TOKUNAGA, AKIRA et al. (26 JAN 1949)

(167716)
PART 2 OF 2

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Plea in bar of trial of TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KUKAMA, Shigeo.

Delivered by

Commander Martin E. Carlson, USNR.

May it please the commission:

These three accused, Tokunaga, Akira; Takahashi, Yoshio; and Kcyama, Shigeo make this plea in bar of trial on the grounds of the statutes of limitations.

The offenses charged are in violation of the law and customs of war. For reasons best known to the judge advocate what these laws and customs of war are in the instant case is not being made known. It suffices for the purposes of the judge advocate to allege the offenses in this vague and indeterminate language.

We know that even at common law pleas of limitation were allowed long before there was any statute on the subject. (34 Am. Jur. Limitation of Actions, Sec. 2 p 14)

In the United States Naval service and by Federal Code there are statutes of limitation which limit the time when a person can be charged with an offense. That is there is a definite time within which action must be brought otherwise such action is barred by statute.

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

Revised Statutes sec. 1624 established the Articles for the government of the Navy. Article 61 of the Articles for the government of the Navy under this statute 1624 provides and I quote the entire article: "No person shall be tried by court martial or otherwise punished for any offense except as provided in the following article which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself/for some other manifest impediment he shall not have been amenable to justice within that period."

This statute of limitations as you will note reads that no person shall be tried or otherwise punished for an offense committed more than two years before the order for his trial by court martial. A military commission convened by a navy officer is but another navy court, an exceptional military court. (See D-12 Appendix D, NC&b) The Constitution of the United States Art. 1, Sec 8, Clause delegates to the Congress of the United States alone the power to define offenses against the law of nations insofar as the United States is concerned. The Supreme Court in Ex-Parte Quirin, 317, U.S. 1 rules that Congress and the President, like the courts, possess no power not derived from the Constitution. The military cannot define offenses nor establish a statute of limitation other than has been legally established. Such utterances of the military do not become a part of the fundamental law of the United States. The fundamental law of the land is of three sources: (1) The Constitution (2) the laws of the United States made in pursuance thereof, and (3) treaties. (Constitution of the United States, Article VI.)

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Therefore when exceptional military trials are held by naval authority the commission conducting such trials shall be constituted and organized and shall conduct its proceedings in the manner provided for naval courts martial. There are no exigencies of service which permit or authorize illegal procedure or illegal acts by a navy convened military commission (Sec. D 14, 15, 19, Appendix D, NC&B). Such procedures or acts which clearly oppugn the express provisions of the Constitution or established law are unconstitutional and void.

The statute of limitationsis regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense (Wheeler v Castor, 11 N.D. 347, 92 N.W. 381, 61 LRA 620) and is one to which in proper circumstances all men are entitled as a right. (34 Am. Jur. "Limitation of Actions" Sec 12 p 23) The defense of the statute of limitations is not technical (U.S. v Oregon Lumber Co. 260 U.S. 290, 67 Led 261, 43 S.Ct. 100) but is deemed to be legitimate substantial and meritorious. (O'Malley v Sims 51 Ariz 155, 75 P. (2d) 50, 115 ALR 634; Guaranty Trust Co. v U.S. 304 U.S. 126, 82 Led. 1224, 58 S.Ct. 785; 34 Am. Jur. Ibid)

Statutes of limitation in criminal cases differ from those in civil cases. In civil cases they are statutes of repose, while in criminal cases they create a bar to the prosecution. (15 Am. Jur. "Criminal Law," Sec 342 p 32; State v Steensland, 33 Idaho 529, 195 P. 1080, 13 ALR 1442; People ex rel Reibman v Warden 242 App Div 282, 275 NYS 59 citing RCL).

Statutes of limitation as applied to criminal procedure are to be liberally construed in favor of the defendant. (Hogoboom v State, 120 Neb. 525, 234 NW 422, 79 ALR 1171.) The state surrenders its right to prosecute and by statute declares the offense to be no longer the subject of prosecution.

In this case these three accused were regularly demobilized and they did return to their own country and resumed their immunities as citizens. The statute of limitations stated in effect that any proofs of their guilt were blotted out since the U. S. Navy Department had not charged them with any crime during the period of two years.

Not only should statutes of limitations be liberally construed in favor of the defendant because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is recognition and notification by the legislature that there are positive periods of time beyond which proof of guilt is destroyed. In other words the defense of the statute of limitation is one not merely of technical process to be grudgingly applied, but of right and wise reason, and therefore to be generously dispensed. (Wharton "Criminal Procedure, Vol I Sec 376).

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

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Statutes provide 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. "Military" Section 98; U.S. v Smith 197; U.S. 386, 49 Led 801, 25 S.Ct. 489). The rule now prevails in most, if not all the States that an accused is entitled as a matter of constitutional right to the services of counsel upon his preliminary examination. (14 Am. Jur. Cum. Supp. Criminal Law Sec 167 N.W. par 884).

Tokunaga, Akira was arrested without warrant September 25, 1946. Takahashi, Yoshio was arrested without a warrant on May 2, 1948. Koyama, Shigeo was arrested with warrant on July 31, 1948 . Not any of these three accused were given the benefit of counsel nor were they told why they were arrested and on what charges. Not until December 9, 1948 were they furnished with a true copy of the charge and specifications.

The statute of limitations has run in this instance because the prosecution have refrained from bringing the accused to trial promptly.

All the accused Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo plead the statute of limitations as a bar to trial for the alleged offenses said to have been committed from June 25, 1944 to July 8, 1944 and pray of judgment of the charge and that the charge and specifications be quashed.

Respectfully,

Martin E. Carlson

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REPLY TO THE PLEA IN BAR

Delivered by

Lieutenant Commander Joseph A. Regan, USN,
Judge Advocate

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

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

Respectfully,

Joseph A. Regan.
Joseph A. Regan.

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PLEA IN ABATEMENT

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

The accused, Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo respectfully interpose this plea in abatement on the ground that there has not been any notice to the protecting power of the opening of this judicial proceedings against these three accused, all Japanese nationals who were brought to Guam by order of Commander Naval Forces Marianas to answer for alleged offenses said to have been committed by them while members of the Japanese military forces on Rota Island in June and July of 1944.

It is true that these three accused surrendered and thereby became prisoners of war in August 1945 and in September 1945 were removed to Guam and subsequently sent to Japan and regularly demobilized. But on September 25, 1946 Tokunaga, Akira was arrested without warrant; on May 2, 1948 Takahashi, Yoshio was arrested without warrant; and on July 31, 1948 Koyama, Shigeo was arrested without warrant. Let the judge advocate answer as to what the status of these three accused is if they are not prisoners of war.

These three accused are Japanese nationals and all former members of the military forces of Japan who are charged with offenses alleged to have been committed while they were serving in the Imperial Japanese Army in June and July 1944. They were captured by the U. S. forces having surrendered on orders of the Japanese Emperor. Article 3 Annex to the Hague Convention Respecting the Laws and Customs of War on Land, Section 1, Chapter 1, Article 3, reads: "The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war."

The Hague Convention No. IV of October 18, 1907, Chapter 2, reads in part as follows: "According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

"It has not, however, been found possible at present to concert Regulations covering all the circumstances which arise in practice;

"On the other hand, the High Contracting Parties clearly do not intend that unforseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

This plea of ours does have merit and it is no answer to say that these conventions apply only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war. We in America have the greatest concern that justice shall be done in the trial and punishment of all men accused of crime in our courts. There is in this present case no valid reason why there should not be notice given as required by Article 60, Geneva (Prisoners of War) Convention of July 27, 1929.

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All three of the accused, Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo, pray that Article 60 of the Geneva (Prisoners of War) Convention of July 27, 1929 be complied with before this trial proceeds and before issue is joined.

Respectfully,

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

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REPLY TO PLEA IN ABATEMENT

Delivered by

Lieutenant Commander Joseph A. Regan, USN,
Judge Advocate

Defense counsel in his next to the last paragraph has already advised the court that the only answer possible by the judge advocate is not an answer at all. He says "It is no answer to say these convictions apply only to persons who were subjected to jurisdictional proceedings for offenses committed while prisoners of war", yet the United States Supreme Court in its review of the Yamashita case, wherein, in that appeal that was one of the very objections made by the defense, namely that no notification had been given to the Swiss Government did specifically answer that objection by stating that it was not necessary to give any notification, as the convention that required it only applied to prisoners of war and their offenses. These men are not being tried for anything they did subsequent to the end of the war. All of the offenses of which they are presently charged were committed in 1944. These men never reached the status of prisoners of war for they were sent back from Rota and demobilized from the Japanese Army. When they were arrested on the various dates pointed out by defense counsel, which dates are all since the end of the war, they were arrested as war criminal suspects and they are charged now with war crimes.

As an extremely practical matter, the only purpose of giving notification to a protecting power would be because the two belligerents did not desire to correspond with one another while hostilities were in progress, and therefore each warring nation would leave the affairs of its prisoners to the protecting power which would be neutral. Here today there is no question of Switzerland being a protecting power for the Japanese have their own national government and the war is over. The Japanese government itself is cognizant of the fact that these three accused are being tried here today for the Japanese government has sent counsel for the defense and also interpreters to aid this court. What purpose could possibly be served, even assuming it to be legal to send notification to Switzerland of a condition that Japan is fully cognizant of? The Supreme Court of the United States has said that the principle used here by defense counsel for his plea in abatement has no application for war criminals and we therefore ask that the plea in abatement be denied.

Respectfully,

Joseph A. Regan.
Joseph A. Regan.

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MOTION FOR A BILL OF PARTICULARS

Delivered by:
Commander Martin E. Carlson, USNR
Defense Counsel for TOKUNAGA, Akira, TAKAHASHI, Yoshio, and KOYAMA, Shigeo.

All three of the accused make this motion for a more definite statement of the charge and for a bill of particulars in order to enable the accused to prepare for trial. (Rule 12(e) Federal Rules of Civil Procedure for the District Courts of the United States and case of Herman v. Mutual Life Ins. Co. (CCA 3d) 108 F (2d) 678, 127 A.L.R. 1458).

The accused pray that Specifications 1, 2, 3, and 4 of the charge set out the law and customs of war which it is alleged the accused violated and thereby committed a war crime.

The object of this motion is to make more definite and certain the charge and the specifications thereunder (Tilton v. Beecher, 59 N.Y. 176, 17 Am.Rep. 337 and 41 Am.Jur. "Pleading" section 276.)

It is necessary that the accused definitely know with a certainty just what law and customs of war they are charged with having violated. The accused cannot determine from reading the charge and specifications what law and what customs they have violated. A penal statute is required to be sufficiently definite to show what acts the law makers intended to punish or it will be considered invalid. Clark and Marshall, A Treatise on the Law of Crimes, 4th edition, section 29, p. 40, stated the rule as follows:

> "It must define the offense with certainty, either by specifying the acts which shall constitute it or by describing it by some name known to the common law." (Citing the cases of United States v. General Const. Co., 269 U.S. 386, 70 L.Ed. 322, 46 S.Ct. 126 see note; 38 Harvard Law Review 963.)

The accused cannot properly prepare a defense to a charge based upon vague and indefinite references to certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907, and customs of war. (Gross v. Big Creek Development 75 W.Va. 719, 84 S.E. 75, LRA 1915 E. 1057.)

According to the ruling in 41 Am.Jur. "Pleading" Section 271:

> "As a general rule bills of particulars will be ordered in every case in which the party can satisfy the court that it is necessary to a fair trial that he should be apprised beforehand of the particulars of the charge which he is expected to meet." (May v. Ill. C.R. Co., 129 Tenn. 521, 167 S.W. 477, LRA 1915 A. 781, Ann. Cas. 1916 A. 213.)

Not knowing the statute, the accused can of course not know what the statute prohibits.

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

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"A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused." (Williams v. Chattanooga Iron Works, 131 Tenn. 683, 176 S.W. 1031, Ann.Cas. 1916 B. 101; and May v. Ill. C.R. Co., 129 Tenn. 521, 167 S.W. 477, LRA 1915 A 781, Ann. Cas. 1916 A. 213.)

We ask for particulars as to the law which made the acts of these accused crimes, war crimes punishable by a military commission.

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

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

Respectfully,

Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

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REPLY TO THE MOTION FOR A BILL OF PARTICULARS

Delivered by

Lieutenant Commander Joseph A. Regan, USN
Judge Advocate

There is no provision in Naval Courts and Boards for such a motion. The only motions provided for are set out in Section 404. This motion is one that is used in civilian courts where the indictment does not sufficiently inform the accused of the crime with which he is charged to enable him to prepare his defense. In naval courts, and military commissions 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, assuming there is any merit in his objections. Counsel for the accused is actually in no doubt as to the specific international law which the prosecution claims the accused has violated for he points out "the accused cannot properly prepare a defense to a charge based upon vague and indefinite reference to certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907." The accused here, from the very wording of the charge and specifications, know that they are accused of having violated Article 30 of the Fourth Hague Convention which prohibits the execution of persons thought of as spies without a trial. As the commission knows, there is no necessity of pleading laws which the commission may take judicial notice of, and at a later date the judge advocate will request the commission to take judicial notice of the Fourth Hague Convention and its pertinent sections. Counsel for the accused has not been hampered in the preparation of his defense for he has known all along the specific law involved. We ask that the motion be denied.

Respectfully,

Joseph A. Regan.
Joseph A. Regan.

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OPENING STATEMENT

In the case of TOKUNAGA, Akira; TAKAHASHI, Yoshio and KOYAMA, Shigeo.

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

If it please the commission:

The charge and specifications in the present case allege that all three defendants presently before this commission are guilty of having executed four natives of Rota and one Spanish brother as spies without benefit of a trial. The four specifications each accuse Tokunaga of having participated in the execution of the five. While there were five individuals killed, there were three different incidents. The killing of two natives on the 25th of June 1944 for which in this trial Tokunaga, alone, is being held responsible. On the 5th of July the Spanish brother Miguel Timoner was killed as a result of the activity of all three of the accused. On the same date, Ignacio de la Cruz was executed and for this Tokunaga and Takahashi, but not Koyama are accused. A few days later, namely on the 8th of July the fifth person was executed and for this Tokunaga alone is accused.

These executions came about through the ever present Japanese fear of spying, even on the small island of Rota that had been held by the Japanese since the first World War, and to which few, if any Americans had come in the twenty or so years that the Japanese held the island. The population had been tranquil, and presumably obedient, until the arrival on that island of the Tenth Independent Mixed Regiment, then led by Captain Tokunaga. The American air raids had started and the Japanese well knew constant and heavy air raids were a prelude to an invasion. For some reason Tokunaga decided that the natives were spying upon the Japanese installations, and were in fact in touch with the American authorities, although just where the Americans were is presumably in doubt since at the time of these executions, Guam had not been occupied. Why these five, out of all the natives that were on the island, were picked is something the prosecution does not know. In our investigation

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it has been determined that one of these victims spoke English and that another wore upon his body a tattooed American flag. Tokunaga had these five arrested. They were given no trial, although, I am sure when the defense begins to produce its evidence, they will insist the executions resulted only after a lengthy investigation by some Japanese officers and enlisted men, but in any event, the victims were given no trial before being executed even though Article 30 of the Fourth Hague Convention specifically provides. Tokunaga sent a message to Japanese Headquarters on Guam that five men were spies and he requested orders as to their disposal. He received back a dispatch telling him to execute the natives, and this he did. On the 25th of June Tokunaga brought two natives, one of them believed to be Bonifacio Estebes to the Yasui Platoon which was then in the Tatacho area of Rota. The commanding officer of this platoon, Yasui, at the time Tokunaga and the two natives arrived, was absent and Tokunaga gave orders to one of the sergeants to have the members of the platoon assemble. In the meanwhile, Yasui returned and Tokunaga told him the two natives were to be executed by the Yasui Platoon. From the assembled men, on the instructions of Tokunaga, Yasui chose an execution squad of six men and lined them up before the two natives. At that time Tokunaga read to the two natives their sentences of execution. This was done in the presence of the two natives and the assembled men of the platoon and of his firing squad. Then pursuant to the order of Tokunaga, Yasui gave the necessary command and the two natives were shot to death. For this execution Tokunaga is being held responsible for Tokunaga knew that the two natives executed as spies had not been given a trial. Some days later, and let the commission remember that the dates in all these cases are very indefinite, but approximately on the 5th of July, two individuals were brought to the small hospital near the battalion cave in the Taruga area of Rota Island. Early that morning a Japanese soldier sent Thomas Mendiola, Tomas Cruz Manglona and another man to the large cave some few miles distant from headquarters where all the natives were staying

as a result of the destruction of their homes by air raids. These three men were sent with instructions to secure the Spanish missionary brother Miguel Timoner, and an elderly native by the name of Ignacio de la Cruz and bring them to the Battalion Headquarters. This they did and when they brought the Spanish brother and the native and turned them over to the soldiers at the Battalion cave they were dismissed and they never saw the Spanish brother or the old man again. Some few days before, Surgeon Lieutenant Takahashi, the accused in this case, had been told by Tokunaga that he was to execute two natives because they had carried on spy activities and he was to use potassium of cyanide. So on this day the Japanese soldiers brought Miguel Timoner to the dispensary of Takahashi, and there in the field on the grounds of the dispensary, the Spanish brother was given a cup of coffee by Takahashi and told to drink. He did drink from the cup and immediately fell to the ground in agony for along with the coffee the cup contained potassium of cyanide. The brother had drunk enough to cause him pain, but not enough to kill him, and so Takahashi sent a messenger to Tokunaga to request instructions of what should be done. Tokunaga sent back the word "finish him off," and when Takahashi received this word he ordered Koyama to bayonet the brother, and this he did killing him. For this execution, all three of the accused are held responsible. A few minutes after the death of the brother the native Ignacio de la Cruz was brought to the scene but Takahashi, realizing that the native might find it a little strange to be offered coffee when no one else was drinking, had his men assemble at a small table nearby and all pretend to be drinking as the native came up. Takahashi then proferred this native a cup of coffee laced with potassium of cyanide and the native, no doubt, thinking it a kindly gesture since all the others were drinking, drank the contents and died as a result of the poisoning. Both bodies were then buried in a hole nearby. For this execution Tokunaga who gave the orders, and Takahashi who carried them out are being held. On the 8th of July the last execution that we know of occurred

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Tokunaga sent for first lieutenant Shiono to report to his battalion headquarters. Shiono came and found Tokunaga with a native, whose name to this day we don't know. In the presence of Shiono, Tokunaga read a sentence of execution to the native advising him that he was condemned because of the spy activity and he ordered Shiono to have the native executed at his detachment. Late that afternoon Shiono and the native returned to Shiono's outfit. There warrant officer Yoshimura was sent for and the native turned over to Yoshimura with instructions by Shiono that he was to be executed the following morning; at this time Shiono advisdd Yoshimura of the sentence of execution. The following morning Yoshimura, accompanied by the native and two seamen, for while Shiono was an Army officer, Yoshimura was a Navy warrant officer, and the members of the Shiono platoon were seamen, went to the beach, and there the two seamen shot the native to death under the orders of Yoshimura. For this execution Tokunaga is held accused.

This case while relatively simple, is nevertheless important. A war crime has been committed and the law should be vindicated even though most of the victims were natives. To prove the statements made by the judge advocate, there will be present in this court, two natives of Rota who were on that island when the events complained of occurred, and also seven Japanese who have personal knowledge of these events. The testimony of the witnesses will be supported and corroborated by the confessions of all three of the accused. There was no trial, but there were five illegal executions.

Respectfully,

Joseph A. Regan.

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Objection to the Receipt in Evidence of the
Confession of the Accused, Tokunaga, Akira.

Delivered by

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

We object to the introduction of the alleged confession of the accused Tokunaga on the grounds (1) that it is obnoxious to the hearsay rule; (2) that this is an extra judicial confession and therefore prima facie involuntary; (3) it was made during the time Tokunaga was being held in close confinement and after he had been so held for more than a year in close confinement (see his affidavit offered in evidence and accepted on the first day of the trial) without charges being preferred against him and without benefit of counsel and was therefore illegally obtained.

In ruling upon the admissibility of this purported confession the Commission should bear in mind the four distinct stages in the history of the law's use of confessions. In the earliest stage going back only to the time of the Tudors and Stuarts, there was no restriction at all upon their reception. In the next stage comprising the second half of the 1700's, the matter begins to be considered, and it is recognized that some confessions should be rejected as untrustworthy. In the third stage, comprising the 1800's, the principle of exclusion is developed under certain influences, to an abnormal extent and exclusion becomes the rule, admission the exception. In the last phase a reaction sets in here and there and little is accomplished in the way of changing the law or practice. (Wigmore, Evidence, Vol. III, Sec. 817) Recent court rulings should be carefully considered by the Commission because it seems that exclusion of confessions is the rule in the present unsettled political world situation. As Wigmore says some of the confusion and uncertainty regarding the law's use of confessions has arisen from a failure to perceive the differing values which the historical perspective confers upon different precedents. (Wigmore, Evidence, Vol. III, Sec. 817)

It is true that the law cannot attempt to weigh testimony before even listening to it. But it can take note of certain objective circumstances as leading with high probability to falsities. The circumstances which thus call for the rejection of a confession are usually described as involving either a promise or threat. (Wigmore, Ibid. Sec. 822) So in this present case the Commission has heard testimony of prosecution witnesses who actually testified that they killed the victims alleged to have been killed by these three accused. When the very persons who did the actual killing are not brought to trial such circumstances can well be considered by the Commission in deciding whether or not there was promise of immunity from trial if this accused did also confess.

This alleged confession is particularly obnoxious and contrary to the rights guaranteed by the Constitution of the United States of America to all men. The Fifth Amendment guarantees that no person shall be compelled to be a witness against himself in any criminal case, nor be deprived of the life, liberty, or property without due process of law. The Sixth Amendment guarantees that the accused shall in all criminal prosecutions enjoy the

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right to a speedy or public trial by a jury, to be informed of the nature and cause of the accusations and to have the assistance of counsel for his defense.

Commander Currie knew that Tokunaga had been held in close confinement for more than a year without charges being preferred against him and without benefit of counsel. Statutes provide 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. "Military" Sec. 98 and case of U. S. v. Smith, 197 U.S. 396, 49 L. Ed. 806, and other cases). "The rule now prevails in most if not all the states that an accused is entitled, as a matter of constitutional right to the service of counsel upon his preliminary examination." (14 Am. Jur. Cum. Supp. "Criminal Law" Sec. 16, p. 74)

The very form of this alleged confession is objectionable. A Navy officer with an enlisted Navy reporter and an interpreter who has been working for the U. S. Army and Navy went to Sugamo Prison and proceeded to question Tokunaga, asking him 111 questions which he was required to answer without benefit of counsel. The original questions put to Tokunaga in Japanese (he cannot understand English) are not even reworded or offered in evidence. Instead we have questions and answers in English only. Such a procedure is quite unfair to the accused since he cannot understand or speak English or read or write English.

For these reasons we object to this document and move that it not be accepted into evidence.

Respectfully,

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

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冒頭陳述

弁護人　佐藤　毅

被告徳永明、高橋喜雄及小山茂雄が目下訴追サレテ居ル所ノ、昭和十九年七月下旬又七月上旬ロタ島デ起ツタ島民ノ居住民ノ殺刑事件ニ於テ最モ大キナ論争点ハ一ハ法律論――即チ主張サレタル事件ガ戦争法規ノ違反デアツタカ否カトイフ点――デアルト考ヘル。

検事側ニ依テ主張サレテ居ルコトハ被告等ガスパイヲ処刑スルニ当ツテ国際法規ニ違反シタトイフノデアルガ本事件ノ被害者ハ果シテ国際法規ニ規定サレテ居ルスパイデアツタカ否カ先ヅ之ニ就テ検討スル要ガアル。

スパイトイフ言葉ハヘーグ条約第二十九條ニ規定サレタ特定ノ條件ヲ備ヘタ狭イ意味ノモノト単ニ敵ニ味方ノ情報ヲ提供スルモノトイフ廣イ意味ノモノトニツノ用法ノアルコトハ周知ノ事項デアル。今日迄本法廷デ日本人証人及島民ノ証人ガ被害者ハスパイ行為ニ依テ処刑サレタモノデアルト証言シタガ之ハ後者ノ廣範圍ノ意味ノモノデアリ国際法上ノ條件ヲ具備シタスパイノ意味デナカツタコトハ既ニ委員各位モ了解セラレタコトト思フガ尚弁護側段階ニ於テコノ点ヲ一層明瞭ニシタイト思フ。

被害者タル ロタ島民又原住民ノ行為ガヘーグ條約第二十九條規定ノスパイ行為デナカツタトイフコトニナレバ被害者達ハ何等国際法上ノ取扱ヲ受ケル資格ハナカツタノデアリ又本件被害ハ何等戦争法規ノ違反シタモノデアルト問責サレル理由根拠ガナイノデアル。

被害者達ノ行為ガヘーグ條約第二十九條ノ行為デナカツタトスルナラバ如何ナル法規ニ該当スルモノデアリ如何ナル罰ガ課セラルベキモノデアツタカ――

――/――

x (1)

0091

被害者達ノ行為ヲ指ズルニ之ハ事件当時香港統治ニ関係アリシ
ニ適用サレテ居ラ軍機保護法ニ違反セルモノデアリ之ニ依リ處罰サルベキ
モノデアリタルデアル又当時ノ戦況カラ云フトラバ陸軍刑法ガ適用ニ準
ラト解スルコトガ出来ルノデアル。尖故弁護側ニ於テハ関係日本国
政法ヲ証據ニ提出シタイト思フ

被告等ガ訴追サレテ居ル事件ノ事実部門ニ関シテハ検事側
証人ノ証言ノ事項ト検事ニ依ツテ提出サレタ被告ノ陳述書ノ内
容トノ間ニ大キナ相違ハナイ。従テ事件ノ事実ノ大綱ニ就テ特ニ論
争シタイトハ思ハヌ処ニ於テ本事件ヲ我々ノ当ノ時ニ考慮ニ入レテ
イバナラヌコトハ……事件生起当時ノ戦況ト共ニ戦況下ニ於テ被告
徳永ノ執リタ措置ハ軍事上ノ必要上緊急已ムヲ得ナカツタト云フ点
デアル。

モウ一ツ尖ニ處刑サレタ島民及居住民ノ通敵利敵行為ノ
罪状トヲ調査確認スル為ニ執ツタ措置デアルコトニ尖ニ就テハ
調査ノ主任者デアツタ奥山陸軍中尉ガ死亡シテ居リ又弁護側
カラ訊問書ヲ提出シタ徳永憲兵軍曹ガ現在精神異常者デ
アツテ Deposition ヲ得ルコトガ出来ナカツタ為ニ詳細ヲ提出
スルコトガ出来ナイ。処ニテ被告徳永及ビ証人今川茂男ノ記
憶スル限リノ事項ニ依リ是等ノ点ヲ明瞭ニシタイト思フ

以上ノ点ノ外ニ他ノ事実ニ関スル事項ヲ明瞭ナラシメル
為ニ関係者ニ提出シテ得タ所ノ Deposition ヲ証據ニ提出
シ又必要ナ弁護側証人ヲ証人台ニ立テルデアロー。

(終)

X (2)

0092

OPENING STATEMENT FOR THE DEFENSE

In the case of TOKUNAGA, Akira; TAKAHASHI, Yoshio and KOYAMA, Shigeo

Delivered by Sanagi, Sadamu, Counsel for the Accused.

If it please the commission:

The main point at issue in the incidents of the executions of native inhabitants and residents which took place on Rota Island in the latter part of June and early part of July of 1944 with which the accused TOKUNAGA, Akira, TAKAHASHI, Yoshio and KOYAMA, Shigeo are presently charged, is, in our submission, the legal aspect of the argument, namely whether these alleged incidents contitute violations of the laws of war.

The judge advocate alleges that the accused violated international law in executing spies. It is necessary first to examine whether or not the victims in the present case were spies as defined by international law.

The word "spy", as is well known, is used in two meanings of that word. First in the narrow sense of the word with special conditions, in the meaning of the word as defined in Article 29 of the Hague Convention. Secondly, in the broader sense, of a person who discloses secrets of one's own side to the enemy. The Japanese and native witnesses who have testified in court up to the present time have stated that the victims were executed for spy activities. They are using the word "spy" in the latter and broader meaning of that word and not in the narrower and conditioned sense of the word as understood in international law. Of this fact, it is believed, the commission is already aware. However, this point will further be clarified in the defense phase of this trial.

If it is shown that the acts of the native inhabitants and residents of Rota Island who were the victims, were not acts of espionage as determined in Article 29 of the Hague Convention, the victims were in no way qualified to be treated in conformance with International Law, and there is no reason or ground for the accused in the present case to be charged with violation of the laws of war.

If the acts of the victims were not acts as determined in Article 29 of the Hague Convention, to what laws did they correspond and to what punishments could the victims be subjected for them?

Referring to the acts of the victims, these were violations of the Military Secrets Security Law, in effect in the South Seas Mandated Territory at the time of the incidents, and the victims should have been punished in accordance with that Law.

And further, in view of the then existing battle conditions the interpretation that the Army Criminal Code applied, may also be placed. Therefore the defense will introduce these relevant domestic laws of Japan into evidence.

Concerning the factual aspect of the incidents with which the accused are charged, there is no wide discrepancy between the matters testified to by prosecution witnesses and the contents of the statements of the accused of-introduced into evidence. Consequently we do not wish in particular to contend on the main factual aspects of the incidents. However, one point must specially be taken into consideration in judging this case, which is, that under the battle conditions existing at the time of occurrence of these incidents, the measures taken by the accused Tokunaga were necessary and urgent from the military standpoint.

0093

Another point to be considered is the crimes of informing the enemy and subversive activities on the part of the natives and resident who were executed and the steps taken to investigate and confirm these activities. In connection with this, Lieutenant Okuyama who was in charge of the investigation is deceased, and Kempei Sergeant Tokunaga, to whom the defense sent interrogatories, is today mentally unbalanced, so that the defense were unable to obtain a deposition from him. The consequence is that the defense is unable to introduce details concerning this point. However it will attempt to clarify these matters as far as possible on the basis remembered by the accused Tokunaga dna the witness Imagawa, Shigeo.

To elucidate the above two points and other matters pertaining to the facts, depositions which have been received from persons concerned will be submitted, and essential witnesses for the defense will assume the stand.

Respectfully,

Sanagi, Sadamu.

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

Eugene F. Clark,
Lieutenant (junior grade), USN,
Interpreter.

0094

徳永明陣述書

裁判長並に軍法委員各位、
審理最終に方り私の経歴、当時の日々為の状態、島民の取扱、及び引続き経緯、心境を開陳し、多くの経験と名誉ある服務を有せらるる軍法委員各位の御賢察を御願申上げます。

経歴

私は九州熊本県僻村の農家に生れ素朴醇厚なる同地に於て小、中学校時代を過しました　幼時より軍人となり国家に忠誠を盡すべき希望と当時支那事変の拡大による日本の危機情勢は遂に意を決して昭和十年東京の陸軍士官學校に入校致しました

昭和十四年卒業と共に北満に派遣せられ約五ヶ年同地附近にありて対蘇作戦の猛訓練一風雪を胎む満蘇國境に又は酷寒或は人跡未踏の曠野、密林――に従事しました　当時附近は牧安の駐屯地と対峙し寒下四十度確立し実戦に参加する機会もありませんでした

昭和十九年三月突如動員下令せられ中部太平洋地区に派遣されました

夜半グアム島の港到着と共に輸送船中にて第二十九師団長高品中将に申告し一部を指揮し翌朝ロタに向い直に第二十九師団長高品中将に申告し一部を指揮し翌朝ロタに向いました　其処に於て私は軍隊に入ってから始めて海軍及び民間と接触を持たされ然も此等の上に立って防衛に関する指導・全島の連絡調整に身に余る重責を感じ全力を盡しました　未だ浅きを自覚し常に上司の指示を仰いで盡忠なきを期して居りました

当時師団長参謀長、兵団長等の巡視指導が屢あり其の際種々の指導を受けた事も屢々ありました　今川が来てからは生活で経験の多い彼に如何にすべきかの問題が起きた時は常に相談して助言を得て居りました

0095

ロタ島の状況

昭和十九年七月下旬より大隊は グアム島に移駐準備中、同年六月十日
突如米軍のマリヤナ進攻作戦開始せらるや 無数の艦艇海を覆い空には
数百機雲霞の如く 飛んで連日連夜十機の爆撃と海上からの砲撃とを受け
ロタ島は一時全く指揮連絡遮断せられ 私は当時 ソンソンにありて極力
戦備の促進秩序の確保に努めました
当時上司から與えられた状況判断では 米軍の ロタ上陸の
公算は 約二ケ師団 約二ケの第一線増加 全住民壮丁の
召集徴用に依る戦力強化を行い且戦斗指揮所を(ソンソンより)米軍上陸予想地
たる タルガへの移駐を行いました 今川は私より上級将校にて
当時海軍指揮統一の関係からも 今川の陸海民の統一指揮を良策と
考へ グアム司令官に 私と今川の指揮関係を照会せし処 統帥指揮
権は飽くまで私にある旨返事を受け私は之に従いました
大隊は編成上有線通信資材を有せず 当時南洋興発株式会社の事業
用として敷設せる電話線を軍用として使用しあり、是は利用し得る唯一の
指揮連絡施設でありました 然るに砲爆撃に依る被害と叛逆行為者
等の故意切断妨害により作戦遂行上重大支障を生じました 従って
私は緊急重大なる第一線部隊の指導の為止むを得ず夜間も利用し
地区より地区に移動せる状態であります
然もサイパン島占領(六月中旬)せらるや 米軍一つの度をかへ 今度の状況ふ米軍一つ
ロタ島に対する砲爆撃は熾烈の度をかへ 今度の状況ふ米軍一つ
上陸切迫を思はせ 全島守備将兵は殆んど徹宵戦備を厳にして
居りました

島民一般の取扱いに就て

口島に在りし島民は約八百名で公学校教育も徹底し大部分が日本
語を解し其の素質も在住朝鮮人沖縄人等より良好で日本軍隊
に進んで協力する状態でありました　従って自ら好意がもたれ島
民を使って居た部隊に於て大部の島民の働きは良好でありました
又徴用実施に方りても亦叛逆行為の調査に際しても進んで援助を
申出でました　亦此の調査の主任者たる奥山少尉は最も克く島民
の内情に詳しく彼等のよき理解者として信頼を得て居りました
徴用せる島民の起居、作業、給養等は兵員と少しの変る処なく
相互に親愛の情を生じ私の巡視に方りても汗と土にまみれ兵員と
共に働く姿を見て感謝して居りました　亦彼等の休暇は他
の日本人徴用兵より特典を與え都合によりては日々通勤を許す
等の便宜を與えて居りました
避難島民に対しては各係を通じ克く保護せしめ亦私自ら余暇を
利用巡視して其の労苦を慰めました　是の如く島民は戦斗員の
一部として将亦陣地構築作業、食糧の確保に、外敵と全く遮断
されたる孤島に於て互いに力を合せ多く相依り相扶け苦楽を共にしたの
であります

四、処刑の心境

一九四四年以来ロタ島は日本の委任統治地で日本帝國の領土の一部でありました　グアム島の司令官の命に依り処刑されました五人の被逮者の行為は日本を裏切る企図なりとなされました　此等の人々は彼等の生涯の大部分を日本法律の保護下に生活して居ました　そして其の日本が重大なる危機に直面した時に其の旗を裏切ったのであります

即ちマリヤナ群島が米軍の総攻撃を受けサイパン島敗戦に落ちグアム及ロタ島が上陸直前の昨今より空爆を受け全将兵が決死を以て防衛を覚悟せる情況に於いて放任せば益其数を増大、悪質化しロタ島住民の運命を左右する重大なる犯罪の特徴を持って居ります

昭和十九年初期に於て日本軍は日本防衛の最後の一線として急速にマリヤナ地区の強化に奔走し兵力資材の輸送・築城・飛行場の増設に最も多忙でありました　一方飛行場の完成拡張に全島民協力作業中でありました――ロタ島に於ても同島民部落疎開中の奥山少尉より島民の一部に利敵又は軍機探知等の被逮行為の疑ある旨報告を受け師団長巡視の際報告せし処　性質に鑑み厳重に警戒する如く指示せられ　私は奥山を指名し憲兵に捜査を命じ逐次報告を受けました

戦況の緊迫、熾烈なる米軍の攻撃其他各種の事情に依り（急にして）私は本事件の調査に専念する事は出来ませんでしたが　調査を命じたる奥山少尉及憲兵曹長の周密なる調査に対し全幅の信頼を置き又時私は已の能なる最大限を尽し捜査を重ねる等当時私は作戦上司法上の見地から此事を上官たるグアム島軍司令官に報告せざるを得ませんでした　彼等は軍機を漏洩し作戦行動を妨害する叛逆の罪に対し有罪となりそしてグアム島が全滅に直面した秋（とき）に於て是等の人々を処刑する命令が発せられました　グアム島に於ける日本軍隊は全滅しロタは単に米軍がロタに上陸する事により救われました

（二）

私は彼等叛逆者達が敵に援助を與えた事を知って居ます、何故に立人が以前に充分なる裁判なくして処刑を命ぜられたかは知りません、然し司令官が私に処刑を命じて私は其の命令に従はざるを得なかったのであります
之を行ったのは日本島に於ける日本軍の守地を守り且かゝる叛逆罪に対し死刑を課する事を要求する法律に従って是等の責任者と認したのであります
私の行為は日本国の重大なる責任前令に基き私の直属上官たる司令官の命令に従ってなされたものであり一兵の私心或は不埒面目なる態度も毛頭なかった事を信じます
最後に三つの処刑は私が厳粛に死刑の宣告を行った后夫々私の指定した部下に実施を命じたものであります――安井堆野が私の命に従った如く高橋は軍に私の命に従ったに過ぎません　従って野、安井の部下と同様高橋の命に従ったに過ぎません　小山は堆高橋、小山に何等の責任はなく、假に彼等に何程かの責任ありとしても夫は大隊長であった私一人の負ふべきものである事を申上ぐる次第であります。

敬白

Statement of TOKUNAGA, Akira.

At the close of this trial, I would like to make a statement regarding my personal history, the situation existing at that time on Rota, the treatment of the natives, circumstances that led up to the execution and my state of mind, and submit them to this experienced and honorable commission for their mature judgment.

Personal History:

I was born on a farm in a remote village in Kumamoto prefecture, Kyushu, and spent my grammar and high school days in an environment of simplicity and humbleness. From childhood I aspired to become a military officer and to serve my country faithfully and truthfully. With the development of the Sino-Japanese Incident, Japan was placed in a critical situation. Consequently I made up my mind and entered the Military Academy in Tokyo in 1936.

I graduated from the Academy in 1939 and, simultaneously, was dispatched to North Manchuria where I was stationed for five years. I was engaged in intensive training for the Soviet operations, being face to face with the Soviet positions along the borders of the Soviet Manchurian frontier where the temperature often dropped to 40 degrees below zero; on plains and in forests where no man had hitherto set foot. At that time the peace and order in this district was well established and I had no opportunity to participate in actual combat.

Suddenly, in March 1944, orders for mobilization were issued, and we were dispatched to the Central Pacific Area, having been told on board the transport we were told that we had been selected as the Rota Island Detached Unit, so as soon as we arrived on Guam, at night, I reported to Lieutenant General Takashina, Commanding General of the Twenty-ninth Division, and the next morning I assumed command of part of the Unit and left for Rota. It was my first experience since I entered the army in which I was placed in contact with the navy as well as the civilians. I felt that I was unequal to carry such an enormous burden of responsibility when I realized that I had to stand above all and direct matters concerning defense, liaison, and coordination work of the whole island, but I exerted all my efforts in that direction. I was also well aware of the fact that I was young and inexperienced, and consequently always asked for instructions from my superiors. At that time there were frequent instruction-inspection tours by the Commanding General of the Division and his Chief of Staff as well as the Brigade Commander. On these occasions I received various directions. Moreover, I received frequent instructions over the wireless. After Imagawa, who was well advised on matters came to the island, I used to consult him on matters which called for a decision and accepted his counsel.

The Situation on Rota Island:

In the middle of the withdrawal of our battalion from Rota to Guam, which had commenced during the latter part of May 1944, the United States Forces started its Marianas Operations on June 11, 1944, and numerous warships covered the sea. Waves of bombers darkened the skies and hundreds of bombers dropped their missiles while naval guns shelled the island daily. All command communications were temporarily suspended. I was at that time in Songsong and concentrated my efforts in preparation for combat and the establishment of order and security.

At that time, according to the judgment given by the higher commands regarding the battle conditions, and the present phase of battle, American landing on Rota appeared imminent. I carried out reinforcement of the first

line units with the 2,000 naval personnel of the Naval Air Base, and consolidated the fighting strength by conscription and induction of all the adult residents of the island. Furthermore, I moved my battle command post from Songsong to Taruga where we anticipated a landing of the United States Forces. Imagawa was my senior and in regard to the unification of army and navy command I considered it a better policy to let Imagawa assume unified command over the army, navy, and civilian groups, and asked for directions of the Commanding General on Guam regarding the command relationship between Imagawa and myself. We received a reply that the command authority be vested in me and I obeyed the orders.

Due to the organization of the battalion we did not possess any telephone equipment. At the time, we were using for military purposes telephone equipment owned by the South Seas Development Company. This was the only communication facility for command purposes that was available. But due to the damages sustained by the bombing and the intentional cutting of the telephone wires by saboteurs, our operations were seriously hampered. For this reason I was forced to move by night under cover of darkness from one area to another in order to give directions to the first line units on urgent and important matters.

Moreover, after the capitulation of Saipan (middle of June) the main target of the American offensive turned to Guam and aerial bombing, and naval bombardment increased in intensity. The general situation anticipated an impending American landing, and all the officers and men on the island were under strict orders to be at their battle stations night and day.

Regarding the treatment of the natives:

The native population on Rota Island was approximately 800. The public school education was thorough-going and most of the natives understood Japanese. Their intelligence surpassed those of the resident Koreans and Okinawans, and they willingly volunteered to cooperate with the Japanese Forces. We could not but feel favorably disposed toward them. The work done by most of the natives who were employed by the units was very satisfactory. When the conscriptions were carried out, and on the occasion of the investigation of saboteurs, they willingly offered to give assistance. Second Lieutenant Okuyama, who was in charge of the investigation, was well advised on the internal conditions of the natives and enjoyed their confidence as a friend and sympathizer. Billets, work, and food for the conscripted natives were no different from that of the Japanese soldiers and between them a strong bond of friendship and affection had grown. I was overwhelmed with gratitude whenever I observed these people in my tours of inspection working side by side with the soldiers with sweat streaming down their muddy faces. They were given privileges regarding their holidays which was not granted to the other Japanese employees. I even permitted them to come to work from their own homes whenever it was convenient for them to do so.

Through the men in charge, we gave the refugee natives the best possible protection. I, myself, utilized some spare moments to visit them and expressed my sympathies. Likewise, the natives, as part of the combatants, helped us construct positions and procure food, sharing misery and happiness together, depending on each other and assisting each other on this isolated island cut off from the outside world.

Circumstances leading up to the execution:

Since 1914, Rota Island became one of the mandated territories of Japan, and was the integral part of the Japanese Empire. The acts of these five saboteurs, executed in accordance with orders from the Commanding General on Guam, were done with the intent to betray Japan to the enemy. These persons

were under Japanese rule and protection, and in Japan's crucial hour they treacherously betrayed her, under whose flag they had lived most, if not all their lives. This was done at the time when the Marianas were taking the full brunt of an all out American offensive, at a time when Saipan had fallen into enemy hands and when the officers and men on Guam and Rota were facing annihilation confronted by terrific bombardment from the air and sea as a prelude to landing operations. If this was left uncontrolled the number of such cases would have increased and would only go to accentuate and perpetuate these acts. The very character of this crime imperiled the defense of Rota and, ultimately, the fate of all the armed forces and residents on Rota.

In the beginning of 1944 Japan hurriedly strengthened the defense of the Marianas as the last line of battle and the Japanese forces were fully occupied in the transport of men and materials, the strengthening of airfields. On Rota all the residents were engaged in the work of completing the expansion of the first airfield. At about this time, I received a report from Second Lieutenant Okuyama, who was then stationed in the native village of Tatacho, that there was evidence pointing to acts of treason, such as detection of military secrets and subversive activities on the part of some of the natives. I reported this to the Commanding General of the Division on one of his tours, and he directed me to take strict precautions regarding serious cases. I nominated Okuyama to make careful investigations and received a series of reports from him. Owing to the pressing war situation and various other reasons, I was so busily engaged as not to be able to devote myself to the investigation of this case. At that time I was exerting myself to the maximum capacity and I had no thought of conducting further the exhaustive investigation which was undertaken by Second Lieutenant Okuyama and Sergeant Tokunaga, whom I had ordered to make an investigation of the incident.

From the operational and judicial viewpoint, I was obliged to report this to my superior, the Commanding General of the Twenty-ninth Division on Guam . They were found guilty of the crime of treason in that they had disclosed military secrets and impeding operational movements. Orders were received to execute them at a time when Guam and Rota islands were facing annihilation. The Japanese garrison on Guam was annihilated. Rota was saved only because the Americans did not desire to fight for Rota. I know their acts of treachery did aid the Americans. Why the five persons were executed without a formal and full trial is not for me to say. I could only but obey the orders I received from the Commanding General.

We executed them because the Japanese Forces had to defend Rota Island and punished these traitors in accordance with the laws which demanded the penalty of death for acts of treason.

My actions were based on the grave sense of responsibility to defend Rota and in conformance with the orders of my immediate superior, the Commanding General, and there is not a particle of doubt as to the sincerity and impartiality of my attitude regarding my act.

In conclusion, I would like to call your attention to the fact that the three executions were performed after I had solemnly pronounced their death sentence and nominated my subordinates to carry it out. Takahashi only carried out my orders as did Yasui and Shiono. Koyama only carried out the orders of Lieutenant Takahashi as did the other subordinates of Shiono and Yasui.

0102

Consequently, no responsibility can be layed upon Takahashi or Koyama. If there was any blame accountable to them, it should be assumed by myself alone who was then their battalion commander.

Respectfully,

/s/ TOKUNAGA, Akira

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

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

0103

高橋嘉雄　陳述書

私は証人台に立って自己の為に証言しませんでした
何故ならば本件の全証據はたゞ私が上官の命令に従って二人の島民の処刑に参加したと言ふことだけだからであります　私が重罪を犯した二人の人々の処刑を命ぜられたことは私を率直に認めなければなりません
嘗て日本陸軍の一軍医将校であつたものとして私は合衆国の軍隊に於いて長期の名ある服役を有せらる、軍法会議員諸君の前で絶対的な上官の命令に対して冗長な説明を行はうとは思っておりません
又貴国アメリカの裁判所に於いて「上官の命令」が弁護として用ひられ得るか否かは私の知る所ではありません
私は茲に一九四四年六、七月ロタ島に於ける私の不幸な立場などうして私が重い罪により起訴せられ此の裁判所に来る様になつたかを説明しやうと思います
私は子供の頃黄熱病の研究をして一生を捧げた野口英世博士の伝記を読みました　私は全世界の人々を此の恐ろしい病気から救ふ為にした彼の偉大なる貢献に感激しました
幼な心ながら私は医者となつて痛に苦しでゐる人々の為に働かうと志したのであります　此の私の望が実現し一九四一年三月私が京大の医学部を卒業したとき　私は私の医術と学識を治用される時が来ることを非常に期待して、おりました
当時は日支事変の亡真最中でありました　日本の私と同じ年頃の青年達と同様に私は日本の軍隊に服役する様に

なりました。私は陸軍に入り基礎訓練の忙しい日を送りました。言うまでもなく吾々の訓練は戦争の為のものであり命令に対する服従と天皇の為に死め覚悟が強調されました。そして数ヶ月のち あの十二月八日の霜の朝私は日本と連合軍との間に戦争の勃発したことを聞きました。

かゝる戦争は当然 私の長期の服役を余儀なくせしめました。この様な強い戦争の流れを前にしては一片の葉屑に等しい私はたゞ流されるばかりでありました 誰として一九三二年以来ずっと続いて来た長い戦乱の終ることを望まないものはありませんでした 平和を希求する他の多くの人々と同様に私は好まざるとにかゝはらず恐るべき禍に押しやられて行きました 然しかゝる戦争の混乱の中に於いても私には一つの希望がありました それは 私が医者であったことであります 私は依然として私を必要とする人々 即ち直面しなければならぬ甚だしい現実の中で 病み傷きよるべなき人々の為に尽すことが出来たのであります

一九四四年三月 私がロタ島に到着すると 私は徳永大尉の指導する大隊本部へ配属せられました ロタ島はグアムの北方三十二哩に在る小さい島で二千の日本人と千名の島民が住んでおりました 此等の島民は正直従順で日本の忠良な臣民と見做されておりました 私は彼等を愛し彼等と共に働き又彼等の為す仕事は常に私に満足を与へました 親密度が深まるにつれ 私は彼等も又吾々日本人と同様に吾々自身の悲劇的な運命を知らず国家の為に善かれと念じて居る様になりました

一九四四年六月中頃 米軍はマリアナ諸島に対して大規模な

侵宅作戦を行ないました。彼等の砲撃の猛烈さは到底
筆舌には盡し得ません。昼間ずっと敵機は吾々の頭上ん
居り彼等は悪退するだけの装備を有せぬ吾軍の部隊
と陣地に爆悪と機銃掃射を浴びせました。弱んだ吾々は
洞窟の中で時を過し晩の食事に皆が集り合ふとき
友が未だ丈夫で生きてゐることを喜び合ったものでした。
此等の猛烈な攻悪の為吾軍の死傷者は増加しました。
絶えざる担架の列が私の小さい医務室ん殺到しました。
私は彼等を日本人も島民も全力を盡して手当しました。
吾々は協力一致して生命を賭して戦ってゐたのであります。
私は屢々夜更すぎまで働き明日死ぬかも知れぬ患者の
ことを案じて寝られませんでした。
此の事件はちやうど此の様な時即ち敵のロタ島に対する
上陸が予期されてゐるときに起りました。日本軍人は
勿論島民の大部分は来るべき戦争の準備に忙殺されて
おりました。かうした状況下で苦しいロタ島の人々全部を
米軍ん渡すことがあったとしたらそれはロタ島の人々全部を
危地に陥れるでせう。第五列が吾軍の真只中にゐなくてさへ
絶望的な状態でありました。まして故作戦を妨害し軍機
を探知蒐集しえを敵ん漏洩した叛逆者は処刑せらる
べしとの命令がグアム島の高級司令部から発せられました
私は当時軍隊ん於ける経験の浅い階級の低い軍医ん
過ぎませんでした。当時の状況下島民を処刑せよと言ふ
師団長の発した命令が合法であると信ずるのは当然
のことでありマがる命令ん従ふことは日本軍隊の慣習
と訓練ん合致した行動であると思います。

処刑に毒を使用することは恐ろしいことでしたが私はその
命令を何か訊しませんでした 私は島民が毒を飲んで
死ぬとき大して苦しまないと真面目に信じておりました
私は一九四六年十月に復員しました 戦争は終ってみま
した 私は東京の廃墟に立ったとき悲しい気持がしま
した それは数百万の人命を盡してまで戦って恐るべき
戦争でありました 然し私は戦争が終ったことを喜
びました 東京の荒涼たる廃墟の中にさへ私は
平和の微笑むのを感知しました
私はかねての志望がかなって東京都保健所で働き
ました 私は結婚し子供を持ち幸福な日を送りまし
た 私は日本の再建の為に盡してゐるとの自覚のもと
に努力致しました 私は此の仕事を好みまた妻を愛
しました 私の生涯の最も楽しい年は此の時でありました
然し一九四八年の五月 私は逮捕状なしに警察官に
逮捕せられました 吾々が皆新聞で讀んだ日本の新
憲法には「何人も理由を直ちに告げられ且直ちに
弁護人に依頼する権利をあたへられなければ抑留又は
拘禁されない」と言ふ規定があるにかゝわらず
それから私は巣鴨監獄に拘禁せられ一九四八年十一月
九日に私の裁判の命令書が出る
まで私は弁護人を利用出来ませんでした 私のことを
擁護する人は誰もない様な気がしました
現在 私はあの混乱の時に為したことを後悔してゐ
ます 私は神の前に首くくることが罪であることを認めます
然し当時の状況下に於て私は他の行動をとり得た

でせうか それは私の上官の絶対命令でありました それは
敵前に於て ロタ島の人々の暴動を鎮圧し、ロタ島の人を
を玉砕から救ふ自己防衛行為でありました 叛逆罪
を犯したと言はれてゐる主謀者たちは処刑を命ぜられ
ました 戦争の最中で絶対命令をもちへられたとき
他の行動をとることがどうして一の能でありませう 前述
したごとく 米国の裁判所ん於て上官の命令が弁護
たり得るか否かは私の期待もし知りもしないことであ
ります 貴国アメリカが戦勝国であること それ自体
人生の運命の神はあやつられた将棋の歩に過ぎない
私を裁判するに当り 貴方がたが貴国の道徳の
規範と貴方達が法律であると考へるところのものを
私に押し付けざるを得なくせしめてゐるのでありませう
人々の中には 米国が戦敗国日本を裁判するのは 正し
いと言ふ人がありますが 私は私の裁判の時もかくある
ことを信じてゐます
軍法委員諸賢 どうか私の状況、戦争の状態
敵前に於てとられた行動及私の苦しい立場を理解
して下さい どうか私が貪しいもの病めるもの及瀕死の
病人を助ける仕事が出来る様 私の願をきいて下さい
現在の日本ほど医者を必要とするものはありません
私は人々の苦しみを和らげる為に私の一身を捧げます
貴官がたの一言 言へば 私の為にかくも多くのことを為す
ことが出来 そして未だ述べることの出来め無数のことか
私を通じて行はれ得るのです 私 高橋嘉雄の様な
ものにさへ関心を持たれてゐる貴官等どうか私の願ひ

BB(5)

0108

理解して下さい。私は自己の重大な天職をたゞへまでは
怠って居た者でありました。然し決して今後再び此の
天職をおろそかにはしないでありませう。
是は私等の国家と理解をした次第であります。

謹しみて

右.

高橋 喜雄

BB(6)

Statement of TAKAHASHI, Yoshio.

I did not take the witness stand to testify in my own behalf, because all the evidence merely shows that I participated in the execution of the two natives in accordance with the orders of my superior officer. I myself must frankly admit that I was ordered to execute two persons who were said to have committed serious offenses. As a man who was once a medical officer in the Japanese Army, I do not wish to make lengthy explanations concerning absolute superior orders before the members of this military commission whom I believe have records of long and honorable service in the United States armed forces. Whether "superior orders" may be used as a defense in your American courts is of course something I do not know. I shall try to explain my unfortunate situation on Rota in June and July 1944 and how I am here in court today charged with a grave crime.

When I was a child I read the biography of Dr. Hideyo Noguchi who staked his life for the research of yellow fever. I was deeply touched by his great contribution to save the people of the world from this dreadful disease. My young mind was made up to be a doctor and to work for the people by saving those who were suffering from illness. When my wish and life ambition came true and I was graduated from the Medical Department of the Kyoto University in March 1941, I looked forward with great expectation to the time when I could make use of my medical skill and learning.

At that time, the Sino-Japanese Incident was at its height. Like all the young men of my age in Japan I served in the armed forces of Japan. I entered the Army and passed busy days in our basic training. Needless to say our training was for war and stressed obedience to orders and a will to die for the Emperor. Several months later, on the frosty morning of December 8, 1941, I heard that war had started between Japan and the Allied Nations.

Naturally such a war was to require of me a long service in the Japanese Army. Before the strong tide of the war, I was nothing but a light piece of straw which would be swept along the stream. Everyone hoped that the long war which had continued since 1932 would soon end. Like many other people who loved peace, I was pushed in the direction of war whether I liked it or not. But even in the confusion of war, I had one hope. I was a doctor. I still could serve the people who were in need of me, those who were sick, wounded, and helpless in the stern reality which they faced.

After I arrived on Rota Island in March 1944, I was attached to the battalion headquarters commanded by Captain Tokunaga. Rota was a small island only 32 miles to the north of Guam and was inhabited by 3,000 Japanese and 1,000 natives. These natives were thought to be honest and diligent people, and were deemed to be loyal subjects of Japan. I loved them and worked with them, and their work always gave me satisfaction. As our relationship became closer, I came to know that they were like the Japanese who were willing to do their best for their country without knowing the tragic destiny awaiting them.

In the middle of June 1944, the American forces commenced a large scale offensive in the Marianas Islands. The intensity of their bombings and bombardments were indeed beyond description. All through the day, the enemy planes were above us bombing and strafing our troops and positions which did not possess the arms to repulse their attacks. Most of the time we passed in the cave, and were delighted that our friends were safe and alive when we met them at the evening meal.

CC(1)

Because of these furious attacks, our casualties increased. A constant stream of stretchers made its way into my small dispensary. I treated them, Japanese and natives, to the best of my ability. We were all fighting for our lives. Often I worked later than midnight and could not sleep being worried about my patients who might die the next day.

The incident happended just at the time when it was expected that the enemy would land Rota Island. Not only the Japanese servicemen but also most of the natives were busily occupied in preparing for the coming combat. Under such circumstances, if some of the men on Rota revealed secrets to the Americans, it would endanger all the people on Rota Island. The situation was hopeless enough even without a fifth column in our midst. Therefore, there was an order from the higher command on Guam that such subversive agents should be executed for obstructing our military operation, detecting and gathering military secrets, and exposing and disclosing such secrets to the enemy.

I was then only a low ranking surgeon with little experience in the military service. I think that it was natural under the circumstances to believe that orders to execute the natives issued by the division commander were lawful, and to obey such orders was in accordance with the customs and training of the Japanese Army. The use of poison for the execution was horrible to contemplate, but I could not question the order. I sincerely believed that the natives would not suffer much by dying from poison.

I was demobilized in October 1946. The war was over. When I stood among the ruins of Tokyo, I felt sad. It was a horrible war fought at the cost of millions of human lives. But I was glad that the war was over. Even in the desolation of the ruins of Tokyo, I felt peace smiling.

I worked at the Public Health Committee, Tokyo. This was the job I had been looking for. I was married, my wife had a baby, and we lived a happy life. I exerted myself in the work realizing that I was doing something for the rehabilitation of new Japan. I liked my job and loved my wife. These were the best years of my life.

However, in May 1948, I was suddenly arrested by a policeman without a warrant, although the New Constitution of Japan which we had all read in the papers clearly provided that "no person shall be arrested or detained, without being once informed of the charges against him or without the immediate privilege of counsel." Then I was confined in Sugamo Prison from where I was transferred to Guam in November 1948. Not until the order of my trial was issued, was I given the benefit of counsel. No one seemed to care about me.

I now repent what I did during the days of confusion. I realize that it is a sin to break the Commandment of God. But did I have an alternative under the circumstances? It was an imperative order from my superior officer. It was an act of self defense done in the face of the enemy to put down the violence of the people on Rota and to save them from being annihilated. The leaders who were said to have committed treason had been ordered to be executed. How could I do otherwise but to obey absolute orders when I was told to do so in the excitement of battle? As I have said, whether superior orders is a defense in your American court is something I cannot be expected to know. In the very nature of things your victorious America cannot but impose upon me your code of morals and what you consider to be the law when you try me, a mere puppet and pawn of Fate in Life. There are those who say it is well that America is trying the defeated Japanese. I trust it will be so in my case.

CC(2)

Members of the commission, please consider the circumstances, the battle conditions, and the action taken in the face of the enemy and my difficult situation at that time. I beg you will grant my plea so that I can work again for the people by helping the poor, the sick, and the dying. I know there is great need of doctors in Japan, a new Japan and I dedicate myself to the alleviation of sufferings of all peoples. You can by one word do so much for me, and through me for untold and unborn thousands. I pray that you understand my plea, you who are concerned over even the fate of one man such as I, Takahashi, Yoshio, a doctor who should never have forgotten his great calling and who will never again forget his calling.

I pray your indulgence and understanding.

Respectfully,

/s/ Takahashi, Yoshio.

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

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

CC(3)

0112

小山茂雄陳述書

裁判長閣下並に軍法会員各位

裁判の終り に當り私に個人的な陳述の機會を與へて下さった事を心から感謝致します。然し私の拙な教育を充分に受けて居ない百姓の子は此處で果して自分の言ひ度い事を充分に述べられるかどうか心配してゐます。

事實 私は証人台に立つた時すつかり上つてしまひ充分に起訴狀の説明を行ひ得ませんでした。本當に私はこうした嚴肅な裁判所等には生れて始めて來たのですすつかり其の雰圍氣に壓倒されてしまつたのです。私は不安でした。

私が戰爭中に命ぜられる儘もなく悪意なしにした事について裁判に立たねばならないと言ふ事は恐ろしい事です。

私は東京の北方の山村に生れました。私の父は一町歩足らずの土地を持ち麦と野菜を栽培してゐました。然し此のせまい土地では充分ではありませんでした。

私は村の小學校で八年の教育を終へた時更に上の學校に行つて學問を勉強したかつたのですが貧乏な父は之を出來ない事が出來ませんでした。

それで學校を卒業してからは私は兄弟と共に野良仕事をして父母の仕事を助けました。

然しこうした平和な村にも戰爭の嵐が押寄せて來る時が來ました。

私は徴兵せられ日本の陸軍に入隊しました。陸軍の嚴格な軍紀は私の様な鈍重な山村の青年には敢ては大変辛いものでした。

私はこれが國の爲に盡す道と思ひ一生懸命に勢力しました。

勿論私の様な教育の無い者には取ては、時には将校の命令の理由を理解き兼ぬる事もありました
然し其の様な場合 私としては唯服従するより方法がありませんでした 私共一兵卒は将校の命令に対しては質問する事を許されず絶体に服従をせられました
証據として不法迄も提出された私の陳述書に述べて知く「上官の命令は之を天皇の命と心得よ」と教へられて来たのであります

持い私の配属した部隊は東京の第一師團第一聯隊であつたその此の觀念は傳統的に強かつたのであります
私の軍隊生活中 私は絶体的に質問する事なく常に上官の命令に従つて来ました。

私の上官は皆厳格な人々でしたが 又反面私共兵隊に対しては非常に親切でありました。私は當時上官から服従すべきであつて不当な命令を受けた事はありません
兵隊である吾々は唯黙々と上官の命に従ふ事より直い國の爲に盡す事が出来ると信じて居りました 私は起訴せられてゐる 事件の當日衛兵勤務に服してゐたが 衛兵の對空監視から降りて来る(時間)が もう少し遅かつたならば 私は高橋軍医少尉の處へ通かつたならば 私は高橋少尉の處へ通かつたならば 私は高橋少尉の處へ通かつたならば 私は高橋

然し此の次いもう一つの恐ろしい仕事が私を待って居たでしょう。

高杉少尉は私に突けと命じました。

私は此の思ひ掛けない事を命ぜられた時本當にどうしたら良いか途方に暮れましたが訓練の結果第二の天性となった服従の精神が呼び掛けました

私は自分の行爲がどんな結果を齎すかを知らず

あやつり人形の様に服従しました もう一人の警戒兵だった筈ですが高杉少尉から

後刻は當時一等兵だったそうです 私が高杉少尉から

選ばれたのです 上官と下級者の間にはきまれて

私は此の 命令を實行する より他に途が

ありませんでした。

私は命令に對する絶体服従しか知りません。

上官の命令が正當であるかを判断する能力は

ありません 事實、私は判断等言ふ概念を

知りません

前述した通り私は上官の命令が絶体的で正しい

と信じそれに服従する事しか知りません

とうか尚

此の様な状況にある兵隊は他に爲す方法が

ない事を理解して下さい

此の法廷で私が全部もるさずに逮捕された事が不法であると主張した事が不法に得られたものであると主張

又私の自白書が不法に得られたものであると主張

されました 終戦後教育中法律等少しも教わりませんでした 又現在も法律を知り

ません。又裁判官人の命令や指示に従う事が習慣の様になって私に取っては唯言はれるまゝにするより方法がなかったのです。

此の法廷で私は小隊長にあつた安井准尉の証言を聞きました私は彼の行為に対して何度も考へて見ました。どうか私に対しても寛大なる御処置を故将校が裁判されるでしょう私は二の人に質問をする事がという事がありませんから これも又そうであるに違ひありません

前に述べました様に私は貧しい百姓の子に過ぎません怒しい神の前にも人の前にも私が正直に勤勉な生活をして居ります 戦争が終つて すべての事がたちました 私は今 捕虜として人々から 捕虜され居り戦犯容疑者として居ます。

入営以来 私の経験した事はすべて 一連の悪夢の様に私には思はれます

現在私の唯一の願ひは私のるふるさと故郷に帰つて 昔 私が二月まれた あの土を 拝む事です。

どうか寛大な処置を御願ひします。

敬白

小山 武雄

一九四九年二月十四日

DD(4)

Statement of KOYAMA, Shigeo.

Your Honor, the President and Members of the Commission:

I sincerely appreciate the opportunity granted me to make this personal statement at the closing of my trial. However, I am afraid that I will not be able fully to relate my story, because I am but a farmer's son who has had little education. As a matter of fact, when I took the witness stand I was so excited that I could not fully explain my situation in relation to the charge and specifications. Since it is the first time in my life that I have attended such a solemn trial as the present one, I am entirely overcome by the atmosphere of the court. I am ill at ease. It is awful to have to stand trial for something I was ordered to do by a superior officer during war time, something for which I had no will to do and certainly no malice.

I was born in a mountain village to the north of Tokyo. My father owned two acres of land where he raised wheat and vegetables. This small plot of land was not sufficient to sustain the livelihood of our family consisting of fourteen persons. When I finished my eight years of education at the grammar school in my village, I wanted to go to a high school to receive further education, but my poor father could not afford it. After we were graduated from the grammar school my brothers and I helped our aging parents with the field work.

There came a time, however, when the storm of war overwhelmed our small and peaceful village. In January 1942 I was conscripted and entered the Japanese Army. The strict military discipline in the Japanese Army was really painful for me who was a slow-moving young man from the hill country, but I did my best believing that it was what I should give for my fatherland.

Of course, an uneducated man like myself sometimes could not fully understand the reason for the orders of my officers. In such a case all I could do was just to obey the orders. We privates were not permitted to question the orders of officers but were required to obey them implicitly. As was said in my statement which was introduced as evidence in this court, we were taught that "we had to obey the orders of our superiors as if they were the orders of the Emperor".

Especially in the unit to which I was first attached, the First Regiment of the First Division in Tokyo, this idea of military discipline was traditionally strict. During my whole military career I always obeyed orders of my superiors, absolutely and without question.

Although my superior officers were all strict persons, they were also very kind to us privates. I never received an order from an officer which I, at that time, thought I should not obey. It was my conviction that we privates served our country best by obeying the orders of officers without saying anything.

On the day of the incident with which I am charged, I was on a guard detail. If I had come back from my air lookout post on the tree just a little later, I would not have been sent to Surgeon Second Lieutenant Takahashi. When I calmly think over the incident today, I feel I was selected by Fate for this tragic task.

When I reported to Lieutenant Takahashi with my comrade, Itagaki, and was ordered to stand on guard at the scene of the execution, I felt sick. I had had no combat experience. The mere thought of an execution made me shudder. However, to stand sentry, as well as air lookout, was one of the main duties of

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the guards at that time, and I could not hesitate. But nobody knew that yet another horrifying job was waiting for me. Lieutenant Takahashi ordered me to stab! When I was ordered to do this unexpected task I really did not know what to do. However, obedience to officers, which was second in nature with me because of my training, prevailed. I obeyed like a puppet without knowing what result would be caused by my action.

The other sentry, Itagaki, was then a private first class. That is why I was chosen by Lieutenant Takahashi. Being in an embarrasing situation between a superior officer and a lower ranking man, I had no alternative but to carry out this order.

I only knew absolute obedience to orders. I have no ability to judge whether or not a superior order is lawful. In fact there was no such concept of judgment in my mind. As I stated before, all I knew at that time was to obey and act believing that superior orders were absolute and just. Please understand, your Honor, that a man placed in such a situation had no alternative.

It was said in this court that my arrest was uhlawful because I was not shown a warrant. It was also said that my confession was illegally obtained. However, I was taught nothing about the law in the course of my little school education. Even now I do not know about the law. Since I was accustomed to obey orders or instructions of other persons for a long, long time, I could not help doing as I was told.

In this court I heard the testimony of Warrant Officer Yasui who was a platoon commander. I have thought again and again about his acts and I pray you be lenient with me also. Why must I stand trial and he an officer not stand trial? I have never known what it was to question the authorities so this, too, must be as it is.

As I stated before I am nothing but the son of a poor peasant, but I take pride in myself before God and man, that I am an honest and hardworking man. Four years have already passed since the termination of the war. I am on Guam being despised by people because I am a war criminal suspect. Everything I experienced after my conscription is for me like a series of nightmares. At present, my only wish is to return to my dear old village to till the soil on which I was brought up in peaceful days gone by.

I beg that you deal leniently with me.

Respectfully,

/s/ KOYAMA, Shigeo

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

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

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OPENING ARGUMENT

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

If it please the commission, substantially all the facts which the judge advocate informed the commission would be proved in his opening statement, have by now been incorporated into the record. We produced Japanese witnesses who were actually present at the various executions and through the agency of the two natives Blanco and Manglona we have shown the commission that the individuals executed were actually Miguel Timoner, Ignacio de la Cruz and Benefacio Estabes. At the beginning of the case we informed the commission that we would be unable to introduce any evidence concerning the identity of two of the victims and we have not shown who they were, and I am sure the commission realizes that it is completely unnecessary for we have shown that they were executed by the Japanese under the orders of Captain Tokunaga.

The facts of this case are relatively simple as is the law which is applicable. Through the agency of the witnesses Yasui and Momma the court has been informed how the shoemaker Benefacio Estabes and his unknown companion were executed in the Tatacho Area of Rota Island. These witnesses testified that on or about the 25th of June 1944 Tokunaga, the accused, brought the two natives to the Yasui Platoon and there gave orders for the members of that platoon to assemble. You have heard the testimony of Yasui that he at first protested against the execution, but his protests were overridden by Tokunaga who informed him that there was not sufficient time to change the plans already made. From Yasui and Momma the commission has heard how the two natives were lined up before a six man firing squad and that after the sentence of execution had been read to them by the accused, Tokunaga, the firing squad under Yasui shot the natives. The commission will remember that Yasui, himself, testified that one of the natives was not killed by the three shots and that he, borrowing Momma's rifle put an end to the native by firing a bullet into his head. After this was done the two natives were buried.

The next incident concerns the brother, Miguel Timoner. The commission knows his name through the testimony of Tomas Cruz Manglona who testified that the brother's name was Miguel Timoner and that the picture introduced into evidence was a picture of Miguel Timoner. Manglona testified that in the middle of 1944 he, Tomas Mendiola and Valentino Sengao were instructed by a Japanese policeman to bring to headquarters the brother Miguel Timoner and the old man Ignacio de la Cruz. He told the commission that these instructions were carried out and the two men were delivered to soldiers at battalion headquarters in Taruga. He also told the commission that he never saw Miguel Timoner or Ignacio de la Cruz again. From the Japanese witnesses Kato and Yoshizaki we know why the brother and Ignacio de la Cruz were never seen again. Takahashi gave the brother potassium of cyanide mixed with coffee but not in sufficient quantity to kill him. When it became obvious that the poison had only caused pain, word was sent to Tokunaga and Tokunaga sent back word to "finish him off". Takahashi turned to Koyama and Koyama obeyed the order by thrusting his bayonet into the brother's body. We know this not only from the testimony of Kato and Yoshizaki, but also from the testimony of the native Blanco who observed this killing from the hillside. True, there are some discrepancies between the testimony of Blanco and the testimony of the Japanese as to the sequence of events on that day. Blanco has the brother standing while the Japanese have him lying on the ground.

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Blanco has Koyama wielding the bayonet two or three times while the Japanese insist it was used but once. But these variations do not becloud the picture and it does seem certain that Koyama, under the orders of Takahashi, bayoneted the brother at least once. We know this definitely from Koyama's statement which has been introduced into evidence and we know that it was Koyama's bayonet which Blanco saw covered with blood in the cave that actually did the killing for he, Koyama, says "Having no alternative I obeyed the order and stabbed. I certify that he was alive at that time because he was still suffering from pain when I stabbed him having no other way but to obey the order."

In the case of Ignacio de la Cruz, Takahashi was more successful with his potassium of cyanide. I told the commission in my opening statement that Japanese had sat down around the table and pretended to be drinking in order to induce the old man to accept the cup which Takahashi offered. But the witnesses were rather reluctant to put the facts in just that way, however, there has been no failure in the proof, for Takahashi in his confession which is presently in evidence, admits that he had some men sit at a table and pretend to be drinking and Takahashi, Kato and Yoshizaki admit that Takahashi gave the old man coffee mixed with potassium of cyanide and after he drank it, he fell to the ground, that nothing further was done to his body except to bury him.

For the last execution the commission has heard the testimony of Shiono and also Yoshimura. They testified quite plainly that they executed the native using a two man firing squad after Shiono had heard the sentence of execution read to the native by Tokunaga, and had passed this information on along with his instructions to Yoshimura. The defense may make much of Yoshimura's insistence that Shiono was not present at the execution, but Shiono has testified that he witnessed this execution even though he was not seen by Yoshimura, who actually issued the orders. As a practical matter this discrepancy makes little or no difference for Tokunaga has admitted the facts himself, not only in his statement, but also from the stand.

Those are the facts of the executions and what were the reasons for the executions? From all Japanese witnesses who have testified, the commission knows that the natives and the brother were killed because of their supposed connection with spy activities. The attorneys for the defense have informed the commission in their opening statement that these natives were not spies in the international sense, but were rather subversive agitators who were punished solely under Japanese law and that their executions should be a matter of no concern to this court. This distinction exists only in the minds of defense counsel for it certainly wasn't present in the minds of Tokunaga and his aides when they decided upon the executions of the natives. The definition of spies given in Article 29 of the Hague Convention is: "A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a beligerent, with the intention of communicating it to the hostile party."

From each witness who has testified the commission knows that the natives were considered to be engaged in spy activities. There was testimony of the shooting, of flares, signal fires at night, cloths and clothes left lying about in the daytime. It remains for the accused, Tokunaga himself, to tell us definitely whether or not these men were spies. In answer to a question of defense counsel "Please state concretely what these acts were on the part of the natives?" Tokunaga answered "First these five had conspired in their efforts to detect and gather military secrets, the conditions of the air field, the disposition 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..." As a matter of fact we do not know whether or not the five

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men executed actually committed any of the acts that Tokunaga claims they did. However, from his testimony and the testimony of the other witnesses, we know that Tokunaga believed these five to be spies for according to Tokunaga, all Rota Island was a battle field and thus a "zone of operations of a beligerant". The verbiage of Article 29 of the Hague Convention has been completely satisfied for again according to Tokunaga these five gathered the information secretly and thus acted "clandestinely".

If a person falls within the definition of Article 29 of the Hague Convention then Article 30 of the Hague Convention must be complied with. Article 30 states "A spy taken in the act shall not be punished without previous trial". These men were punished but the commission knows from the testimony of Imagawa and also from the testimony of Tokunaga that there was no trial. No doubt the defense at great length will explain because of the peculiar circumstances existing on Rota during these days that it was impossible to hold a trial. The court knows from the evidence introduced not only by the Japanese, but also by the judge advocate, that the Japanese Army had a well developed court martial system, but this court martial system was not used in the present case. Had the natives been given a trial, regardless of whether the trial was good, bad, or indifferent, no agency could complain of the sentences, providing there was a trial. Defense counsel will argue that if the evidence was conclusive as brought forth by the investigation, that there would be little point in going through the formality of a formal trial. But the law is not that easy - human life regardless of color or nationality may only be taken, even by a sovereign state after certain formalities have been complied with. Even assuming the overwhelming guilt of these five victims, they still were entitled to a trial. Not only the Hague Convention required this, but also Japanese law itself, although with respect to Japanese law, since this commission is enforcing international law, the matter is of no importance.

We know that Rota Island, while severely bombed by American aircraft and possibly shelled also by the Navy, was never in fact invaded, and the first American forces landing on Rota landed there after the surrender of Japan. There was no overwhelming compulsion upon Tokunaga to dispose of these people. If he was so sure that these were the ringleaders and that these were the spies, he could have just as easily kept them in confinement in any one of the hundreds of caves that honeycombed Rota. Tokunaga would now have this commission believe that if any guilt exists for the execution of these natives, that the guilt belonged exclusively to the Chief of Staff and Commanding General of the Japanese Army that was on Guam. They might well argue in that matter because they know that in the invasion of Guam, both the Chief of Staff and the Commanding General were killed. Once again in a war crimes trial the defense is going to be superior orders. In spite of the fact that Tokunaga himself, started the chain of operations which resulted in the execution of these natives, not only started, but also actively participated in the end of the chain, he will, no doubt claim he should not be found guilty because of the dispatch order he received from the Chief of Staff. The commission should know that not only in this trial, but in every other war crimes trial on Guam, as well as in Germany and Japan, the cry of superior orders has been raised. The defense of superior orders is peculiar to all these trials and yet, not in a single previous case has that defense been accepted with respect to the question of guilt or innocence. Superior orders has played a part in these trials and should play a part in this one, but only as a factor in mitigation and not as a deterrent to a finding of guilty.

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What I have said concerning superior orders and Captain Tokunaga is equally applicable to Takahashi and Koyama. They accepted the orders of Tokunaga and carried them out and the mere fact that they were carrying out the superior orders of Tokunaga, who in turn was carrying out the superior orders of the chief of staff should be no defense to them. The facts show that these men committed the acts that they are charged with, and the judge advocate requests that each specification be found proved and that each of the accused be found guilty of the charge.

Defense counsel may pretend in their coming arguments to be greatly confused as to why Takahashi and Koyama are presently being tried while Yasui and Shiono have been utilized as witnesses and have not, themselves, been made accused. I'm sure they will express no confusion over the fact that Tokunaga is a defendant. True, Yasui actually fired a bullet into the head of one of the natives. Certainly an act equally as grave as the act of Koyama in thrusting a bayonet into the chest of Miguel Timoner. But the facts surrounding these acts are different. Yasui and Shiono acted only after they heard read by Tokunaga a sentence of execution from a piece of paper declaring that the natives were to be executed pursuant to a sentence of death for having committed various spy activities. Koyama and Takahashi acted without this apparent cloak of legality. They acted solely on the orders of Tokunaga. The reason Yasui and Shiono were not tried is because of the formalities that were gone through by Tokunaga. Had these executions by firing squads which Tokunaga knew to be illegal, been in fact legal, he could not have proceeded with more formality than he actually did. In the case of the natives executed by Yasui, the sentence of execution was read to the natives in his presence and in the presence of the firing squad. In the case of the native executed by Shiono the sentence of execution was read to the native in the presence of Shiono, and that information was passed on to Yoshimura and no doubt passed on to the two man firing squad used by him. In the case of Miguel Timoner and Ignacio de la Cruz there is no evidence, nor has the defense pretended, that any sentence of execution was read, or known to Koyama and to Takahashi. Tokunaga, himself, in his confession has said the sentence of execution was read to the natives that we know to be Miguel Timoner and Ignacio de la Cruz, but there was no one else present when the sentence was read. To hold Yasui and Shiono, even though they were officers, as accused, would be to expect a higher degree of conduct than would even be expected from American soldiers in the same circumstances. They acted under the belief that the sentences indicated a trial. Takahashi and Koyama merely acted because they received the orders of Tokunaga. The judge advocate again repeats his request that each specification be found proved and that each of the accused be found guilty of the charge.

Respectfully,

Joseph A. Regan.
Joseph A. Regan.

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最終辯論

弁Rota島派遣隊長(當時)
上陸軍大尉 德永昇の辯護人
高野純二郎

軍法会議会長並に各位

私は被告人德永昇の辯護人として茲に最後辯論を為すに當り本件の審理が終始公平且厳粛に行はれたることに對し深甚の感謝の意を表するものである。

第一部　総論

(第一節　緒說)

國家が自國民に對し統治權即ち立法權、行政權、司法權を行使するに付ては其の國家は何等國際法の制肘を受けない。國際政治上一國が「他國の内政には干渉せず」と屢々声明することあるは之が為である。

本件の冒頭陳述に於て檢察官は「本件は比較的簡單ではあるが係り重大案件である。戰爭が終つたのである。而して其の被害者の大部分が敵民であつたとは言へ法を擁護せねばならぬ」と論じてゐる。此の「法」と云ふ話は此の場合「國際法」或は「戰爭法規」を指すと解するのが至當であるが果して然るや

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此の点に於て私は検察官と全く異った見解を持つものである。換言すれば本件は国際法上謂ふ所の「スパイ」の問題ではない。随って戦争法規の下に慣習法の取扱ふ事柄ではなくして日本の国際私法上の問題であるというのが私の見解である。以下項を分けて此の点を論じてみやう。

第二、間諜と叛逆罪。

1907年 Hague 條約第四の附属書陸戦の法規慣例に関する規則第29條は「交戦者、作戦地帯に於て敵対交戦者に通報の意思又は与国の為に又は無偏、中立国に対し情報を蒐集し又は蒐集せんとする者に非ざれば之を間諜と認むることを得ず」と規定してゐる。此の陸戦法規の條項は間諜の国籍及性別並に身分等には制限を設けてゐない。ここに謂ふ間諜の性別身分等には勿論含む。此の條項が間諜の国籍等には制限を設けてゐないのは当然のことである。蓋し交戦国が敵国の情報を蒐集する為間諜を使用する場合には其の間諜は或は自国民であることあり、或は第三国人なることあり時としては其の敵国の国民なることもある。或る場合には間諜たる者は二重若は三重国籍を有する者たることもあり得るのであって更に進んでは無国籍者を間諜として使用することもあるからである。実際上斯かる状況であるから條約の條文としては国籍に関する制限的文言を使用することは條約の法文制定の技術上適当でないのである。

然しながら交戦国の国民が敵国に軍事

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上の利益を以て自國の軍事上の利益を害する行為を為すことは上記「陸戦法規」慣例の規則第24條の問諜には該當しないことは同條項の解釋上明かである。

然らば交戦國の國民が對手交戦國の爲に間諜行爲を爲すことは如何なる犯罪を構成するや？之れは其の交戦國（自己の本國）に對する叛逆罪を構成するのである。

アメリカ合衆國憲法第三條は「合衆國に對する叛逆罪は合衆國に對し戦端を開き又は合衆國の敵に加担して敵に援助及び助力を與へることのみを以て構成す」と明規してゐる。

更にアメリカ合衆國の刑事法は叛逆罪に關して「何人を問はず武器、彈薬、軍需品、金錢又は其他の物品其の他敵に援助を與ふることを知りて直接又は間接に敵との通信を隠匿し保護し又は保持し或は敵に情報を與ふる者又は此等の行爲を爲さんとする者は死刑又は軍法会議若は軍法委員会の科する刑罰に處す」と規定してゐる。(Eighty-first article of war; act June 4, 1920, Chap. 11, 41 Stat. 804, — U.S. War Department's Rules of Land Warfare of 1940, § 205 — Treason, p. 57.)

上記アメリカ合衆國憲法並に軍法の規定に徴するに叛逆罪は一國の國内法に依って規定せられた犯罪であって其の國の司法機関（軍事裁判機関を含む）は依って其の國の國内法を適用して裁判せらるべき性質の罰せらるべきものである。即ち叛逆罪は全く國内法上の問題

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つゞき

CLARK and MARSHALL は其の著書「犯罪論」と称して「…, 州の憲法又は制定法に於ても其の州に対する叛逆罪に付て同様の定義を想定してゐる(25)」と脚註(25)の例へば イリノイ州刑法§556, マサチューセッツ一般刑法§1, 但賀州刑法§37, ヴァージニア州法典§3658) と説いてゐる。(Clark and Marshall, Law of Crimes, 4 Ed. §3, Treason, p. 7)

或る國の國民が敵國の爲に間諜其の他を爲したる場合は其の行爲は國際法上の問題ではなくて自己の國家に対する叛逆罪であるといふことに付ては HACKWORTH の意見と WINTHROP の説明を引用せんとする

HACKWORTH は「間諜として行動する外國人は自己の行爲又は行動に依って容易に害を與へんとする其の被害國に対する何等の犯罪即ち國際法上の"犯罪"を犯すものではない。但し其の者が自國に対して(敵の爲に)間諜を働くが如きは其の者は彼の自國の法律上の犯罪として相當の刑法を受くることあるべきは言を俟たない」と説いてゐる(Digest of International Law, by Co. N. Hackworth, Vol. VI, Chap XX, §681, p. 308.)

又 WINTHROP は「…, 其の國の軍隊の一員又は民間人が敵の利益の爲に自己の本國に対して間諜として行動する場合は其の者は背信又は叛逆の廉で訴追せらるべきであって其の行爲は大陸に於ては死刑に値する。但し死刑が此の犯罪に科せられ所

以は軍事的緊急と危険とに依って其の行為が目的を達成するときは重陽なる何等の警告なくして最も重大なる危機に陥ることがあるから……」と説明されている。(Military Law and Precedents by William Winthrop, 2nd Ed., 1920, §1200, p.771.)

敵逆罪が原則として死刑をもって処罰せられることは殆んど各国其の揆を一にする。此の問題に関する日本国法律は下記別項に於て述べることとして先ずアメリカ合衆国の法規を見るに1940版のRules of Land Warfareは「戦時敵逆罪者は常に厳重に処罰せらる。……若し其の者の他の如何なる場所又は地方を保持し或は支配しつつある軍隊の状態、安全、作戦又は計画に関する一切の事項を敵に通達するに至るときは死刑を以て処罰せらるべし」と規定し次で「場所及時期の如何を問はず(合衆国の)裁判管轄権内に於て逮捕せられた敵逆罪の被告人は此の免責(Hague規則第31條の免責を指す)を享くることなく、而て其等の者を処罰するには常に現行犯として捕へられたることを必要とせず」と明記している。(同書、§§210, 213, p.60.)

Hague條約の陸戦法規慣例に関する規則第24條に規定せられた問諜は同規則第30條の裁判を受くる権利及に第31條の俘虜の取扱を受くる権利及免責を有するものとしては取扱われないところより従って明かなる如く敵逆罪は国内法上の犯罪であって敵逆者は国内法が適用を受けるのであるから、陸戦法規慣例の第30條及第31條が敵逆罪を処

たる者は適用されないのは当然である。

第三、日本の南洋委任統治領R.T.島の島民。

日本が国際聯盟より委任せられた南洋諸島の統治は所謂C式委任統治であって委任国たる日本は其の領土の一部として日本国法の下に施政を行ってゐたのである。日本の委任統治地たるR.T.島は国内的な法律上の関係つまりては其の領土と異なる所はなかったのである。(国際聯盟規約第22條)。

此の南洋諸島委任統治地R.T.島の島民は当然委任国たる日本の国籍は取得することはなかったのではあるが島民の志望に依り日本の帰化国民となることは出来たのである。R.T.島島民は斯の如く日本国に対する関係上特殊な地位にあったのであるから日本国民の有すると全く同一権利義務は有しなかったけれども多くの点に於て日本国民と同様に取扱はれてゐたのである。其の一例として昭和十九年六月R.T.島島民に対しても第3乙の在住民登録徴用規則を適用して島民の一部を徴用したのである。(被告人須永の証言)

R.T.島に居住する島民ならざる外国人たる住民は日本内地に於ける居住外国人の地位と異なるところはなく其の地に在住する限り法令又は条約による制限を除いては R.T.島に居住する日本国民と同一の権利義務を有してゐたのである。(日本民法第2條類推解釈)。

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第四. Rota 島に於て施行せられた日本の法規（1944年3月より同年8月に至る期間）.

上に述べたる如く日本の南洋諸島等任統治の一部たるRota島よりては日本の法律，命令，及規則が施行せられていたことは明かである．而して是等の法規の適用を受けたのはRota島に在住する日本国民，島民，第三国人であった．仮に1944年3月以後1945年9月降服に至る迄の期間は同島よりは日本軍隊が駐屯しておったのであるから一般法規の外に特に軍隊にのみ適用せられていた法規のあったことは勿論である．此等軍隊に適用せらるべき法規と雖も其の時期中よりは軍人に非ざる民間人にも適用せられたものもあったことは関係箇所の明示するところである．

1944年3月より同年8月限迄の間にRota島に於て適用せられていた諸法規中本裁判事件と関係あるものは軍機保護法（Exh. 7.），軍機保護法施行規則（Exh. 8.），陸軍刑法（Exh. 10.），陸軍懲罰令（Exh. 11.），陸軍司法警察官執務心得（Exh. 12.）等である．（Exh. 9及被告人徳永の証言）．尚ほ此の外に日本刑法が当時Rota島に於て施行せられておったことは被告人徳永の証言の外1947年3月31日に亘る本軍法会議に於て弁護人吉本為作に係る我判の判決に対するアメリカ合衆国海軍法務長官の1948年1月22日附意見書なる（元日本海軍中将第十一の裁判記録訳文書類ヲ11.）及1947年4月より6月に亘る本軍法会議に依て弁護人松井正文末に係る我の裁判の判決に対するアメリカ合衆国海軍

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法務長官の1948年1月26日附意見書§5（同上第一の裁判録記拠書類第9.）より知るのである。而して古木及井上の関係した事件はYaluit島に生起した事件ではあるけれども、Yaluit島はRota島と同様に日本の南洋群島委任統治地の一部であったからである。

尚ほ上記法律、命令、規則が1944年6月一7月頃Rota島に於て施行せられたことは被告人側証人佐藤毅の高法廷に於ける証言より徴して明確にせられた（公判第13回）。

A. 軍機保護法第一條は「本法に於て軍事上、External Affairs and Defense秘密と称するは作戦、用兵、動員、工作、生産、交通、通信其の他国防に関する事項又は図書物件を謂う。（第2項）前項の事項又は図書物件は、種類、範囲は陸軍大臣又は海軍大臣命令を以て之を定む」と規定し、第四條第二項は「軍事上、External Affairs and Defense秘密を探知し又は収集したる者之を公にしたる者又は外国若は外国の為に行動したる者に漏泄したる者は死刑又は無期若は二年以上の懲役に処す」と明確に規定している。

B. 軍機保護法施行規則第一條は軍機保護法第一條第二項の規定に依る陸軍の軍事上External Affairs and Defense秘密を要する事項又は図書物件の種類範囲を規定し同條第二號は国防、作戦又は用兵に関する事項を、第三號は編制、装備又は動員に関する事項を詳細に特記しているのである。

C. 陸軍刑法第二條は「本法は陸軍軍人に非ずと雖も左に列載したる罪を犯したる者に之を適用す。三. 第九十九條乃至第八十五條の罪。六. 第九十五條第一項、第九十六條、第九十七條第二項は第九十八條の罪」と規定し陸軍刑法が軍人と称する者は民間人

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ノ数ニ之ヲ適用セラルヽコトヲ明カニシテヰル。

同法第八十二條ハ「第七十九條ニ記載シテアル物又ハ陸軍戰斗ノ用ニ供スル鉄道、電線若ハ水陸ノ通路ヲ損壞シ又ハ使用スルコト能ハサルニ至ラシメタル者ハ無期又ハ二年以上ノ懲役ニ處ス」ト規定シテヰル。

同法第八十九條ハ「戰時又ハ事變ニ際シ軍事ニ關シ造言飛語ヲ爲シタル者ハ七年以下ノ懲役又ハ禁錮ニ處ス」ト規定シテヰル。

D. 陸法会議法ハ憲兵ノ將校、准士官又ハ下士官ハ陸軍司法警察官トシテ捜査ヲ爲スコトヲ規定シ（第七三條）、中隊以上ノ軍隊ハ之ニ準スヘキ軍隊ノ部隊長ハ陸軍司法警察官ノ職務ヲ行フコトヲ規定シテヰル（第七四條）　更ニ同法ハ部隊長ハ部下ノ將校ヲ指定シテ特定ノ事件ニ付陸軍司法警察官ノ職務ヲ行ハシムルコトヲ得ト定メ（第七五條）又陸軍司法警察官又ハ陸軍司法警察官ノ職務ヲ行フ者ハ捜査ヲ爲スニ付上官ノ命令ニ從フト規定シテヰル（第七六條）

E. 刑法ハ何人ニ對シテモ適用セラルヽコトヲ第一條ニ於テ明カニシテヰル。同法第八十五條ハ「敵國ノ利ニ爲ス目的ヲ以テ軍艦、陣營、艦船、兵器、彈藥、汽車、電車、鉄道、電線其ノ他軍用ニ供スル場所又ハ物ヲ損壞シ又ハ使用スルコト能ハサルニ至ラシメタル者ハ死刑又ハ無期懲役ニ處ス」ト規定シ、第八十六條ハ「敵國ノ爲ニ間諜ヲ爲シ又ハ敵國ノ間諜ヲ幇助シタル者ハ死刑又ハ無期若クハ五年以上ノ懲役ニ處ス。（第二項）軍事上ノ機密ヲ敵國ニ

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滞地ヨリ出者ヲ同シ」ト規定シテイル。第八十六條ハ「前五條ニ記載シタル以外ノ方法ヲ以テ敵國ニ軍事上ノ利益ヲ與ヘ又ハ帝國ノ軍事上ノ利益ヲ害シタル者ハ二年以上ノ有期懲役ニ處ス」ト、第八十七條ハ「前六條ノ未遂罪ハ之ヲ罰ス」ト夫ニ規定シテイルノデアル。

上記第85條ニ「敵國ノ爲ニ間諜ヲ派シ又ハ間諜ヲ幇助シタル者」トアルハ講時ニ於テ敵國ノ國民又ハ第三國人ガ二ノ間諜行爲トナリ Hague 條約ノ陸戰ノ法規慣例ニ關スル規則第29條ノ要件ヲ具備セル以上ハソレハ即チ同規則ニ謂ハユル"Spy"デアル。從テ之ニ對シテハ同規則第30條ノ適用ガアリ之ニ違反スルトキハ即チ戰時國際法ニ慣習法ノ違反トナルノデアル。然ルガ此ノ第85條ノ犯罪行爲ヲ日本ノ國民ガ爲シタル場合ハソレハ既ニ上ニ記述シタル日本國ニ對スル叛逆罪トナリ純然タル日本ノ國内法上ノ問題トナッテ上掲 Hague 條約ノ適用ヲ受ケナイノデアル。茲ニ誤解ヲ避ケル爲一言附言スルコトハ此ノ日本ニ對スル叛逆罪行爲ヲ爲シタルハ本國民ハ Hague 條約ノ適用ヲ受ケナイガ故ニ裁判ヲ行フコトナクシテ處罰セラルルコトガアッテモソレガ違法ナリト言ハントスルノデハ決シテナイ。但シ假ニ此ノ場合事前ニ裁判ヲ行ハクシテ犯人ヲ處罰スルコトガアッタトシテモソレハ戰時國際法ニ慣習法ノ違反トハナラナイト、ソノコトヲ力說スルノデアル。

註：日本刑法ノ引用條文ノ英譯文ハ William J. Rebald, LL.B., の The Criminal Code of

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Japan に據ったものである.

第五. 違法阻却事由 (Faits justificatifs)

現行日本刑法の法制上犯罪行為の形式が一通り揃って居る場合と雖にこれを違法ならしむる事由が認められて居る.

陸軍刑法第22條は「多衆共同、暴行ヲ以テ擾亂シ又ハ敵前ニ在リ部隊、急迫ニ臨ミ軍紀ヲ保持シ勢ヲ挽回スルニ止ムヲ得サルニ出テタル行為ハ之ヲ罰セス. (第二項) 但シ、程度ヲ超ヘタル行為ハ情狀ニ因リ其ノ刑ヲ輕減又ハ免除スルコトヲ得」と規定し第23條は「前條ノ規定ハ刑法又ハ他ノ法令ノ罰セラレサル行為ニ之ヲ適用ス」と規定して居る.

刑法第38條は「罪ヲ犯ス意ナキ行為ハ之ヲ罰セス. 但法律ニ特別ノ規定アル場合ハ此ノ限ニ在ラス」と規定して居る.

此等の條項は或る行為が一應犯罪の形式を具へては居ても法は特に此の行為に違法性を認めないとすることを規定して居るのである.

第六. 上官の命令.

本軍法會議に於て今日まで屢々行はれた多數の戰爭犯罪人裁判に於ては日本軍隊に於ける「上官の命令」を以て辯護の事由とせられた事例は數々あったのである. 隨て此の事項に關しては本軍法會議

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は先ず正確なる知識を有せよ、ことを信ずるが故に今茲に事新しく「上官の命令」とは何ぞやを述べることは差控へる。唯一言日本軍隊内に於ける上官の命令服従が如何に厳重であったかを二三の法文上の規定を以て示さんとする。

作戦要務令第一部第二篇第三は「軍隊ノ指揮ハ統帥ノ大権ニ根源ス。各級指揮官ハ厳粛ニ之ヲ承行シ……」と規定している。（被告人徳永の証言）

軍隊内務令第二章服従第九第一項には「隷下ハ苟モ長ニ服従スルニ於テハ如何ナル場合ト雖トモ厳重ナルヘシ」と規定せられ、其の第十一第一項には「命令ハ謹ンテ之ヲ守リ直ニ之ヲ行フヘシ。決シテ其ノ当不当ヲ論シ其ノ理由、理由等ヲ質問スルヲ許サス」と規定せられている。（被告人徳永の証言。）

陸軍刑法第五十七条は「上官ノ命令ニ反抗シ又ハ之ニ服従セサル者ハ左ノ区別ニ従ヒ処断ス　一、敵前ナルトキハ死刑又ハ無期若ハ十年以上ノ禁錮ニ処ス」と規定せられている。

上官の命令は上記法規の明定せる通り絶対且無条件に服従することを要し其の命令に対する批判は絶対に為すことを得ざりしことは勿論其の命令の当否、理由等は質問することさへの許されなかったのである。上掲陸軍刑法の規定の如く上官の命令に服従せざるときは其れは犯罪を構成し、命令に従って行為を為し其の行為が

犯罪の構成要件を異へた場合へもそれは違法阻却の事由とはなのである。

第貳部　事實論

第七、起訴及罪狀項目

本件の起訴狀は戰爭法規及び慣習法の違反であって其の罪狀項目其の一は當時日本軍隊の一大隊長であった德永明は1944年6月25日頃Rota島に於て之等のRota島島民を銃殺することに依り事前に裁判を行うことなくwhyとして不法に處罰し且處罰せずして戰爭法規及び慣習法に違反し；罪狀項目其の二は當時日本軍隊の一大隊長であった德永明及當時日本軍隊の軍人であった高橋嘉雄及び小出茂雄は1944年7月5日頃Rota島に於て各自に且共同して1名のRota島島民を銃殺することに依り事前に裁判を行うことなくwhyとして不法に處罰し且處罰せずして戰爭法規及び慣習法に違反し；罪狀項目其の三は當時日本軍隊の一大隊長であった德永明及當時日本軍隊の軍人であった高橋嘉雄は1944年7月5日頃Rota島に於て各自に且共同して1名のRota島島民を銃殺することに依り事前に裁判を行うことなくwhyとして不法に處罰し且處罰せずして戰爭法規及び慣習法に

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追及し、罪状項目甚の四は當時日本軍隊の一大隊長
たりし松濃永明は1944年7月8日頃Rota島に於て
1名のRota島島民を銃殺することに依り事前に裁判
を行うことなく ipso facto に不法に厳罰し且つ厳罰せしめ
以て戦争法規並に慣習法を違反したと言うのである。

第八. 証拠上に現はれたる本件の事實

検察官側証人及被告人側証人並に被告人の各
証言、作成書証と綜合して見ると本件の事實上の要
領は次の通りである。

1944年3月下旬被告人濃永明は當時Guam島
上司令部を置いてゐた第29師團の師團長高品中
將の命に依り純主混成歩兵第十聯隊第一大隊
を率いて其の大隊長としてRota島に派遣せられた。此
の部隊は同師團の第一線の派遣隊であつたのである。

1944年7月中旬頃迄は濃永はRota島に
於ける派遣隊の指揮を執つてゐたが其れ以後は
今川義男陸軍少佐が濃永に代つてRota島の指揮
官となつた。

1944年6月10日今川少佐がRota島に来着
して以来濃永が指揮官であつた間は今川は上記師
團長の命に依り若年の大隊長濃永の作戦・指導者
として作戦の指導に付ては勿論其の他の事項に付ても
濃永を指導し且保佐してゐたのである。

1944年6月11日Mariana地域を對し米軍

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の攻撃が開始せらるゝRota島に対しても米軍の艦砲射撃及空爆並に空襲が加へらるゝRota島全島が戦場と化したのである。そこで同月14、15日頃徳永大隊長はRota島各部落の部落長及其の他の者を集め会議を開き同席上緊迫せるMariana地区の戦況を説明し次で徳永は第29師團長の命令に依り第31軍司令官制定の在住民召集徴用規則を実施する旨を述べ、島民の夜間8時以後一定地域外への外出禁止、燈火管制の厳守を命じ更に利敵行為又は軍律違反等の行為をなさざる様注意を與へたのである。

これより裏Rota島民の間に同島における日本陸軍の兵力、配置、装備等の秘密事項を探知し、情報を蒐集する者があった。更に毎夜夜間発動艇燈火信号より後り海上艦船及飛行機と相互に連絡をとり毎晩は各地の空を旋回して飛行機を誘導しお軍上陸の造言飛語を流布し島民の軍人、住民、島民を不動の不安状態に陥れた者もあった。加之島内の電信線が屢々切断された事実があった。

此等の事実があったので徳永は一方部下の宮山中尉に其の捜査及調査を命ずると共に他方部下の徳永軍曹及市村前衛行方必査にも其の犯罪捜査を命じたのである。

宮山中尉及徳永軍曹並に市村の捜査及調査の結果容疑者島民約10名を捕へ証拠物件には上記各種犯罪事実の関係事項を記載せる手帳

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預金帳及書簡十数通外に信号用布及鞭等を押収したのである。

更に進んで奥山，徳永軍曹，市村に依ってそれぞれ容疑者の調査，訊問，上記押収証拠物件，証人等の証言，犯人の自白，容認に依り本件の被害者5名が殺人されることの確証を得此等5人は通謀して強制猥褻行為及殺逆行為等の犯罪を犯したることが確認され，此等の者より日本の機密事項に関する情報の一部が米軍に提供せられた事実も判明したのである。

徳永は此等5人の行為は軍機保護法，陸軍刑法及刑法に規定せられた犯罪に該当することが解ったと証言している。

茲に高時R.A.島よりは通常司法裁判所の設置なく又弁護人等の権利が無かったのと此の徳永も陸軍刑法に規定された第24師団の直轄の一派遣隊であったので徳永は当時派遣指揮者であった谷川及此の犯罪の捜査調査に当ってゐた奥山中尉と合議の上直ちに司令部にGuam島に在る第24師団長に此等5人を如何なる措置を講ずべきやの付指令を仰くことに決し直ちに無電を以て第24師団長に指令を求めたのである。此の請訓に対し同師団より其の要旨は「其等5人の犯人を陸軍刑法…に依り極刑に処すべし」との指令が通電が来着した。茲に徳永は師団長の此の命令に従って其の命令を実行したのである。

茲に本裁判に於ては徳永は上官の命令を

案の守りを完成した点に於て起訴せられたのである。

被告人高橋嘉雄及山口茂雄も同様彼等の上官たる德永の命令通り其の命令を実行したことに因って主訴せられたのである。

第九　1944年6－7月頃のRota島に於ける戦況

1944年6月11日より Mariana 地域に対する米軍の大規模の攻撃が開始せらるゝ一機到達は爆撃がRota島よりも行はるゝか或は連続して行はれ数日に亘って全島の大部分の家屋建物は破壊せらるゝ6月13日頃より海上に米軍の艦船が現はれ其の数約100隻を数へた。其の頃以来海上に米軍の潜水艦が現はれ始め殊に小舟艇が海岸に近接するやうになった。米軍の艦船より艦砲射撃砲撃が加へられ6月15日 Saipan が米軍の手に帰したかは米軍の艦船の近接するということがRota島の日本軍隊、住民、島民を刺戟し米軍が上陸せりとの報道が傳はり混乱が起ったことも数度あった。以上のことと綜合して米軍のRota島上陸が本年中に行はれ其の時期が緊迫しつゝあることが日本軍隊側より豫想せられたのである。

Rota島には既に飛行場の一が完成し Mariana 地域の戦闘に参加した日本の飛行機が之を使用して居り米軍の攻撃の目標となったと判断せられた。

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最初6月中旬頃米軍のR元島爆撃迄の目標は飛行場、兵舎、海岸の艇舶であったが6月下旬頃より7月初旬までの爆撃の目標が第一線陣地に移り米軍の参加飛行機は約100機と違った。斯かる状態であったのでR元島は第一線陣地を一層強化するの必要に迫られ全島玉砕の覚悟で防衛に当ったのである。

斯くてR元島全島は戦場と化したのである。
(被告人側証人今川政男の証言、及被告人徳永の証言。)

第参部　結論

上記第二部において叙述したる本件の事実を第一部において説述したる理論に照らして検討すれば結局の結論に到達するのである。

第十. R元島島民は日本の法律上外国人ではない。

R元島島民は日本の国籍法上外国人ではない。大体において日本国民に同様に取扱はれてゐたのである。それであるから上掲第二部第八に引用したる被告人徳永の証言中よりよく知てR元島島民に第31軍司令官の制定した住民召集徴用規則を適用したことに徴して見ても此のことは明かである。如何なる戦時中とは言へ斯かる種類の規則は法律上外国人には適用出来なかったのである。R元島島民は

国際法上は日本の統治下に在る人民であると認められ
且つ日本国民と同様に取扱はれてゐたと云ふのである。
2. 仍て第二に第一点判の最終結論に於て相
手人カールソン中佐の論じられたが如く日本が国際聯盟
を脱退した後も依然として其の委任統治の一般原則と
なったのである。

第十一、R.T.島は日本の国内法が
施行せられてゐた。

R.T.島は国際法上日本の領土の一部分と看
做されてゐたのであるから同島は日本の国内法の全部
かが施行せられてゐたのであって第一部第四章掲げた
本件と関係ある軍機保護法、陸軍刑法、刑法
等も同島に施行せられてゐたのである。

第十二、本件の島民、当時は国際法
上の"Spies"ではない。

本件の当時の島民は Hague 陸戦の附属書陸
戦法規並に慣例の規則第24條を規定せられた
"Spies"とは認められない。彼等は同條項を規
定せられた"Spies"の要件を具備しない。若し許さ
るならば私は今"quasi-Japanese subjects"と
云ふ語を用ひ度いのである。而て此等島民は準
日本国民(quasi-Japanese subjects)として日本の
法律上の如何なる地位を有するかと云ふのである。随
って其の犯罪及其の処罰は日本の国内法上の事柄
であって国際法上の問題ではない。彼等は上記
規則第24條の"Spies"ではないから同規則第30

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條及第31條の適用を受けないのである。

尚ほ証人等の証言中に現はれた此等5名の島民の為した行為中"敵軍交戦者に通報するの意思を以て陰密又は虚偽の口実の下に行動して情報を蒐集し又は蒐集せんとした"と云ふ行為は"Hague Regulations"第29條の"Spy"と該当すると雖も同條は証言中に明かにせられた此等5名の島民の為した"電話線の切断行為","燈火信号","発火信号","日本軍隊に有害なる造言飛語の流布"等の行為は検察官は如何に見るであらうか? 此等の行為は明かに Hague Regulations 第29條の"Spy"の定義中の"Spy"の行為の中よりは掛けうまれないのである。

第十三、本件の5名の島民の為した行為は叛逆罪である。

本件の5名の島民が為した行為は日本の法律である軍機保護法第4條、陸軍刑法第82條第99條、刑法第83條、第85條、第86條の外患即ち利敵行為及叛逆行為に該当するのである。

此の利敵行為及叛逆行為は日本の国内法上の犯罪であって之を処罰することも本国内法上の事項である。假に日本の一国民が自己の本国である日本に対し敵国の為に利敵行為又は叛逆行為を為した場合之を事前に裁判おくして処罰せよと云ふた場合之は Hague 條約陸戦法規慣例規則第30條の適用であると言ひ得るであらうか? 何人も

GG (20)

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答弁を以て答へることゝする.

本件の島民5名は利敵行為及救逆行為の犯人として處罰せられたのである. この處罰は日本の國内法上の事項であって國際法上の問題ではなかったのである.

第十四. 被告人徳永昭の行った處罰は上官の命令の實行であった.

(a.) 被告人徳永昭の行った島民5名の處罰は彼の直上の上官なる第29師團長高品中將の命令の實行として行った行為である. 此の行為を行うに當っては徳永は何等の判斷を有してゐなかった. 唯上官の命令を實行しただけである. 換言すれば徳永は上官の命令實行の道具として行動したまでである. 或る行為の實行に用ひられた道具は其の行為の結果に付て何等の責任を負はないのは自明の理である.

(b.) 他方に於ては又本件の5名の島民の行為が日本の國内法の犯罪であり, 其の處罰は日本の國内法の適用に依って行はれ徳永は上官の命令の實行として之を執ったのであるから徳永の行った處罰も亦日本の國内法の適用を受くべきは當然である. 仍て茲に上掲陸軍刑法第22條, 第23條, 及刑法第38條の規定を援用する. 此等の條項に依って徳永の行った行為の違法性は阻却せらるゝのである.

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(c) 上記の主張の事実に基く弁護人の違法性阻却の事由は相被告人高橋喜雄及び山戸政雄の分の弁護と同じである.

第十五. 主張されない事項.

下記の三事項は検察官より依って何人も合理的疑惑を抱さうるにまでに立証はされなかった.

(1) 本件5名の被告者中1名の者が西班牙国の国民でなかったこと.

(2) 本件の被告人徳永が行った犯罪行為が戦争法規並に慣習法に違反してあること.

(3) 被告人徳永が自己の自由意思として良民5名を殺害したこと. (徳永の其の行為が犯罪を構成するか又は徳永に犯意が有ったことが必要である.)

第十六. 以上の理由に因り私は徳永明は本件起訴並に罪状項目其の一, 其の二, 其の三, 其の四の全部を付無罪であることを主張する次第である.

願はくは本件被告人徳永明に対し本軍法会議は無罪の御判決を賜はらんことを.

陳言

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I N D E X

FOR CLOSING ARGUMENT IN BEHALF OF TOKUNAGA, AKIRA.

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CLOSING ARGUMENT IN BEHALF OF TOKUNAGA, AKIRA

Delivered by TAKANO, Junjiro,
Counsel for the accused TOKUNAGA, Akira,
formerly Captain, Imperial Japanese Army,
Commanding Officer of Detached Unit on
Rota Island.

The Honorable President and Members of the Commission:

I have the honor to deliver my closing argument before this learned Commission in defense of the accused, TOKUNAGA, Akira. I would like to express my deep-felt gratitude for the fair and sincere manner in which this trial has been conducted.

Part I. GENERAL REMARKS.

Section 1. - Introduction.

A State exercising its sovereignty, namely, its legislative, administrative and judicial authority over its subjects is in no way restrained by international law. It is because of this that it has been often proclaimed that as a matter of international polity, one state will not "interfere in the internal affairs of another state."

The judge advocate in his opening statement delcared as follows: "The case while relatively simple, is nevertheless important. A war crime has been committed and the law should be vindicated even though most of the victims were natives."

As the words "the law" used in this statement are to be appropriately interpreted as meaning "international law" and "Laws of War", I on this point hold a view which is at complete variance from that of the judge advocate. In other words, the present is not a case of "spy"-ing in the international law sense of that word. I hold therefore that the question here is not one that involves laws and customs of war, but a question of Japanese Domestic Law.

I will state my reasons below under item headings.

Section 2. - Acts of Espionage and Treason.

It is set forth in Article 29 of the Rules of Land Warfare annexed to the Hague Convention IV of 1907 that:

> "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."

This article of the Rules of Land Warfare places no limitations on the nationality or sex or status of the spy. Leaving for the moment the sex and status of the spy; it is quite natural that this article places no limitations on the nationality of the spy. When a belligerent nation uses spies to gather information concerning an enemy belligerent nation, the spies are sometimes its own nationals, sometimes third party nationals, at times nationals of the enemy belligerent nation. In certain cases a spy may have dual or triple nationalities and in some instances he may have no nationality at all. Such actually being the case the use of words to qualify nationality in the text of the Convention is not proper from the technical aspect of drafting the legal language of the Convention.

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It is, however, clear from the context of Article 29 of the Rules of Land Warfare cited above, that a national of a belligerent country who by his acts proffers military advantage to an enemy belligerent nation, and who works to the military detriment of his own country, would not fall under the category of spies mentioned above.

Then what crimes are constituted by acts of espionage on the part of a belligerent national performed for an enemy belligerent nation against his own country? They constitute acts of treason against the belligerent nation on the part of its national.

Section 3 of the Constitution of the United States of America explicitly states that "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort...."

Further, Statute Law of the United States of America states as follows on Treason:

> "Para. 205. Treason. - (a) American Statutory definition.--Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other things, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such punishment as a court-martial or military commission may direct." (Eighty-first article of war; act June 4, 1920, Chap. 11, 41 Stat. 804, U.S. War Department Rules of Land Warfare of 1940, Para. 205. Treason, p. 59.) (Underscoring defense counsel's)

Referring to the above regulations from the Constitution of the United States and the Statute Law of the United States, it will be seen that treason is a crime which is determined by the domestic laws of a nation which is tried and punished by the judiciary of that nation, including the organizations of military tribunal, through the application of the domestic laws of that nation. In short, treason is purely a question of domestic law.

Clark and Marshall in their book "Law of Crimes" state their view as follows:

> ".....In state constitutions or statutes there are similar definitions of treason against the state." (25)

Footnote 25:

> For example, see Crim. Code Ill. Rev. Stat. ch. 38, Para. 556, Jones Ill. Stat. Ann. 37, 525; General Laws Mass. ch. 264, Para. 1, Const. Mo. art. 2, Para. 13; Penal Code N.Y. Para. 37; Code Va. 1887, Para. 3658 (Clark and Marshall, "Laws of Crimes" 4th Ed. p. 7)

I quote below Hackworth's opinion and Wintrhop's explanation in regard to the point, that when a national of a certain state performs acts of espionage for a hostile billigerent against his own country, he is not guilty of espionage but of treason to the state to which he is subject.

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Hackworth states:

> "An alien serving as a spy is not guilty of any crime against the country which he is seeking to undermine by his acts or conduct as the term "crime" is used in the international law. Of course, if he serves as a spy against his own sovereignty, he may be found guilty of crime under the law....." (Digest of International Law, by. G. N. Hackworth, Vol. VI, Chap. XX, Para. 581, p. 308.)

Winthrop explains it as follows:

> ".....Where indeed a member of the army or citizen of the country assumes to act as a spy against his own government in the interest of the enemy, he is chargeable with perfidy and treachery, and fully merits the punishment of hanging; but - generally speaking - the death penalty is awarded this crime because, on account of the secrecy and fraud by means of which it is consummated, it may expose an army, without warning, to the gravest peril;....." (Military Law and Precedents by William Winthrop, 2nd ed., 1920, Para. 1200, p. 771(underscoring defense counsel's)).

Nearly all countries generally punish treason with the death sentence. Leaving the domestic law of Japan on this question for a later chapter, let us refer to the law in the United States of America in Rules of Land Warfare, 1940 edition. It is there set forth:

> "The war traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death."

It goes on further to state:

> "This immunity (referring to the immunity set forth in Article 31 of the Hague Convention) does not extend to persons guilty of treason who may be arrested at any place or any time within the jurisdiction (of the United States of America); and it is not necessary for traitors to be caught in the act in order that they may be punished. (Ibid., Paragraps 210, 213, p. 60)."

That a spy as determined in Article 29 of the Rules of Land Warfare of the Hague Convention has the right to be given a trial in conformance with Article 30 of the same Rules and the right to be accorded the treatment of prisoners of war and the immunity from being punished for previous acts of espionage as set forth in Article 31 of the Rules is clear from the foregoing. In the same way, treason is a crime of domestic law and to the traitor is applied the domestic laws of his country. Therefore, it is only natural that Articles 30 and 31 of the above mentioned Rules of Land Warfare do not apply to persons committing the crime of treason.

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Section 3. - Natives of Rota Island of the Japanese South Seas Mandated Territory.

The South Seas Islands mandated to Japan by the League of Nations were so-called C-Class mandates, and the Mandatory, Japan, administered these islands as an integral part of its territory, exercising the domestic laws of Japan over them. Rota Island, which was a Japanese Mandate, was in no way different from Japanese territories in regard to domestic laws. (Article 22 of the Covenant of the League of Nations. It is true that the natives of Rota Island of the South Seas Mandated Territory did not automatically assume the nationality of the Mandatory, Japan but if they desired to become naturalized subjects of Japan, they were qualified so to become. Under these circumstances, the natives of Rota Island stood in a peculiar relation to Japan. Thus, although they did not possess all the identical rights and duties of Japanese nationals, as they were administered under the laws of Japan, they were treated in the same manner in many respects as Japanese nationals. For example, in June 1944 the Conscription and Induction Regulation of the 31st Army was put into effect in regard to natives and part of the native population was inducted. (Testimony of the accused TOKUNAGA.)

The foreign residents of Rota Island who were not native inhabitants, as long as they resided there, had the same rights and duties as Japanese nationals residing on Rota Island, except for the conditions provided by laws and treaties. Their position was no different from the position of foreigners residing in Japan. (Interpretation by analogy of Article 2 of the Japanese Civil Code.)

Section 4. - Japanese Laws and Regulations which were in effect on Rota Island. (During the period from March 1944 until August 1944.)

As stated above, it is clear that Laws, Ordinances and Regulations of Japan were in effect on Rota Island which was a part of the Japanese South Seas Mandated Territory. These laws, ordinances and regulations applied to Japanese nationals, native inhabitants and third party nationals residing on Rota Island. As Japanese armed forces were stationed on Rota Island during the period from March 1944 until the Surrender in September 1945, it goes without saying that there were besides the general laws and regulations, laws and regulations pertaining specifically to the armed forces which were in effect during that period. The text of pertinent articles clearly reveal that although regulations which were designated for application to military personnel applied primarily to them, they nevertheless applied to non-military personnel as well.

Those laws and regulations which were in effect on Rota Island during the period from March 1944 until around August 1944, and which are relevant to this trial are as follows: Military Secrets Security Law (Exhibit 7), Regulations Governing Security of Military Secrets (Exhibit 8), Army Criminal Code (Exhibit 10), Army Court-Martial Law (Exhibit 11), and Instructions relative to Army Judicial Police (Exhibit 12). (Exhibits 9 and 12, and the testimony of the accused TOKUNAGA) The fact that the Criminal Code of Japan was in effect on Rota Island at that time may be determined through the testimony of the accused TOKUNAGA as well as through the opinion on the judgment passed by this Military Commission in the trial of FURUKI, Hidesaku by the Judge Advocate General of the United States Navy, dated 22 January 1948 (Exhibit 11 of the trial of HARA, Chuichi, former vice admiral, Imperial Japanese Navy), and by the opinion of the Judge Advocate General of the United States Navy, dated 26 January 1948, on the judgment in the trial of INOUE, Fumio, who was

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tried by this Military Commission (Exhibit 9 in the trial of HARA, Chuichi). The incidents in which FURUKI and INOUE were involved occurred on Jaluit Island. However, Jaluit, with the same status as Rota Island, was part of the Japanese South Seas Mandated Territory.*

A. Article 1 of the Military Secrets Security Law provides:

> "By the term 'military secrets' is meant matters, or documents, relating to operations, strategy and tactics, mobilization, expeditions and other matters necessitating secrecy from a military viewpoint. As to the scope and range of the matters and documents referred to above (which are to be classified as military secrets) the Ministers of War and Navy shall determine by (appropriate) orders."

And in paragraph two of Article 4 it sets forth:

> "A person who detects a military secret or who gathers military secrets and exposes it or them in public or who discloses it or them to foreigners or those acting for foreigners shall be condemned to death, or sentenced to life imprisonment or imprisonment for not less than three years."

B. Article 1 of Regulations Governing Security of Military Secrets determines the scope and range of the matters and documents which are to be classified as military secrets in accordance with paragraph two of Article 1 of the Military Secrets Security Law, while Part 2 of the same Article specifies in detail matters relating to national defense, operations and logistics and part 3 of that Article similarly specifies matters pertaining to organization, equipment and mobilization.

C. Article 2 of the Army Criminal Code provides that:

> "This law shall also be applied to those who commit the crimes mentioned below, though they are not the military army officers and soldiers.
>
> "3. The Crimes of Articles from 79 to 85.
>
> "6. The Crimes of Clause 1 of Article 95, Article 96, Clause 2 of Article 97 and Article 99."

By this it clearly shows that the Army Criminal Code applied to persons (civilians) who were not military personnel.

Article 82 of the same Code provides:

> "Those who destroy the things named in Article 79, or railways, telegraph wires, or passages on land and sea for military use, shall be sentenced to life imprisonment or not less than two years' imprisonment."

Article 99 of the same Code determines that:

> "Those who have made a false order, report or information relating to military affairs in wartime or in disturbances, shall be sentenced to not more than seven years' imprisonment with labour or confinement."

* Furthermore, it has been made clear by the testimony of defense witness Sadamu Sanagi in this court that the above mentioned laws, ordinances and regulations were in effect on Rota Island around June and July of 1944. HH(6)

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D. The Army Court-Martial Law provides that an officer, warrant officer, or Kempei non-commissioned officer shall conduct the inquiry in the capacity of a judicial police officer (Article 73) and further determines that a commanding officer of a company or units higher than a company, and troops corresponding thereto shall exercise the functions of a Military Judicial Police Officer. (Article 74) The same law further determines that a unit commander may charge his subordinate officer with the functions of a Military Judicial Police Officer in a specific case, (Article 75) The same law further goes on to state that Military Judicial Police Officers or persons exercising such functions as substitutes shall follow the orders of their superior officers in conducting their investigations. (Article 76)

E. Article 1 of the Criminal Code of Japan clearly shows that such Code applies to all persons within the Empire (of Japan). Article 83 of the Code provides:

> "Every person who for the purpose of benefiting an enemy power has damaged (destroyed) or rendered unfit for use a fortress, camp, vessel, arms, ammunition, train, electric car, railroad, telegraph (or telephone) lines, or other place or thing for military (or naval) use shall be condemned to death or punished with penal servitude for life."

Article 85 of the Criminal Code provides:

> "Every person who has acted as a spy for an enemy power or has aided a spy of an enemy power shall be condemned to death or punished with penal servitude for life or not less than five years.
>
> "The same (punishment) applies to every person who has disclosed a military (or naval) secret to an enemy power."

Article 86 provides:

> "Every person who by methods other than those of the preceding Articles has given an enemy power any advantage or has injured the interests of the Empire shall be punished with limited penal servitude for not less than two years."

While Article 87 provides that:

> "Attempts of the crimes of the preceding six Articles shall be punished."

Article 85 above states, "Every person who has acted as a spy for an enemy power, or has aided a spy of an enemy power....." Spies as used in this Article are enemy nationals or third party nationals who commit acts of espionage during wartime and who fulfill the conditions of spies set forth in Article 29 of the Rules of Land Warfare of the Hague Convention. Consequently, Article 30 of the same Rules would apply to them, and when there are violations of Article 30, they are violations of the laws and customs of war. However, when subjects of Japan violate the provisions of Article 85, they commit treason against Japan, as has already been stated above, and it becomes purely a matter of the domestic laws of Japan, and the Hague Convention does not apply. In order to avoid any misunderstanding

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I would like to add that I am not asserting that because the Hague Convention was not applicable to those Japanese nationals who committed acts of treason, it would have been legal to punish them without trials. I strongly hold that even if the offenders in this case were punished without previous trial, such action did not constitute a violation of the laws and customs of war.

(N.B. The English translations of the excerpts from the Criminal Code of Japan cited above are the translations of William Sebald, LL.B.)

Section 5. - Faits justicatifs. (Justificatory grounds)

In the legislation of civilised nations of today, grounds are recognised which relieve an offense of illegality even when most elements constituting the offense are present in form.

Article 22 of the Army Criminal Code provides:

> "The action which has inevitably been taken in order to put down the violence of people or to keep the military discipline in the strained situation of the army unit in the face of the enemy, is not liable to be punished.
>
> "The punishment for the action carried out beyond necessity shall be reduced or exempted according to the circumstances."

Article 23 further provides that:

> "The previous Article shall also be applied to the action which comes under the crime of criminal law or any other laws or ordinances."

Article 38 of the Criminal Code of Japan provides:

> "Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable."

These articles quoted above provide that although an act possesses in outline the form of a crime, they do not recognise the illegalityof the act.

Section 6. - Superior Orders.

There have been not a few trials of War Crimes tried by this Military Commission where "superior orders" in the Japanese armed forces were brought forward as grounds for defense. I firmly believe that as a result this Military Commission possesses a sufficient and accurate knowledge in regard to this subject. I will therefore avoid going into lengthy explanations of "superior orders" at this point. I merely with to show how strictly obedience to superior orders was in effect in the Japanese armed forces by referring to two or three expressed provisions of laws and regulations.

Article 3, Section 2, Part I of the Operational Field Manual provides:

> "The command authority in the armed forces stems from the Imperial Prerogative of Command of the Generalissimo (T. N. Emperor) Commanding Officers of all ranks shall solemnly carry (them) out." (Testimony of accused TOKUNAGA.)

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Paragraph 1 of Article 9 on Obedience, Chapter 2 of the Military Administrative Manual provides:

> "Subordinates shall obey their superiors implicitly under all circumstances."

Paragraph 1 of Article 11 stipulates:

> "Orders will be respectfully observed and immediately executed. Never will it be permitted to discuss the propriety of an order or question its cause or reason." (Testimony of the accused TOKUNAGA)

Article 57 of the Army Criminal Code provides:

> "Any one who resists the superior officer's orders or who is not obedient to them, shall be punished according to the distinctions as follows:
>
> > "1. When it is in the face of the enemy, he shall be condemned to death, or sentenced to life or not less than ten years' confinement."

As the above laws clearly show, orders of superior officers required absolute and unconditional obedience. It was of course absolutely prohibited to criticize them and it was not even permitted to question their cause or reason. As the above cited Army Criminal Code provides, it constituted a crime not to obey orders of superior officers. And if an act were performed in conformance to orders, though that act were a crime, it would be exonerated from criminality.

Part II. ARGUMENT ON THE FACTS

Section 7. - The Charge and Specifications.

The Charge in the present case is violation of the law and customs of war and 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 Battalion Commander in the armed forces of Japan, he unlawfully punished as spies without previous trial two native inhabitants of Rota Island by shooting with firearms;

Specification 2 charges that TOKUNAGA, Akira, then a Battalion Commander 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, without previous trial, punished or caused to be punished as a spy one Spanish Catholic brother, a resident of Rota Island by administering a deadly poison;

Specification 3 charges that TOKUNAGA, Akira, then a Battalion Commander in the armed forces of Japan, and TAKAHASHI, Yoshio, then an officer in 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, without previous trial, one native inhabitant of Rota Island by administering a deadly poison;

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And Specification 4 charges that TOKUNAGA, Akira, then a Battalion Commander 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 without previous trial, by shooting with firearms.

Section 8. - Facts of the case as they appeared in the evidence.

The gist of the facts of the case from a synthesis of the testimony of witnesses for the prosecution and the defense, and of the accused themselves, and of the documents, are as follows:

In the latter part of March 1944, the accused TOKUNAGA, Akira, was ordered by the Commanding General of the 29th Division, Lieutenant General TAKASHINA, who had his headquarters on Guam at that time, to go to Rota Island as the Battalion Commander of the 1st Battalion of the 10th Independent Mixed Regiment, taking the battalion with him. This unit became the 1st line detached unit of the above division.

Around the middle of July 1944 the accused TOKUNAGA was in command of the detached unit on Rota Island, but after that time IMAGAWA, Shigeo, major, Imperial Japanese Army, relieved TOKUNAGA as Commanding Officer on Rota.

From June 10, 1944 when IMAGAWA landed on Rota Island and during the period TOKUNAGA was commanding officer, IMAGAWA, by orders of the Commanding General of the 29th Division directed the youthful battalion commander, TOKUNAGA, in operations in his capacity as operational director, and in other matters directed and supported TOKUNAGA.

On June 11, 1944 the United States offensive in the Marianas area began. Rota Island also was subjected to naval bombardment and air raids. The whole territory of Rota Island was turned into a field of battle. Thereupon Battalion Commander TOKUNAGA called the village heads and other persons of all the villages around the 14th or 15th of June and opened a conference. At this meeting, TOKUNAGA explained the pressing battle conditions in the Marianas area to those present, and next, the plan to put into execution the regulations governing the Conscription and Induction of natives determined by the Commanding General of the 31st Army, through an order from the Commanding General of the 29th Division, and ordered the prohibition of natives to leave certain areas after eight o'clock at night, and the strict observance of blackout control. He further cautioned those present to be on the alert for subversive acts and acts of treason and spreading rumours.

Prior to this there had been natives of Rota Island who had detected the forces of Japanese troops on the island, their disposition and equipment, military installations and other secret military matters, and had gathered information concerning them. Further there were persons who maintained liaison with enemy surface ships and planes during the day and during the night by using flares and blinker signals, and those who directed enemy planes during the daytime by stretching pieces of cloth of various colors on the ground, and those who by spreading groundless rumors of landings by United States forces caused constant insecurity among Japanese military personnel and the native population of Rota Island.

Furthermore, military telephone wires were often cut.

Because of these actual happenings, TOKUNAGA ordered First Lieutenant OKUYAMA to search and make investigations on the one hand, while on the other he ordered his subordinate Sergeant TOKUNAGA and the former South Seas Government Office Policeman ICHIMURA to investigate these crimes.

As a result of the searches and investigations made by First Lieutenant OKUYAMA, Sergeant TOKUNAGA, and ICHIMURA, approximately ten native suspects were arrested and various exhibits, for example a secret handbook containing matters relative to the various crimes mentioned above, ten odd letters, pieces of cloth and a bottle for signalling purposes were seized.

Furthermore, the guilt of the five victimes of this case was confirmed through the investigation questioning of the suspects by OKUYAMA, Sergeant TOKUNAGA, and ICHIMURA, through the above mentioned exhibits, through the testimony of the witnesses and through the confessions and admissions of the criminals. And it was confirmed that these five men had conspired and in conspiracy committed the crimes of subversive action and treason above mentioned. The fact became evident that some information concerning military secrets of the Japanese armed forces was being offered to the United States forces through these men.

TOKUNAGA testified that he knew that the provisions of the Military Secrets Security Law, the Army Criminal Code, and the Criminal Code of Japan applied to the actions of these five men.

However, as at that time there were no permanent judicial courts established on Rota Island, and as there were no court-martial organisations, and as the TOKUNAGA Battalion was an expeditionary unit directly subordinate to the 29th Division stationed at the front, TOKUNAGA on consultation with IMAGAWA who was at that time directing operations and First Lieutenant OKUYAMA who was conducting the search and investigations, decided to request instruction of the Commanding General of the 29th Division who was at his immediate superior headquarters on Guam Island, concerning the disposition of these five natives, and immediately sent a dispatch requesting instructions to the Commanding General of the 29th Division. In reply to the request he received the following instructions by despatch on the next day:

"In accordance with Article *** of the Army Criminal Code award these five offenders the extreme sentence."

Thereupon TOKUNAGA carried into execution this order of the Commanding General of the Division.

TOKUNAGA is charged in this trial for having faithfully observed and executed the order of his superior officer.

His co-defendants TAKAHASHI, Yoshio and KOYAMA, Shigeo are likewise being charged for having carried out the order of TOKUNAGA, their superior officer, to the letter.

Section 9. - Battle Conditions on Rota Island around June and July of 1944.

From the 11th of June 1944, the large scale United States offensive in the Marianas area commenced. Rota Island was subjected to intensive bombings. These continuing daily and nightly, the greater part of the houses and buildings on the island were demolished within a few days. U. S. warships began to appear on the seas from around the 13th of June, and they numbered over a hundred ships. From around that time U. S. submarines began to appear on the seas and small craft to approach the shores at night. About

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this time there were bombardments by U. S. warships. After Saipan had fallen into American hands on the 15th of June, what affected the Japanese military and residents and natives of Rota Island was the approach of United States ships, and there were frequent false reports of landing of United States forces on the island which created confusion. Synthesizing the above, the Japanese military on Rota Island judged an American invasion as inevitable and anticipated that the day of invasion was not far distant.

Rota Island was an objective of American attacks because it was judged that there was was one completed air field on Rota Island which was being used by Japanese planes participating in the combat in the Marianas area.

Around the middle of June 1944, the objectives of the American bombing attacks were the air strip, the barracks, and the Japanese ships lying off shore. From the latter part of June and early part of July, however, the Americans shifted their bombing objectives to first line positions, and the number of planes participating in the attacks rose to over a hundred planes. Under such conditions it was imperative to strengthen the first line positions. All personnel were determined to fight to the last to defend Rota.

The whole island of Rota was thus turned into a field of battle. (Testimony of prosecution witness IAMAGAWA and of the accused TOKUNAGA, Akira.)

PART III. CONCLUSION

By examining the facts of the case set forth in Part II of this argument in the light of the reasoning of Part I, I arrive at the following conclusions:

Section 10. - Native inhabitants of Rota Island were not foreigners from the standpoint of the Laws of Japan.

Native inhabitants of Rota Island were not foreigners according to the domestic laws of Japan. They were generally treated in the same manner as Japanese nationals. This fact is clear when we refer to the testimony of the accused TOKUNAGA in that portion of his testimony which was quoted in Section 8 of Part II, where it states that the Regulation enacted by the Commanding General of the 31st Army for the Induction and Conscription of residents applied to the native inhabitants of Rota Island. Such regulations cannot be applied to foreigners even in time of war. The native inhabitants of Rota Island were recognized under international law to be people under the protection of Japan, and were thought to be treated almost similarly with Japanese nationals. As was argued by my co-counsel Commander Carlson in his final argument in the trial of HARA, Chuichi, this state of affairs was further accentuated after Japan's withdrawal from the League of Nations. Moreover Rota Island was considered to be an integral portion of Japan.

Section 11. - The Domestic Laws of Japan were in effect on Rota Island.

As Rota Island was considered to be an integral portion of Japanese territory in international law, as a consequense, numerous domestic laws of Japan were in effect there. The Military Secrets Security Law, the Army Criminal Code, the Criminal Code of Japan and other laws and regulations mentioned in Section 4 of Part I relevant to this case were of course in effect.

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Section 12. - The five natives of the instant case are not spies under international law.

The five native inhabitants in the instant case are not "spies" as determined by Article 29 of the Rules of Land Warfare annexed to the Hague Convention. They do not possess the necessary elements of "spies" as set forth in that Article. If permissible I would like to use the term "quasi-Japanese subjects" for the native inhabitants of Rota Island. These natives, these quasi-Japanese subjects, had committed criminal offenses in the light of Japanese laws. Consequently their crimes and punishment therefor were not questions of international law but matters of Japanese domestic law. As these men are not "spies" as provided in Article 29 of the Rules of Land Warfare of the Hague Convention, Articles 30 and 31 of the same Rules of Land Warfare cannot apply to them as a matter of course.

Although there were acts on the part of the five native inhabitants to which witnesses testified which corresponded with acts of spies set forth in Article 29 of the Hague Convention, namely acts which corresponded to "acting clandestinely or on false pretences, obtaining or endeavoring to obtain information with the intention of communicating it to the hostile party", there were clearly other acts committed by the five natives such as "cutting of telephone lines", "Signalling by flares", "signalling by blinkers", "disseminating unfounded rumors detrimental to the Japanese armed forces" and others brought out in the testimony. How does the judge advocate view these acts? Such acts are definitely not enumerated among the "acts of spies" in the definition of spies given in Article 29 of the Hague Regulations.

Section 13. - The acts committed by the five native inhabitants in this case were acts of treason.

The acts committed by the five native inhabitants in the present case are crimes which fall under Article 4 of the Military Secrets Security Law, of the Criminal Code of Japan, and they are in short subversive acts and acts of treason.

These acts benefitting the enemy, and acts of treason, constituted crimes under the domestic laws of Japan, and their punishment was a matter for the domestic laws of Japan. Presuming that a Japanese national was punished without previous trial on the ground that he committed acts to benefit the enemy or acts of treason, in the interest of an enemy and against his own country, who will assert that he violated the 30th Article of the Rules of Land Warfare of the Hague Convention? It is believed that everyone will negate such a thought.

The five native inhabitants in the instant case were punished for having committed subversive acts and acts of treason. This punishment was a question of the domestic laws of Japan and not one of international law.

Section 14. - The punishments meted out by the accused TOKUNAGA, Akira were in performance of superior orders.

(a) The punishment of the five native inhabitants meted out by the accused TOKUNAGA, Akira, was in performance of the order of his immediate superior officer, Lieutenant General TAKASHINA, Commanding General of the 29th Division. In performing these acts, TOKUNAGA did not have any criminal intent. He merely carried out the orders of his superior officer.

In other words, TOKUNAGA acted as an instrument executing the orders of his superior officer. It is an obvious fact that an instrument used in the carrying out of an act is not responsible in any way for the results caused by that act. Article 22 of the Army Criminal Code provides:

"The action which has inevitably been taken in order to put down the violence of people or to keep the military discipline in the strained situation of the army unit in the face of the enemy, is not liable to be punished.

"The punishment for the action carried out beyond necessity shall be reduced or exempted according to the circumstances.

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Article 23 of the Army Criminal Code provides:

"The previous article shall also be applied to the action which comes under the crime of criminal law or any other laws and ordinances."

And Article 38 of the Criminal Code of Japan provides:

"Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable.

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

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

(b) On the other hand it is only natural that the domestic laws of Japan apply to the punishment meted out by TOKUNAGA, as the acts of the five native inhabitants of the instant case were crimes in the light of the domestic laws of Japan, and as Japanese domestic law applied to their punishment, and as TOKUNAGA punished these men by carrying out the order of his superior officer. I here adduce the above cited Articles 22 and 23 of the Army Criminal Code and Article 38 of the Criminal Code of Japan. By these articles the acts of TOKUNAGA are relieved of illegality.

(c) The grounds for removal of illegality on the basis of superior orders above mentioned, will also be submitted in defense of the co-defendants of the accused TOKUNAGA, TAKAHASHI, Yoshio and KOYAMA, Shigeo.

Section 15. - Matters which were not proved.

The three items below were not proved beyond a reasonable doubt by the judge advocate,

(1) One of the five victims of the instant case was a Spanish national.

(2) The acts of punishment performed by TOKUNAGA were violations of the law and customs of war.

(3) The accused TOKUNAGA of his own free will punished the five native inhabitants. (For TOKUNAGA's acts to constitute crimes, it is necessary to establish TOKUNAGA's criminal intent.)

Section 16. - On the above grounds I hold that the accused TOKUNAGA, Akira is not guilty of the Charge, and not guilty of Specifications 1, 2, 3, and 4 of the Charge.

I respectfully request that this Military Commission grant a verdict of not guilty to the accused TOKUNAGA, Akira.

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.

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II

Argument of Counsel.

被告高橋嘉雄及小山茂雄ニ対スル辯論

昭和二十四年二月十四日

辯護人　佐藤敬

委員長並ニ委員各位.

本辯護人ハ本裁判ニ於ケル被告ノ中、高橋嘉雄及小山茂雄ノ為ニ辯論ヲ行ハントスルモノデアル

昭和十九年六月下旬乃至七月上旬、ロタ島デ生起シタ島民及居住民ノ虐殺事件ノ事実及法律論、全般的事項ニ就テハ相辯護人高野氏ガ既ニ詳細ニ述ベタノデ、本辯護人ハ主トシテ被告高橋及小山ニ関聯シタ事実ニ就テ先ヅ本法廷ニ提出サレタ証拠ニ基ク事実ヲ検討シ、次デ両被告ガ問擬サレタル起訴罪状項目ニ依ツテ罰セラルベキモノナリヤ否ヤニ就テ論ジヨウト思フ

第一章　証拠ニ基ク事実ノ検討.

罪状項目第二及第三ニ於テ主張サレタル事件ニ於テ被告高橋及小山ノ為シタル行為ニ就テハ検事側ニ依ツテ提出サレタ証拠ニモ弁護側ニ依ツテ提出サレタ証拠ニモ殆ド喰違ヒガナイ. 従テ其ノ詳細ヲ再ビ茲デ検討スルコトヲ避ケ、被等ヲ裁クニ当ツテ特ニ考慮ヲ拂ハネバナラヌ点ニ就テ若干指摘シヨウト思フ.

一、事件発生当時ノ戦況.

罪状項目第二及第三ノ事件ノ行ハレタ当時ノ戦況ニ就テハ既ニ本法廷ニ充分ノ証拠ガ提出サレタノデ再ビ茲ニ之ヲ繰リ返ス必要ハナイ. 唯、斯ノ如ク緊迫シタ戦況下ニ於ケル味方ヲ裏切リ、反逆行為ニ出ヅルモノヲ急ギ処刑スルコトガ軍事上ノ必要デアツタ点ヲ了解スル必要ノアル事ダケヲ指摘スルニ止メテ置ク.

二、被告等ガ犯行ニ参加スルニ至ツタ経緯

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被告高橋が罪状項目第二及第三ノ犯行ノ事件ニ参加スルニ至リタルハ、大隊長徳永明ノ命令ニアリタル事ハ、被告徳永ノ本法廷ニ於ケル証言及被告高橋ノ陳述書(Exhibit 2)ニ依リ証拠ノ立証セラレタル所ナリ

被告小山ハ事件当時大隊本部ニ於ケル衛兵勤務ニ就キ居リタルモノニシテ検事側証人加藤又吉崎ノ証言及被告小山ノ証言ニ依リ何等ノ疑ナキ、被告小山ガ当日捕虜ノ殺害、財物ノ略奪ノ監視ノ任務ヲ終テ衛兵所ニ帰テカラ間モナク日直下士官カラ命ゼラレテ他ノ一名ノ衛兵ト共ニ警戒兵トシテ高橋軍曹ノ財ノ庭ニ派遣サレ、其ノ指揮ヲ受クルニ至リタル状況ニ鑑テハ他ニ之ヲ追証スル証拠ハナイガ之ニ対シテ誰シモ疑問ノ余地ハナイ所デアル

即チ被告高橋及小山共ニ夫々上官ノ命令ニ基イテ処刑ニ参加スルニ至リタル事実ハ正当ナル疑ヲ超エテ立証サレタ

三、処刑執行ノ手続

罪状項目第二、第三ノ事件ニ於ケル処刑実施ニ先リテ被告徳永ノ前デ徳永軍曹立会イノ下ニ二名ノ島民ニ対シ、被告徳永ガ処刑宣告文ヲ読ミ聞カセタル旨ノ証言アリ

此ノ事実ヲ追証シ得ル立場ニアルハ徳永軍曹ノミデアルガ、彼カラ之ニ関スル証言ヲ得ルコトハ未ダ嘗テ実現デアル(当日、午前、徳永憲兵軍曹ガ本部前ヲアチラコチラ歩イテ居タコトハ検事側証人加藤隆ガ証言シテ居ル)

然シテ徳永軍曹ノ追証ガ得ラレトクテモ第一回ノ処刑(Spec. 1)及第三回処刑(Spec 4)ニ於ケル被告徳永ガ島民ノ前デ処刑宣告文ヲ読ミ聞カセタル事ガ証拠ニ立証サレテ居ルコトニ鑑ミルトキハ、第二回処刑ニ於テモ、第一回、第三回ノ場合ト全然ニ実施サレタコトニ就テ疑念ノ余地ガナイ

四、各処刑者ノ為シタル行為ノ範囲

被告高橋ハ処刑ノ実施ニ当リ青酸加里ヲ使用シタガ之ハ大隊長徳永ガ之ヲ使テ撲ニ命ジタカラデアッタ

最初ノ被害者ガ即チセズ苦悶シテ居ルノニ対シテ警戒兵小山ニ刺殺ヲ命ジタガ之ハ大隊長ニ如何ニ措置スベキカ、指令ヲ仰ギ其ノ指示ニ依ッタモノデアル

以上二つの事実の本法廷に提出された証拠が何等の疑念の残らぬ迄に立証されてゐる。

被告小山が警戒兵の任務に就くに当り小銃着剣をして居た事に就ては被告小山は当時衛兵が任務を遂行するには常に此の服装であるから特に命令する迄もなく当然であると供述して居るし検察側証人吉崎徳一が之を追証して居る。

被告小山が当日爆破現場に派遣されたのは、地上警戒の為めの警戒の為であつて主として対空警戒に当つて居たことは証言これが衛兵が当時の戦況上此の任務の為に派遣されることは誰しも首肯し得る所である。

被告小山が高橋軍曹から呼ばれて被害者を突く様に命じられたとき躊躇したと云う事実は検察側証人加藤及吉崎に対する小山自身の証言に依り明瞭に立証されて居る。

以上を綜合すれば被告高橋は被告小山を其の為した行為の全くは上官から指示された通り其の指示範囲以上のことを行つたものであることが明瞭に立証されて居る。

五、事実に関する証拠の検討の最後に述べなければならぬ最も重要な根本的な問題は爆破された島民又は居住民がヘーグ陸戦条約第29條に規定する條件を備へたスパイであつたと云うことが、果して立証された責任の検挙が検察側に在つたに拘らず検察官に依つて立証されなかつたと云う事である。

被告等はスパイを教唆したに爆破したことがヘーグ陸戦条約第三十條に違反であると検察側に依つて主張された点であるから、ヘーグ陸戦条約第二十九條に規定する條件は(1)変装(2)敵地に潜入(3)情報を敵の為に探知すると云う三つの條件は検事に依つて立証されるべきであつたに拘らず(1)(2)の條件は立証されなかつた。

日本人証人や島民の証人中に島民等がスパイ行為に依つて罰せられたものであると証言したものもあるけれども、夫れは単に通俗的な意味でスパイと云う言葉を使つたのであつて、ヘーグ陸戦条約第二十九條のスパイの意味ではなかつたことは証人今川の本法廷第十回に於ける証言に依り合理的に之を断定することが出来る。

第二章　法律論

一、　被告高橋…罪狀項目其一、其二、其三ニ於テ又被告小山ノ罪狀項目其一ニ於テ夫々故意ニ不法ニ予メ裁判ヲ行フコトナク島民又ハ居住民ヲスパイトシテ處罰シ處罰セシメタル文ハ戰爭法規或ハ慣習ノ違反デアルトシテ訴追サレテ居ル

檢事ハ被告等ノ行爲ガヘーグ條約第三十條ニ違反シタモノデアルト主張シテ居ルケレドモ一方ニ於テ檢事ハ処刑サレタ島民或ハ居住民ガヘーグ條約第二十九條ノスパイデアリタリト云フコトヲ正當ナル理由ヲ擧ゲテ立証スルコトニ失敗シテ居ル

處刑サレタ人々ガヘーグ條約第二十九條ニ該當スルスパイデナケレバ仍條約第三十條ノ適用ハ起ラナイ。從テ戰爭犯罪又ハ慣習違反トイフ問題モ起ラナイコトニナル。換言スレバ被告高橋及小山ノ戰爭犯罪違反トイフ起訴罪狀項目ニ對シテ無罪デアリ釋放サルベキデアル。

被告高橋及小山ハ從來本軍事委員会ガ裁判サレタ此ノ種類ノ處刑事件ノ被告ト異リ日本刑法ニ違反シタトイフ殺人罪ニ依ツテ併合的ニ訴追サレテ居ラナイノデアルカラ、両名ノ被告ニ對シテハ之レ以上ノ議論ヲ進メル必要ハナイノデアル。

以上ヲ以テスパイ事件ヲ切離シテ考ヘタ場合ニ於テモ被告高橋及小山ノ戰爭犯罪トシテ罰セラルベキモノデナイトイフコトニ就テ尚若干ノ議論ヲ進メヨウ。

二、　事件當時行ハレテ居タ世界各國ノ陸戰法規ニ關スル教義及國際法學者ノ通説ハ上官ノ命令ニ從テ行動シタ部下ノ戰爭犯罪者トシテ罰シナイトイフコトニ一致シテ居タノデアル

(A)　日本陸軍ニ於テハ陸軍刑法第五十七條ニ於テ敵前ニ於テ上官命令ニ服從セザルモノハ死刑無期又ハ十年以上ノ輕禁錮ノ刑ニ處セラレルコトガ規定サレテ居タ (Exhibit 10).

被告小山ハ上官ノ命ハ天皇ノ命令トシテ服從スベキコトヲ教ヘラレテ来タト彼ノ陳述書 (Ex 3) 中ニ述ベタガ、是等ノ事項ニ依リ日本軍隊ニ於テハ上官ノ命令ガ如何ニ絶對的ナモノデアツタカハ委員各位モ了解セラルル所

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デアロート男爵

(B) 昭和十九年六月迄ニ於ケル国際指ヒノ通説ヲOppenheim,「国際法」第五版ニ依リ検討シテ見ルニ、第二巻才244頁ニ次ノ如ク論シテ居ル.

『戦争ニ関スル法規ノ違反ハ夫レガ交戦国政府ノ命令トシテ行ハレタ場合ニ於テハ戦争犯罪デアル若シ軍隊ノ一員ガ彼等ノ政府ノ命令ニ依ツテ違反シタ場合ニハ彼等ハ戦争犯罪ニ非ズシテ敵ニ依ツテ罰セラレナイ』

(C) 英国陸軍軍事法規提要1929年版341頁「戦争犯罪ニ対スル処罰」ト云フ項中ニハ次ノ如ク述ヘテ居ル

『此ニ於テ注意スベキ重要ナコトハ軍隊ノ一員ガ戦争ニ関スル法規ニ違反スル行為ヲシテモ夫レガ彼等ノ政府又ハ上官カラ命ゼラレタ場合ニアツテハソレハ戦争犯罪ニトラス.ソシテ敵ニ依ツテ罰セラレナイ』

又仝書1163頁ニハ『多クノ場合.命令ガ為サレタトイフ事実ハ部下ニ犯意ノ無カツタコトヲ起ク立証スルデアロー.ソシテ実際ニハ刑事訴追カラ釈放サレルノガ普通デアル』ト述ヘテ居ル

(D) 米国陸軍省発行『陸戦法規』1940年版347節ニハ次ノ如ク述ヘテ居ル

『軍隊又ハ個人ハ彼等ガ彼等ノ政府又ハ指揮官ノ命令又ハ訓令ニ依テ犯シタ罪ニ対シテハ罰セラレナイ』

米国国務省刑庁.「国際法摘要」1943年版575節ニモ上記ト仝一ノ文章ヲ掲ゲテ居ル

(E) 米国陸軍省刊行「軍事法規及慣例」第二版297頁「命令ニ対スル服従」ナル項中ニハ次ノ如ク述ヘテ居ル.

『平時ニ於テハ命令ハ何ト云ハレナイデアロー所ノ命令ヲアツテモ戦時ニアツテハ.戦争法規又ハ慣習ニ依テ保証サレテ居ル通、之ニ服従シタ部下ニ対シテ完全ナル弁護ヲ提供スルデアロー』

叙上ヲ総合スルニ主張サレタル事件当時ハ.日本ニ於テハ勿論ノコト.米英両国軍ノ戦争法規ニ関スル教義ニ於テモ.国際法学者ノ通説ニ於テモ.上官ノ命令ニ依ツテ為シタ行為ハ.仮令夫レガ戦争法規ノ違反トナル如キ場合デアツテモ戦争犯罪トシテ罰セラレナイト云フ点ニ一致シテ居タノデアル.

事件当時ニ於テ「処罰サレヌ」ト云フ方針ガ明示サレテ居タ行為ガ後ニナツテ之ヲ処罰スルコトハ法ノ原則ニ反シ且正義ニ反スルモノデアル

(ふ)

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三、 本事件ハ、即チ昭和十九年八月乃至十一月頃ハ、ニ行ハレタ戦争犯罪處罰ニ関スル米国及英国ノ軍事法規ノ、教義モ、国際法学説モ改定サレテ、上官ノ命令ニ依ツテ為シタ行為デアツテモ戦争犯罪トシテ罰セラレルコトガ一般方針トナツタ。然ル所ノ上官ノ命令ニ従ツタ行為ヲ辯護トシテ、其處罰ノ余地ヲ存シテ居タノデアツテ無條件ニ罰スルト云フノデハナイ。

昭和十九年十一月改版サレタ米陸軍「陸戦法規」345節 戦争法規違反ニ対スル處罰ノ次ニ次ノ如ク記載シテ居ル。

『戦争法規ノ慣習ニ違反シタ個人又ハ組織ハ夫レニ依テ處罰ヲサレル。然ル所ノ、其ノ問責サレタ行為ガ上官ノ命令又ハ政府ノ認可ニ依テ為サレタト云フ事ハ、處罰サレルニ当ツテ辯護又ハ處罰ノ減刑ノ何レカニ考慮サレルデアロー』

Oppenheim「国際法」第六版第二巻第五節「上官ノ命令ト云フ申立」ノ項中ニハ次ノ所説ガアル

『戦争犯罪ノ管轄ニ於テ、上官ノ命令ト云フ申立ヲ受ケタ法廷ハ、明ニ非合法ナル軍ノ命令ニ対スル服従ハ軍隊ノ各員ノ義務デアル、ソシテ軍隊ノ一員ニ、戦場軍紀ノ状況下ニ於テ受領シタ命令ノ法的價値ヲ極メルニ極メルコトヲ期待シ得ナイノデアル……(中略)……斯ノ如キ状況ハ多分其ノ行為ヲ戦争犯罪ト云フ汚名カラ免レシメルニ充分デアロー』

被告高橋及小山ガ主トシテ居ル事件ハ、軍事緊急状況下ニ於テ生起シタモノデアリ、両名共ニ其ノ上官ニ命ゼラレタ範圍以上ノコトヲ実施シタニ過ギナイコトハ第一章ニ於テ之ヲ指摘シタ通デアル。両名共ニ現行戦争犯罪處罰ノ教義方針カラ云ツテモ處罰カラ免除サレルニ充分ナ特徴ヲ持ツ居ルノデアル。

特ニ被告小山ノ場合ニ該当スル次ノ如キ有力ナル意見ガニユルンベルグ国際裁判米国首席検事 Mr. Robert Jackson ニ依ツテ下サレテ居ル。

『抑モ、我々ハ人ノ行為ノ法的結果ヲ裁クニ当ツテ其ノ行為ノ為サレタ時ノ状況ヲ無視スベキデアルトハ主張シナイ。射撃隊ノ一員デアル其ニハ處刑ノ合法性ヲ確メルコトヲ期待スルコトハ出来ナイ』 (「ニユルンベルグ裁判」)

被告小山ハ対地上ノ空中戦戒望ノ為ニ派遣サレタ其ノ一員ニ過ギナカツタ為ニ死ニ至ルマデ苦悶シテ居ル死刑囚ノ苦痛ヲ早ク去ル為ニ、上官ノ命令ニ依リ已ヲ得ズ射突シタノデアル。故ニ立場ハ上述ノ射撃隊ノ一員ト何等異ル所ガ

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トカツタノデアルカラ、彼ノ如キ立場ノ者ニ其ノ行為ニ対スル刑事的責任ヲ追究シ之ヲ罰スルト云フコトハ、矛ニ次世界大戦後、戦争犯罪ノ糾罰ニ重要ナ役割ヲ演ジタ構成者 Mr. Jackson モ之ヲ認メテ居ナイノデアル。

四、叙上ノ所論ニ対シテ検事ハ SCAP Rule 5. Power and Precedure of Commission ノ d 項 Evidence 中(6)ヲ楯ニ取リ上官ノ命令ノ弁護ニハ全ク主張スルカヲ知レヌ。然シ乍ラ本軍法審査会ニ於ケル命令書ハ SCAP Rule ヲ無修正ノ採用スルト云フ規定ニテ居ラズ、海軍律ノ條項ヲ援用シテ SCAP Rule ノ用ヒル ニ当ツテ "as are neceseary to obtain justice" トスル條件ガ附セラレテ居ル。

本弁護人ハ本法廷ニ提出サレタ証拠ニ照シテ、被告高橋及ビ山ノ行為ハ戦況逼迫時ニ於ケル上官ノ命令ニ従ツタト云フ特殊ノ状況ニ在ツタノデアツテ、假令 Ex Post Facto Law ガ適用サレル状況ニ在ルトシテモ、両名ノ行為ハ充分申譯ノ立ツモノデアルト云フコトヲ主張スルモノデアル。

叙上ノ諸根拠ニ依リ本審査会ガ被告高橋及ビ山ニ対シ無罪ノ判決アランコトヲ希フ次第デアル

尚最後ニ特ニ山ノ為ニ一言シタイト思フ。

米海軍軍刑庁 "Naval Justice" (1945年10月版)ノ序編中 "Theory of Punishment" ノ節ニ次ノ如キ解説ガアル。

『海軍ノ観念ニ於ケル罰スルコトハ個人的ナモノデハナイ。犬ニ復讐的懲罰デモナケレバ犯行ニ対スル報復トシテ課スルモノデモナイ……海軍ノ懲罰ノ価値ハ、犯行者又ハ他ノ者ニ犯罪ガ再ビ繰リ返サレナイ様ニスル為ニ教訓ヲ示ス所ニ存スル -------

此ノ目的ヲ達成スル為ニ懲罰ハ正当デナケレバナラヌ。ソシテ懲罰ヲ受ケルモノカラモ其ノ全僚ノ兵隊カラモ、正シイト理解サレルモノデナケレバナラヌ』

本戦列中検事側証人トシテ証人台ニ立ツタ徳永大隊ノ小隊長ノ一人デアツタ事ハ、罪状項目第一ヲ主張スル事件ニ於テ、彼ガ六名ノ射殺隊ヲ指揮シテ処刑ヲ実施シ島民ノ一人ガ死ニ切レナカツタノヲ見テ、

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自ラノ発意デ小銃ヲ取リ之ニ止メヲ刺シタコトヲ証言シタ. 之ハ上官ノ命令ニ依ツテ已ムヲ得ズ止メヲ刺シタ被告山山ノ行為ニ較ベテ遙カニ程度ノ高イモノデアル.

罪状項目第四ニ主張サレタ憲兵事件ニ於テ憲兵ノ銃口ヲ命ジテ現場ニ居タ中隊長塩野モ. 射殺隊ヲ指揮シタ小隊長吉村モ夫々検事側証人トシテ, 証人台ニ立ツタ

是等中隊長又ハ小隊長ガ訴追サレルコトナクシテ. 上等兵デアリ衛生ノ職務ヲ遂行シタニ過ギナカツタ. 被告山山ガ罰セラレントスルハナラヌ理由ヲ何人モ之ヲ合理的ニ理解シ得ルデアロー乃. 何人モ是ヨリ, 中隊長又ハ小隊長ガ罰セラレズ被告山山ノ罰セラレルコトガ Just デルト合理的ニ理解シ得ルデアロー乃.

最後ニ VOLTAIRE ノ句ヲ引用シテ 私ノ弁論ヲ終リ度イト思フ

「無実ノ者ヲ罰スルヨリモ有罪ノ人間ヲ救フ危険ヲ冒ス方ガ良イ」

敬白

佐藤毅

ARGUMENT FOR THE DEFENSE
ON BEHALF OF THE ACCUSED TAKAHASHI, YOSHIO AND KOYAMA, SHIGEO

Delivered by SANAGI, Sadamu, Counsel for the accused.

The Honorable President and Members of the Commission,

I will argue the case in behalf of two of the accused in the present trial, TAKAHASHI, Yoshio and KOYAMA, Shigeo.

As my colleague, Mr. Takano, has already stated in detail the general aspects of the incidents of the execution of native inhabitants and residents of Rota Island in the latter part of June or early part of July, 1944, both from the legal and factual standpoints, I will confine myself mainly to those matters which pertain to the accused Takahashi, Yoshio and Koyama, Shigeo and will first examine the facts on the basis of the evidence presented to this court and then proceed to argue whether these accused should or should not be punished for the charge and specifications with which they are charged.

Chapter I. Examination of facts on the basis of the evidence.

There is hardly any discrepacy in the evidence presented by the prosecution and that produced by the defense regarding the acts performed by Takahashi, Yoshio and Koyama, Shigeo in the incident alleged in Specifications 2 and 3 of the Charge. Consequently, their detailed examination will here be avoided. I wish merely to direct attention to these facts which should be given consideration in judging these two accused.

1. Battle conditions at the time of the occurrence of the incident.

Sufficient evidence has been presented to this court concerning the battle conditions at the time of the occurrence of the incident of Specification 2 and 3, so that there is no necessity for repeating them here. I would merely point out the fact that under such pressing battle conditions it was a military necessity expeditiously to execute persons who committed treacherous or traitorous acts.

2. How the accused came to participate in the execution.

It has been established beyond doubt by the testimony of the accused, Tokunaga, in this court and by the statement of the accused TAKAHASHI (Exhibit 2), that the accused, Takahashi, came to participate in the incident alleged in Specifications 2 and 3 by order of the Battalion Commander, TOKUNAGA. There can be no doubt from the testimony of prosecution witnesses Kato and Yoshizaki and the testimony of the accused, Koyama, that the accused, Koyama, was on guard duty at Battalion Headquarters at the time of the incident. Although there is no evidence to corroborate the fact that the accused, Koyama, was ordered by the NCO of the day to go to Surgeon Second Lieutenant Takahashi with another guard to act as guards under his orders. It is probably beyond doubt that such was the case as soon after he returned to the guard house after completing his turn as an air and sea surface lookout atop a tree. In short, it has been proved beyond a reasonable doubt that the accused Takahashi and Koyama each came to participate in the execution because of orders from superior officers.

3. Procedure followed in the carrying out of the executions.

The accused, Tokunaga, testified that prior to the carrying out of the executions of the incident of Specifications 2 and 3, he read a sentence of execution to the two natives in front of his rooms in the presence of Sergeant Tokunaga.

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The only person who is able to corroborate this fact is Sergeant Tokunaga. It is to be deplored that testimony cannot be obtained from him. (Prosecution witness Kato, Takashi testified in court that in the morning of the day (of the incident), at the time when the two natives were brought before the headquarters building at Battalion Headquarters Kempei Sergeant Tokunaga was walking to and fro in front of the Headquarters building.)

However, although corroboration cannot be obtained from Kempei Sergeant Tokunaga -- in view of the fact that it was established beyond a reasonable doubt that the accused Tokunaga read a sentence of execution to the natives in the first and third executions of Specifications 1 and 4 -- there is no room for doubt that he did likewise at the second execution.

4. The scope of the actions of the executioners.

The accused, Takahashi, did use potassium cyanide in carrying out the execution. However, he did so because he was ordered so to do by Battalion Commander Tokunaga.

He ordered the guardKoyama to stab the first of the victims who had not died instantaneously and was suffering. This he ordered in accordance with the instructions received after he had sent a runner to Battalion Commander Tokunaga requesting instructions on what to do.

The above two facts have been established beyond a reasonable doubt by the evidence presented in this court.

The accused, Koyama, while assuming guard duties, had a rifle with fixed bayonet. The accused, Koyama, testified in court that it was the regulation at that time for all guards to be so accoutred at all times while fulfilling their duties. Prosecution witness Yoshizaki, Tokuichi corroborated this testimony.

The accused, Koyama, testified that he was dispatches to the scene of execution that day in the capacity of land and air lookout, and that he was mainly engaged in air lookout. It is comprehensible to any person that under the then existing battle conditions guards should be posted to fulfill this duty.

It has been clearly established by the testimony of prosecution witnesses Kato and Yoshizaki, and the testimony of the accused, himself, that the accused, Koyama, hesitated when he was called by Surgeon Second Lieutenant Takahashi and ordered to stab the victim.

It is clearly established, when we analyse the foregoing, that the accused, Takahashi, and Koyama, acted in strict conformance to the instructions of their superior officers and within the scope of their instructions.

5. In closing my examination of the facts on the basis of evidence, I wish to state that the most important and basic issue on hand is whether the natives and resident who were executed possessed the qualifications of spies as stipulated by the conditions of Article 29 of the Hague Convention. Despite the fact that the burden of proving this rested with the prosecution, it has failed to establish the proof.

As it is alleged by the prosecution that the accused violated Article 30 of the Hague Convention by executing spies without trial, the burden of proving the presence of the necessary conditions for spies set forth in Article 29 of the Hague Convention, namely (a) disguise, (b) penetration into zone of operations of a belligerent, (c) obtaining or attempting to obtain information for the enemy, rested with the prosecution. However, it failed to establish the first and second conditions.

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Although there were Japanese and native witnesses who testified that the natives were punished for spy activities, these witnesses were using the term spying merely in the colloquial sense of that word and not in the sense of that word as defined in Article 29 of the Hague Convention. This can be reasonably adduced from the testimony in court of the witness Imagawa on the tenth day of this trial.

Chapter II. Argument on the Legal Aspects of the Case.

1. The accused, Takahashi, is charged in Specifications 2 and 3 and the accused Koyama in Specification 2, of having violated the law and customs of war in that they wilfully and unlawfully, without previous trial, punished and caused to be punished as spies, native inhabitants and residents. Although the judge advocate alleges that the accused violated Article 30 of the Hague Convention he has failed to establish beyond a reasonable doubt that the executed natives and resident were spies in the sense of Article 29 of that Convention. If the term spy, as used in Article 29 of the Hague Convention, did not apply to the persons executed, then Article 30 of the same Convention cannot apply to the accused. Consequently there can arise no question of violation of the law and customs of war.

The accused Takahashi and Koyama are, therefore, not guilty of the charge and specifications which charge and specify violation of the law and customs of war.

The cases of the accused Takahashi and Koyama are different from those of the accused in other trials for execution incidents of this nature and which were brought before this military commission in the past, in that Takahashi and Koyama are not concurrently charged with murder, which is a violation of the Criminal Code of Japan. Therefore, it is not necessary to argue further in behalf of these two accused.

We desire, however, to argue on the point that the accused Takahashi and Koyama should not be punished for war crimes, even when we consider the spy question as a separate issue.

2. The doctrines regarding Rules of Land Warfare and the theories of scholars of international law at the time of the occurrence of this incident, were unanimous in the view, not to punish a subordinate as a war criminal when he acted in conformance with an order from a superior officer.

(a) It is set forth in Article 57 of the Army Criminal Code of the Japanese Army, that a person who fails to obey the order of a superior officer in the face of the enemy shall be condemned to death or sentenced to life imprisonment or imprisonment of not less than ten years. (Exhibit 10). The accused Koyama stated in his statement (Exhibit 3) that he was taught to obey the orders of his superior officers, considering such orders as being the order of the Emperor. It is believed from such facts that the members of the commission will understand the absolute nature of a superior order in the Japanese armed forces.

(b) Referring to Oppenheim's International Law, Fifth Edition for the theory in international law on the matter around June of 1944, we find the following on page 244 of Vol. II: "Violation of rules regarding warfare are war crimes only when committed without an order of the belligerent government concerned. If members of the armed forces commit violations by order of their government they are not war criminals and may not be punished by the enemy."

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(c) Under the heading "Punishment of War Crimes", p. 341, the "Manual of Military Law" 1929 edition of the British Army reads as follows:

> "It is important, however, to note that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government or by their commanders are not war criminal and cannot therefore be punished by the enemy."

The same book on page 163 states as follows:

> "In most cases the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead in practice to his accuittal on a criminal charge."

(d) The following is set forth in Paragraph 347 of "The Rules of Land Warfare" 1940 Edition, issued by the War Department of the United States of America:

> "Individuals of the armed forces will not be punished for these offenses (war crimes) in case they are committed under the orders or sanction of their government or commanders."

Paragraph 575 of "Digest of International Law" issued by the Department of State of the United States of America in 1943 quoted the above paragraph.

(e) The following paragraph is found under the heading, "Obedience to Orders" in the Second Edition of "Military Law and Precedents", page 297, published by the War Department of the United States:

> "It may be added that an order which might not be regarded as legal in time of peace, may furnish to the inferior obeying it a complete defense in time of war, as being warranted by the laws and usages of war."

In piecing together the above, it becomes clear that at the time of the incident with which we are here concerned, both American and British manuals on the laws of war, and needless to say, the Japanese, as well as the theories of scholars of international law all were agreed not to punish subordinates for acts even when such acts may be violations of the laws of war, if they acted on superior orders.

To subsequently punish an act, which at the time of its commission was clearly by policy "not punishable", goes counter to the principles of law and justice.

3. After the occurrence of this incident, in August or November of 1944, the doctrines of American and British Military Law and theories of international law concerning punishment of war crimes were revised. It became the general policy to punish war crimes even when the acts were committed under the orders of superior officers. However this does not completely preclude acts committed under superior orders as a defense and it does not mean tha they will be punished unconditionally.

"The Rules of Land Warfare" Basic Field Manual FM 27-10, revised by the War Department in November, 1944, Section 345, reads as follows:

> "Individuals and organizations who violate accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment."

Oppenheim's International Law, Sixth Edition, Section 253 on the Plea of Superior Orders contains the following passage:

> "Undoubtedly, a court confronted with the plea of superior orders adduced in jurisdiction of a war crime is bound to take into consideration the fact obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in condition of war discipline, be expected to weigh

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scrupulously the legal merit of the order received: ..... Such circumstances are probably in themselves sufficient to divest the act of the stigma of a war crime."

As I have pointed them out in Chapter I, the incident with which the accused Takahashi and Koyama are charged occurred under urgent military conditions and they merely carried out the orders of their superiors within the scope of these orders. Therefore, both of the accused are entitled to exemption from all punishment according to the doctrines and policies relative to punishment of war crimes in effect today.

The following strong opinion expressed by the Chief Counsel for the United States at the Palace of Justice, Nuremberg, Germany, Mr. Robert Jackson, applies especially in the case of the accused Koyama,

"Of course, we do not argue that the circumstances under which one commits an act should be disregarded in judging its legal effect. A conscripted private on a firing squad cannot expect to hold an inquest on the validity of the execution." (Robert Jackson's "Nuremberg Trial")

The accused Koyama was nothing more than a soldier assigned to be an air and land lookout. He happened to be ordered by his superior officer to stab a condemned person who had not been able to die, to put him out of his agony, and, without alternative, stabbed. As his position was no different than that of a member of the firing squad mentioned above, to charge with criminal responsibility and punish a person placed in such circumstances is not recognized even by Mr. Jackson who played an important role in the punishment of war crimes after World War II.

4. The judge advocate in answer to the above arguments may quote Item (6) of paragraph (d) entitled Evidence of SCAP Rule 5, "Power and Procedure of Commission," and contend that orders of superior officers do not constitute a defense. However, the precept addressed to this military commission does not stipulate that it apply SCAP rules unconditionally, but states that the commission may relax the rules for naval courts and may use such (SCAP) rules of evidence and procedure as are necessary to obtain justice. The condition "as are necessary to obtain justice" is placed on its application.

Defense counsel contends that in the light of the evidence presented to this court, the acts of the accused Takahashi and Koyama were performed under special circumstances, namely that they were performed in carrying out the orders of superior officers in the exigent battle conditions that prevailed at the time, and that even presuming that an ex post facto law may be applied to them, their acts would still be excusable.

On the above grounds, counsel for the accused respectfully requests that the military commission return a verdict of not guilty for the accused Takahashi and Koyama.

I wish to add a few words in behalf of the accused Koyama.

The following explanation is to be found in the paragraph entitled "Theory of Punishment" in the chapter of Introduction of "Naval Justice" (October, 1945 Edition) issued by the Navy Department of the United States of America.

"Under the Navy's concepts, punishment is not personal; it is not vindictive; nor is it inflicted as revenge for misconduct. ..... The Navy considers that the value of punishment lies in the object lesson it furnishes the wrongdoer, and others, that the offense must not be repeated.....

"In order to accomplish its purpose a punishment must be just, and must be recognized as just by the recipient and his shipmates...." (Underscoring supplied.)

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During the course of this trial, Yasui, who was one of the platoon commanders of the Tokunaga Battalion, took the witness stand as a witness for the prosecution and testified that in the incident alleged in Specification 1 he commanded a firing squad of six men and performed the execution, and that when he saw that one of the natives was not able to die, he of his own volition took a rifle and gave him the coup de grace. This act compared to that of the accused, Koyama's, which was the delivering of the coup de grace without alternative, under superior orders, is far graver than Koyama's.

Company Commander Shiono who ordered the carrying out of the execution alleged in Specification 4 and who was present at the scene of the execution, and platoon commander Yoshimura who commanded the firing squad, both testified on the stand as witnesses for the prosecution.

What reasonable man can grasp the grounds on which the accused, Koyama, is being punished, a private who merely carried out his duties as a guard, while the Company Commander and the Platoon Commander are not charged? What reasonable man can recognize that it is just that Koyama be punished while the Company and Platoon Commanders go unpunished?

In concluding, I wish to quote the French philosopher Voltaire, "It is better to risk saving a guilty person that to condemn an innocent man." (Francois M. A. Voltaire.)

Respectfully,

Sanagi, Sadamu.

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

Eugene F. Clark,
Lieutenant (junior grade), USN
Interpreter.

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The Summing Up Of

the Defense

in the case of

OKUNAGA, Akira

TAKAHASHI, Yoshio

KOYAMA, Shigeo

Delivered by

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

on

February 15, 1949 at Guam.

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Gentlemen of the Commission:

Introduction

This relatively simple case should crystalise for you the pressing necessity for a codification of the laws of war and the laws of procedures which should control the trials of war criminals. Why in this age of atomic warfare and jet propulsion should the judge advocate say to you members of this military commission, you must try these three young men (they are 25, 29, and 23 years of age respectively) because the law should be vindicated even though most of the victims were natives, and then the judge advocate not be able to point out a definite law which was violated. It is alarming to realise that in this relatively simple case which must be tried because the law must be vindicated that all available literature on war crimes produces only a minuscule and unrewarding collection of generalities and that the judge advocate must resort to the unwritten customs of international law because the authorities and the text books have no answer as to even what law it is that these three accused are said to have violated.

It should have been foreseeable that in every belligerent country there would be a "Quisling" who was ready to betray his country. On Rota there were five such traitors, five saboteurs, who by overt acts collected secret information with the intent to betray Japan and give aid and comfort to the enemy. These five traitors were punished by the Commanding General whose headquarters were on Guam 32 miles away. Their punishment was not strictly in accordance with the code of the United States.

The code of the conqueror must be imposed upon the conquered nation!

Gentlemen of the Commission, how does the judge advocate propose to do this. Of necessity, he says, it can only be done in this instance by resorting to the unwritten customs of international law so this relatively simple case becomes complicated and confused because the offenses charged are said to have been done "in violation of the law and customs of war."

We shall untangle this confusion.

Part II

The facts in this case should be clear to the commission after the arguments of the judge advocate and the Japanese defense counsel. You are all military men most of you with years of experience. You will not be mislead or confused by the vain attempt of the judge advocate to define treason as an act of spying.

All the facts in the case are clear. The prosecution however seeks to confuse the facts and have both alleged and persistently tried to prove that the victims were spies. Of course there is no case unless the prosecution can prove that the victims were spies.

Part III

The fact that these people were not spies but were traitors is so clear that no proof was even required because the court took judicial notice of the "Civil Affairs Handbook Mandated Marianas Islands" which set forth clearly that Japan held possession of Rota since 1914, and virtually annexed Rota and even when Japan withdrew from the League of Nations in 1935 she kept Rota defining Rota as an "integral part of the Japanese Empire." These five natives of Rota and all of the other residents of Rota knew no other flag

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or rule then Japan. The laws of the Empire of Japan prevailed on Rota and civilian residents on Rota were bound to obey these laws. By judicial notice the court has said that these facts are true and no evidence is necessary to prove them.

We shall briefly refer to the evidence which proved that these five persons were traitors and guilty of treason.

Blanco, a prosecution witness on the sixth day of the trial testified he had known Cruz since childhood but did not know his occupation (see ans. to Q. 7. Blanco had lived on Rota 24 years and andwers to Q. 32 and Q. 60.) but then in answer to Q. 74 he admitted he had only known Cruz for 5 years. This same Blanco testified regarding the stabbing although he was the last to enter the air raid shelter and the first one to leave and he couldn't see anything from the trench he was digging, yet he nevertheless testified regarding the stabbing of one of the traitors. (Q. 93, 94, 95, 100, 103 and 110.)

On the third day of the trial Tomas Cruz Manglona testified he had lived on Rota since he was born but never told how many years that was. (Q. 6) He further testified Ignacio de la Cruz was 70 years old (Q. 41) and the other man was 50 years. This of course, was only a guess on the part of the witness and Manglona said he was without any education and could not speak Spanish. He was not a policeman because "The people without education cannot become policeman." (Q. 71)

This was about all the testimony the prosecution introduced regarding the age and length of residence on Rota of the five victims so the allegation "native inhabitants", "Spanish national resident of said Rota Island" and "an unarmed native inhabitant of said Rota Island" cannot be said to have been proved beyond a reasonable doubt. It was however we maintain, proved that the persons alleged to have been executed were all residents of Rota Island and subject to the laws of Japan and these five persons owed allegiance to Japan. We shall show later what the courts have said about persons owing allegiance to the country in which they reside notwithstanding the fact they may not even be citizens of that country. Here we only cite the case of Radich v. Hutchins, 95 U.S. 210; Carlisle v. U.S., 16 Wall (US) 147; DeJager v. Atty-Gen. (1907) A.C. (Eng) 326, and of course the case of Shinohara Samuel Takekuma, a Japanese citizen born in Kagoshima, Japan but a resident of Guam at the time of the Japanese occupation of Guam, Shinohara was tried and found guilty of treason against the United States by a military court on Guam during a trial from July 28, 1945 to August 27, 1945 and sentenced to death by hanging. Shinohara was a Japanese subject yet he was found guilty in that he gave aid and comfort to Japan.

The fact that the five persons on Rota were traitors and did commit overt acts thereby giving aid and comfort to the enemy, the United States was fully shown by co-counsel and there is little need to again call the commission's attention to such evidence. The evidence fully sustains these facts.

Part IV

We do take issue with the judge advocate when he says Tokunaga and his aides decided these persons were to be executed and when he says, "Had the natives been given a trial, good, bad or indifferent no agency could complain of the sentence."

The evidence is clear and strong that Tokunaga sent a message to the Commanding General on Guam asking what should be done with the persons who had after investigation and by confession admitted to be guilty of treason.

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The deposition of Hitotsuya Masami, Exhibit 16, read in court in evidence proves a dispatch was sent to Division Headquarters on Guam asking what disposition shall be made of the persons engaged in subversive activities and that the answer was to dispose of these persons. The testimony of Imagawa and Tokunaga leaves no doubt that a message was sent to the Commanding General on Guam requesting instructions and that they were ordered to execute these five persons forthwith. (Q. 25, 26, 28, 29 and answers by Tokunaga, and Q. 45, 46, 50 and 51 to Imagawa as a defense witness on the seventh day, Q. 28, 29, 30 and 31 to Imagawa as a prosecution witness.)

So it was the Commanding General on Guam and not Tokunaga who decided to execute these five persons.

It is for the purpose of maintaining discipline and control, among other reasons, that military commanders are given broad powers of administering justice. The tactical situation, the character, training and capacity of staff officers and subordinate commanders as well as the traits of character and training of his troops are important factors in such cases. (Yamashita, application of, 66 SCt 340 and Rules of Land Warfare, Field Manual 27-10 United States Army.)

What was present in the mind of Tokunaga is most important. In all crimes there must be a criminal intent. The evidence shows there was no criminal intent on the part of Tokunaga but only a desire to carry out his duties. He consulted with an officer more experienced and senior to him, Major Imagawa. He sent a dispatch to his Commanding General only 32 miles away asking for instructions. If Tokunaga had any criminal intent to execute these persons without a formal trial or to execute them at all he would not have sent the message he did or even consulted with Major Imagawa. He didn't want to execute them but they had committed acts of treason. He reported the matter to his commanding general and he was ordered to execute the traitors. There has been no criminal intent proved. The evidence proves there was no criminal intent on the part of Tokunaga and he should be acquitted as well as should Koyama and Takahashi. Koyama and Takahashi only carried out orders.

I am sure that no one agrees with the judge advocate when he says if these five persons had been given any kind of a trial, good, bad, or indifferent no agency could complain of the sentence. This is at variance with all our Anglo Saxon and American law. We in America have gone a long way since the dark ages when men and women were tried by ordeal, wager of battle and such other procedures which were honestly believed by many people to be adequate trials. They were the law even in our own America. Bouvier tells of trial by wager of battle and says "In the Statutes of South Carolina, Edition of 1857, it is said to be in existence in that state." (Bouvier Law Dictionary vol. 2, p 3416).

Everyone in America knows of the witchcraft trials held in Massachusetts. In those cases the Puritans honestly believed the ordeal to which the suspected witches were subjected to was a fair trial and proved the person suspected to be guilty of witchcraft.

Black's Law Dictionary 3rd Edition pp 1755-1756 tells about public trials, trials at bar, trial at nisi prius, trial by certificate, trial by grand assise, trial by inspection or examination, trial by proviso, trial by record, trial by wager of battle, trial by wager of law.

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"Trial by Inspection or Examination is a form of trial in which the judge of the court, upon the testimony of their own senses, decide the point in dispute".

Trial by wager of battle. "This was a species of trial introduced into England, among other Norman customs by William the Conqueror, in which the person accused fought with his accused, under the apprehension that Heaven would give the victory to him who was in the right". (3 Bl Comon 337-341.)

Just recently at Budapest, Hungary Joseph Cardinal Mindzcenty was tried at the Hungarian Peoples Court and found guilty of treason. He was sentenced to life imprisonment. All the formalities of a trial were complied with including confessions signed by the Cardinal during the time he was being held in custody awaiting trial. No trial in a civil case has attracted such widespread attention as this trial, the first Prince of the Catholic Church to be tried on civil charges in modern times.

Secretary of State Dean Acheson said that the United States was considering another other possibilities, taking the Mindszenty case to the United Nations. Does anyone say that a nation lives unto itself in this day and age?

Yes, we have gone a long way and in America today there is the greatest concern that justice be done in the trial and punishment of all men. Otherwise why would these three accused have been accorded the trial they have been given here.

In further refutation of the judge advocate's position that the victims were punished as spies by killing them without previous trial in violation of the law and customs of war we shall show that the evidence clearly proves that the persons killed were not spies but were traitors and saboteurs who committed overt acts openly as well as by stealth with the intent to give comfort and aid to the enemy, the American invasion force threatening to invade all the Marianas Islands including Rota Island and that such overt acts were not trivial and commonplace but were acts which incited, set on foot and assisted in open rebellion and insurrection the civilian population of Rota in the theater of war and did give aid and comfort to the enemy of Japan, the Americans.

Shiono, Shuichi, a prosecution witness, testified on the sixth day in answer to Q. 33 that flare bombs and light signals had been given prior to the American air raids. These are acts of treason, overt acts committed openly to give aid to the enemy, the Americans.

Yoshimura, Suekichi, a prosecution witness, on the sixth day testified in answer to Q. 24 that he witnessed on several occasions flares at night and also red and green lights over the sea and that he knew of light signals being used constantly at night and that during the daytime signals were made to the enemy by use of pieces of cloth, etc. These acts are all acts of sabotage committed by traitors openly and gave aid to the enemy. They were overt acts committed boldly and tended to incite the other natives to open rebellion.

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Imagawa, Shigeo, a prosecution witness, testified on the seventh day of the trial in answer to Q. 18 that five individuals were executed for subversive activities and commission of acts favorable to the enemy. They were executed after the matter had been discussed with him the senior officer present on Rota Island and a dispatch had been sent to the commanding general on Guam and only after the commanding general of this 29th Division on Guam had ordered it with the approval of the commanding general of the 31st Army who was on Guam at that time (See answer to Q. 28, 29, 31, 44, 47 and Q. 9 on the tenth day. Captain Tokunaga discussed these subversive activities of these natives with Major Imagawa because they were operational matters (Q.57).

Koyama, Shigeo, an accused, testified on the ninth day of the trial in answer to Q. 32 that he frequently saw flash signals, signal and rocket flares and one time he saw a burning charcoal laid out in the form of an arrow pointing toward the Shinaparu Air Field and this form of signal couldbe used both day and night.

Major Imagawa, Shigeo was recalled as a witness for the defense and on the tenth day testified that the natives executed had in their possession note books containing drawings of the location of army positions, that they signalled by flags to enemy planes, and spread cloths on the ground during the day time to signal to American planes and they incited the other natives to rebellion. (Q.13).

Major Imagawa said he used the word spy activities to mean persons detecting military secrets and disclosing them to the enemy and who commits subversive activities. He further testified the offense of these traitors had been committed in the theatre of war in this instance in the Tatacho area which was being bombed by the Americans.

Tokunaga, an accused, testified on the tenth day that these five persons were executed for having violated the articles in the Criminal Code of Japan, the articles in the Military Secrets Security Law, and articles in the Army Criminal code which articles pertain to subversive acts, acts of treason and obstruction of operational movements. (Q.17). Specifically these five conspired in their efforts to detect and gather military secrets, the conditions of the air field, the disposition and armament of the military forces, and passed this information on to 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. (Q.18). These acts are not acts of spies but the overt acts of traitors and saboteurs. They were punished as traitors for treason committed in the theatre of war.

The evidence proves that the five persons executed were traitors to Japan and were guilty of treason. Since the judge advocate of this court speaking in the name of the United States of America seeks to impose upon Japan and these three accused in particular the code of the United States, we turn to the laws of the United States for a definition of treason. In Title 18, Criminal Code and Criminal Procedure, Section 1, Treason, Title 18, U. S. Code, page 1841, treason is defined as follows:

> "Whoever, owing allegiance to the United States, levies war against them, or adheres to their enemies, giving them aid and comfort within the United States or elsewhere is guilty of treason." (Mar. 4, 1909, ch. 321, paragraph 1, 35 Stat. 1088.)

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Article III, Section 3of the Constitution of the United States of America, defines treason as follows:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

"Treason is a breach of allegiance." (52 Am.Jur. "Treason" sec. 2, citing U.S. v. Wiltberger, 5 Wheat.(U.S.) 76, 5 L.ed. 37).

The words of the Federal statute "Whoever, owing allegiance to the United States" add nothing to the meaning of the offense as defined in the Constitution; these words do not in any degree affect the sense of the constitutional definition of treason. (52 Am.Jur. "Treason" Sec. 2, citing U.S. v. Wiltberger, 5 Wheat.(U.S.) 76, 5 L.ed. 37.)

"The principle that treason can be committed only by one owing allegiance to the government does not confine the offense to citizens of the nation against whose government the offense is alleged to have been committed. By the term "allegiance" is meant the obligation of fidelity and obédience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, while domiciled in a country, owes a local and temporary allegiance which continues during the period of his residence; (Radich v. Hutchins, 95 U.S. 210, 24 L.Ed. 409; Carlisle v. U.S. 16 Wall, (U.S.) 147, 21 L.Ed. 426.) And if an alien while residing in a foreign country, does any act which would amount to treason if committed by a citizen of that country, it has been held that he will be guilty of treason, for while he is thus a resident, even though only temporarily, he owes allegiance to the government" (Carlisle v. U.S. 16 Wall.(U.S.) 147, 21 L.Ed. 426; DeJager v. Atty-Gen (1907) AC (Eng) 326, 8 Ann. Cas. 76-PC)" I will add the case of Shinohara, Samuel Tokekoma tried here on Guam by a military commission convened by Island Commander, Guam July 21, 1945 on Guam July 28, 1945 to August 27, 1945. Shinohara, a Japanese citizen, was found guilty of treason to the United States and sentenced to death by hanging. "Aliens domiciled in the United States owe a local and temporary allegiance to the government of the United States; they are bound to obey all the laws of the country not immediately relating to citizenship, during their residence in such country, and are equally responsible with citizens for any infraction of those laws. Those aliens who, being domiciled in the country prior to the Civil War, gave aid and comfort to the Confederate cause, were, therefore subject to be prosecuted for violation of the laws of the United States against treason and for giving aid and comfort to the enemy (Radich v. Hutchins, 95 U.S. 210, 24 L.Ed. 409; Carlisle v. U.S., 16 Wall. (U.S.) 147, 21 L.Ed. 426). If an alien lends assistance to invaders during the absence of the government forces from the place where he lives, for strategical or other reasons, he is guilty of high treason. In answer to the argument against this rule, that inasmuch asthe duty and liability of an alien arise from the fact of the protection furnished him, such duty must necessarily cease as soon as the government is overcome by an invading force, it has been held that the protection of a state does not cease merely because the state forces, for strategical or other reasons, are temporarily withdrawn, so that the enemy for the time exercises the rights of an army in occupation. On the contrary, when such territory reverts to the control of its rightful sovereign, wrongs done during the foreign occupation are cognisable by the ordinary courts. The protection of the sovereign has not ceased. It is continuous, although the actual redress of what has been done amiss may be necessarily postponed until the enemy's forces have been expelled." (De Jager v. Atty.Gen (1907) AC (Eng) 326, 8 Ann.Cas. 76-PC).

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So we see that both English cases and United States federal cases hold that even aliens can commit treason against the country in which they are domiciled. All five persons described as having been killed in the specification owed a duty of allegiance to Japan. The proof is clear and strong that all of these five persons had resided on Rota for many many years and were bound to obey all the laws of Japan.

Did these five persons give aid and comfort to Japan's enemy, the United States of America? "The decisions of the English and American courts are to the effect that whereever overt acts are committed which, in their natural consequence, if successful, would encourage and advance the interests of the enemy, in judgment of law aid and comfort are given (Young v. U.S., 97 U.S. 39, 24 L.Ed. 992). In a broad sense, "adherence to enemies, giving them aid and comfort" means any act on the part of a citizen or subject indicating disloyalty to the government or sympathy for its enemies." Such an act may consist in ... collecting information for their use ... (Young v. U. S., 97 U.S. 39, 24 L.Ed. 992; Carlisle v. U.S., 16 Wall.(U.S. 147, 21 L.Ed. 426; Respublica v. M'Carty, 2 Dall (Pa.) 86, 1 L.Ed. 300; Respublica v. Roberts, Dall (Pa.) 39, 1 L.Ed. 27. (52 Am.Jur. "Treason" Sec. 9.)

In 1917 the Congress of the United States of America enacted The Espionage Act which deals with a wide variety of matters relating to or connected with national defense and war activities of the United States. It's validity was settled as against a variety of objections based upon constitutional grounds. (47 Am.Jur. Sedition, Section 6 and 7, citing U.S. rel. Melbrookac S.D. Pub. Co. v. Burleson, 255 U.S. 407, 65 L.Ed. 704, 41 S.Ct. 352; Schenck v. U.S. 249, U.S. 47, 63 L.Ed. 470, 39 S.Ct. 247, and many other cases cited in footnote 11.)

The courts in construing and applying this Espionage Act have done so in the light of the fact of the existence of the war in which the United States was engaged at the time of its enactment. (Schenck v. United States, 249, U.S. 47, 63 L.Ed. 470, 39 S.Ct. 247 which also held that national defense is a generic concept of broad connotations.

The essential elements of the offense are scienter and intent and apply to those who acted knowingly and in bad faith with intent to interfere with the operations or success of military or naval forces of the United States or to promote the success of its enemies. It is not an essential element of these offenses that the intended results followed the making of false reports or efforts to cause insubordination, disloyalty or the like. (Schenck v. United States, 249 U.S. 47, 63 L.Ed. 470, 39 S.Ct. 247; United States v. Kraft (CCA3d) 249 F. 919, LRA 1918 F. 402.)

"When a nation is at war many things that might be said in time of peace are such a hindrance to its efforts that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." (Schenck v. United States, 249 U.S. 47, 63 L.Ed. 47, 39 S.Ct. 247.)

In June and July of 1944 Japan and particularly the garrison on Guam and Rota were engaged in war with and locked in a death struggle with the American invasion forces. The defense of Rota and Guam appeared to be hopeless for the Japanese. Little wonder that the natives rebelled and that certain ones committed acts of treason and sabotage against the Japanese. Such acts could not be endured by the Japanese garrisons on Guam and Rota who had been ordered to and dedicated themselves to die in defense of these two islands.

You members of this commission are now to pass judgment upon only three persons of the many persons who participated in and ordered the execution of five Japanese traitors. It is you who are now faced with the grave problem of justice to three Japanese soldiers who were ordered by their commanding general to take what he considered was a necessary step in the defense of Guam

and Rota. Available literature on war crimes produces only a minuscule and unrewarding collection of generalities and the text-books have no answer as to what law these three accused violated. Only the unwritten international laws are said to have been violated by these three accused.

International law is concerned with justice (See chapter 2, Laws and Customs of War on Land, Hague Convention No. IV of October 18, 1907.) You members of the commission are to decide if these three soldiers who were ordered to execute five traitors are to be protected by Article 22 of the Japanese Criminal Law which reads: The action which has inevitably been taken in order to put down the violence of people or to keep the military discipline in the strained situation of the armed unit in the face of the enemy are not liable to be punished." (Article 22 of the Army Criminal Law from Exhibit 10.) Is the law of the United States a protection to these three soldiers?

"An order which might not be regarded as legal in time of peace, may furnish to the inferior obeying it a complete defense in time of war, as being warranted by the laws and usages of war." ("Obedience to Orders" Section Edition, Military Law and Precedents, p. 297, published by War Department of the United States.)

From "The Rules of Land Warfare" Basic Field Manual, the rule in effect in June and July 1944 was paragraph 347 "Individuals will not be punished for these offenses (violations of the customs and laws of war) in case they are committed under the orders or sanction of their government or commander." Under this rule the ordinary soldier is excused but his commander or government is liable.

In November 1944 theychanged this rule to read: Individuals and organizations who violate accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability either by way of defense or in mitigation of punishment.

As co-counsel Mr. Takano pointed out we do not hold it would have been legal to punish these traitors without a trial but we are not concerned with that question here because these five persons were traitors; they were not spies. Articles 29, 30, and 31 do not apply in their case. The Judge Advocate General's opinion in the case of Inoue, Fumio and the case of Furuki, Hidesaku confirms our contention that as in those two cases so in this case the victims punished were not punished as spies. It is our contention that the five persons punished in June and July of 1944 on Rota were punished as traitors. International law does not apply in this instance. Since the prosecution failed to properly allege a war crime and failed to prove even what was alleged the commission should find all three accused not guilty and accuit them of the charge.

"The action which has inevitably been taken in order to put down the violence of people or to keep the military discipline in the strained situation of the army unit in the face of the enemy, are not liable to be punished." (Art 22, Army Criminal Law from Exhibit 10.)

In spite of this we believe that the United States of American brought these three soldiers to trial because in reviewing the investigation of the incidents there was some doubt that the procedures under which the traitors were found guilty and subsequently executed did not measure up to the standards of American justice. We cannot believe that this trial was held only because the law must be vindicated.

I quote from the opinion of Mr. Justice Murphy in the Yamashita Case: "If we are ever to develop an orderly international community based upon a recognition of human dignity it is of the utmost importance that the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness. Justice must be tempered by

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compassion rather than by vengeance. In this, the first case involving this momen momentous problem ever to reach this court, our responsibility is both lofty and difficult. We must insist, within the confines of our proper jurisdiction, that the highest standards of justice be applied in this trial of an enemy commander conducted under the authority of the United States. Otherwise stark retribution will be free to masquerade in a cloak of false legalism. And the hatred and cynicism engendered by that retribution will supplant the great ideal to which this nation is dedicated."

The fate of these three soldiers is in your keeping. I have assured them that each and every member of this commission is well aware of his great responsibility as a judge and of your devotion to justice in dealing with them.

The accused await your judgment.

Respectfully,

Martin Emilius Carlson,
Commander, U. S. Naval Reserve,
Defense Counsel.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

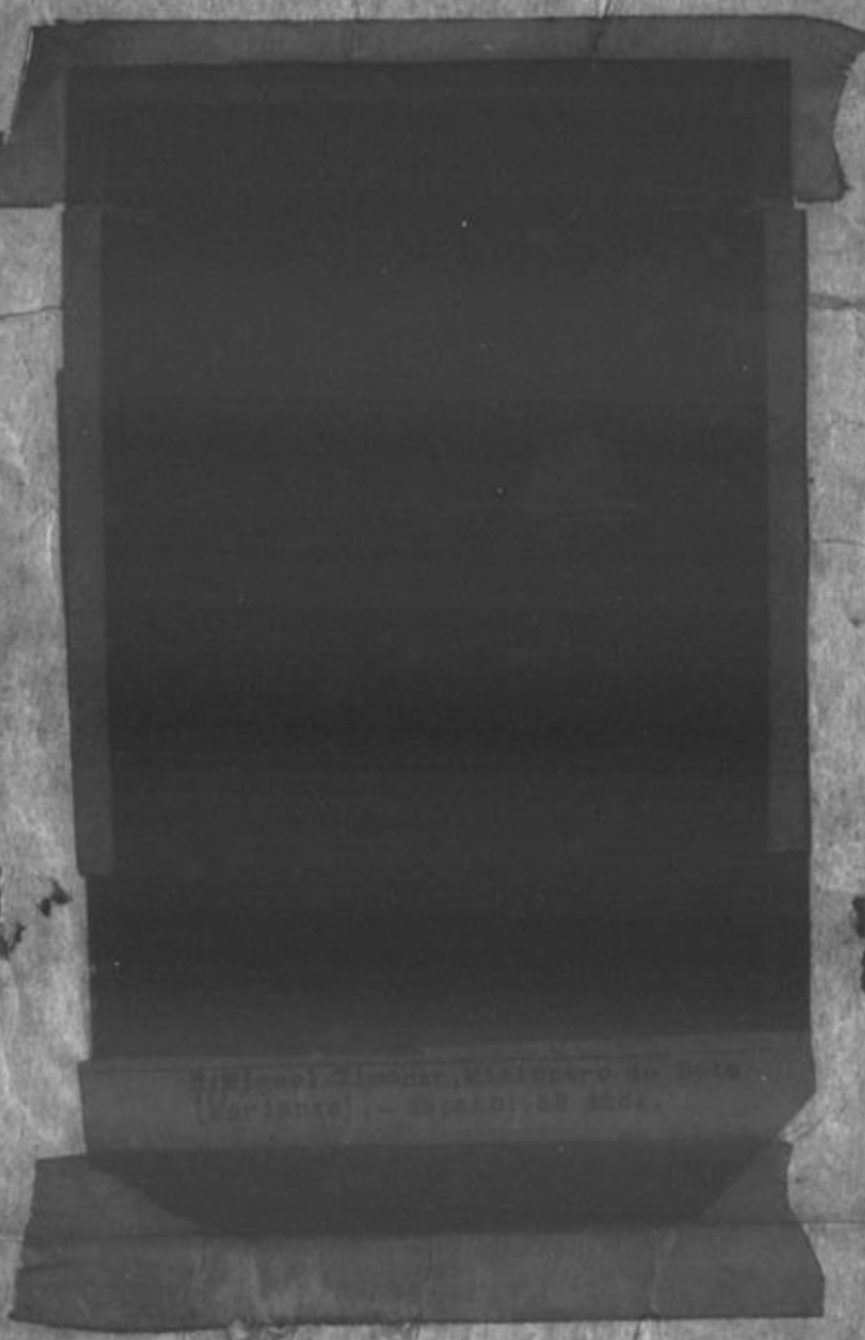

Exhibit #1

Exhibit 1

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高橋嘉雄　日本帝国陸軍軍医中尉(復員時)

戦争中は、マリアナ群島、ロタ島に昭和19年3月から昭和20年9月迄居りました。

ロタ島に居った間は　ロタ島徳永大隊、大隊本部に所属してゐました。

大隊本部に居た時にパラシュートでロタ島に降りたアメリカの飛行士の死体を見ました。

私の聞いた話では、飛行士がパラシュートで山の中に降りましたので、その地区の中隊が捜索隊を出したが見付からなかった。それで兵隊が海岸を警戒して居った時飛行士が海岸に出て来て、兵隊に発見され飛行士はピストルを打ち、兵隊は銃を打ちましたが飛行士が打たれて死んだといふ事です。死体は大隊本部に運ばれ、其処から今川少佐の司令部に運ばれました。其れ以後の事は全く知りません。

私はロタ島に居る間、大隊本部で大隊長の命令に依って昭和19年7月頃2名の島民の死刑を執行しました。その島民の名前は知りません。大隊長からその島民がスパイ行為を行ったから処刑するのだと聞きました。死刑の~~前日~~前だと思ひますが大隊長から呼ばれて青酸カリで島民の死刑を執行する様に命ぜられました。

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~~2,3日後~~翌日に憲兵軍曹徳永が大隊本部の庭に島民を
つれて来ました。それから本部の誰かが2名の島民が
つれて来られた事を私に報告しました。私は~~大隊本部~~
~~の営舎東系上等兵と~~加藤衛生曹長と一緒に本部から
150米位はなれた場所に行きました。~~栗~~加藤は コーヒー
をもって来 ~~加藤~~は 青酸カリをもって~~来~~ました。~~2人の中~~
~~どっちかが~~ コップをもって来ましたか~~覚えておりません~~。
それから~~衛生軍曹吉崎~~警戒兵の一人が 吾々の待ってる場所に本部
の庭から島民の1人をつれて来ました。兵長小山ともう1人
の一等兵(名前は覚えてない)が警戒兵として~~吉崎と出て~~
~~行きました~~やって来ました。それから私は青酸カリと
コーヒーを混ぜコップを島民に渡しそれを飲むやうに
彼に云いました。其時私は島民が処刑される事を云は
れてゐると思ってゐました。彼は非常に驚いたやうです
其時迄処刑される事を知らなかった様に見えました。
それ故彼はコップを口にあてましたが全部はコーヒー
を飲みませんでした。彼はその僅かだけ飲んだが
殺す程充分飲みませんでした。彼の手はコーヒーを
飲んでゐる間ふるへてゐました。その大部分は地上に
こぼれました。その后で彼は地上に倒れました。
吾々はしばらく待ったが薬は効きませんでした。
彼は全身まで起上り大変苦しさうでした。

(　　)

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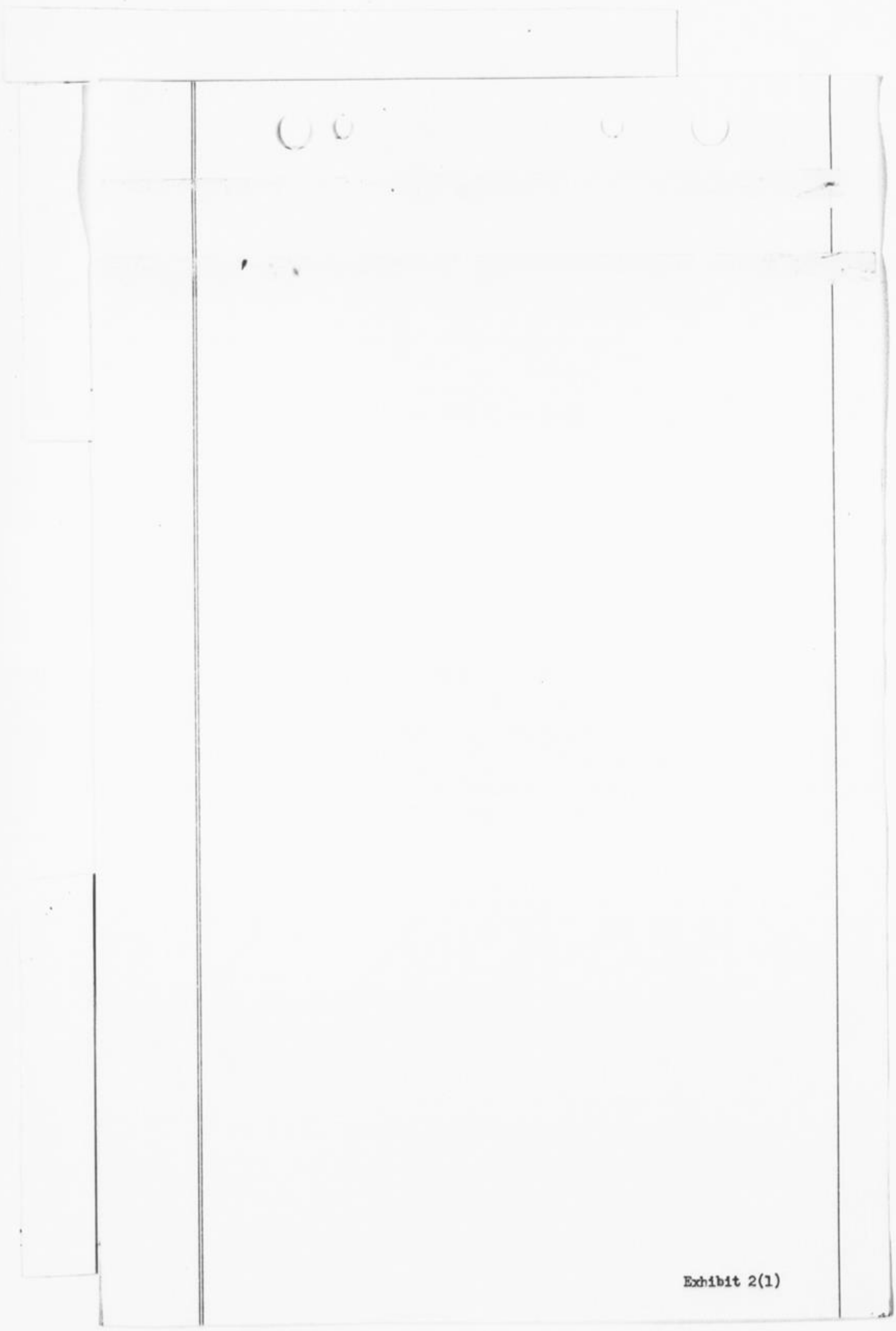

Exhibit 2(1)

薬が彼を殺す程 効かなかったやうに思はれたので
私は當番栗糸をどうしたらよいか大隊長の所へ聞き
にやりました. 栗糸はかへって来て大隊長が刺殺する
様んふったと報告しました. 警戒兵として小山兵長と
他の一等兵は銃剣をつけてゐました. 私は小山に
大隊長の命令を傳へて刺殺させました. 約50米位
はなれて本部の人達が大勢處刑を見てゐました.
次に ~~吉崎軍曹~~ 警戒兵に もう一人の島民をつれて来させる前
も島民が処刑の事を知らないとすると全く方法では
失敗すると思ったから. 本部の処刑を見てゐた人達に
状況を説明してその場所にあった テーブル 椅子に
坐らせ 雑談させ. そして恰も彼等が茶. コーヒー を
飲んでゐたごとく状況を作らせました. それから私は
~~吉崎軍曹~~ 警戒兵に島民をつれてこさせました. 青酸カリを
コーヒーに混じてテーブルの上におき. ~~誰かに~~ それを私は
~~島民に飲を様にすすめさせました.~~ 島民に飲を様にすすめました.
~~大勢居ったので誰にすすめさせたか覚えてゐません.~~ 島民はそれを
飲をとすぐに死にました. その場所に居った本部
所属の朝鮮人軍属4名に死体を死刑の場所から
100米位 運ばせ. 彼等にうづめさせました.
最初の島民の死体はその右で全く場所に 運ばせ
埋めさせました.

Exhibit 2(2)

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そのあとで 私は 2名の島民の死刑を終った事を
大隊長に報告しました.
島民の処刑を 誰かが 大隊長に命令したかどうかは
知りません. 大隊本部以外の場所で 12月島で
島民が 処刑された事は 知りません

以上の陳述は 私の知識と信念にもとづいて
事実であることを誓います.

昭和23年 6月16日 高橋嘉雄

以上の陳述を読みなほし、修正し、私の記憶の範囲中
において真実である事を誓います.

昭和23年 12月7日 高橋嘉雄.

最初処刑された島民は黒い長い着物を着ていた様に
記憶します.

昭和23年 12月7日 高橋嘉雄

Exhibit 2(2)

Takahashi, Yoshio, Surgeon 1st Lieutenant, IJA (at the time of demobilization).

During the war I was on Rota Island, Marianas Islands, from March 1944 till September 1945.

While I was on Rota Island I was attached to the headquarters of the Tokunaga Battalion, Rota Island.

When I was attached to the battalion headquarters, I saw a dead body of an American flyer who came down to Rota Island with a parachute.

I heard the following story: As the flyer descended into the mountain with a parachute, a company which was stationed in the area sent a searching party. But he was not found out. Then the flyer came out to the beach where he was found out by a soldier who was guarding the beach. The flyer shot his pistol and the soldier shot his rifle. It is said that the flyer was shot to death. The dead body was brought to the battalion headquarters and then to the headquarters of Major Imagawa. I don't know what happened after that.

While I was on Rota Island, I performed the execution of two natives around July 1944 according to the order of the battalion commander of the battalion headquarters. I don't know the names of the natives. I heard from the battalion commander that these natives were to be executed because they committed acts of spying. I think it was one day before the execution, I was called to the battalion commander and was ordered to perform the execution of the natives by using cyanide potassium.

On the next day, Kempei Sergeant Tokunaga brought the natives to the yard of the battalion headquarters. Then somebody of the headquarters reported to me that the two natives had arrived. I, with Corpsman Sergeant Kato, went to a spot about 150 meters from the headquarters. Kato brought some coffee and I had some cyanide potassium with me. Kato brought a cup (cups). Then one of the guards brought a native from the yard of the headquarters to the place where we were waiting. Leading Private Koyama and a private 1st class of the headquarters (I don't recall his name) were on the guard detail. Then I mixed the cyanide potassium with the coffee, handed the cup to the native and told him to drink. At that time, I thought that the native had already been told that he was to be executed. He seemed to be very surprised as if he had not known up till then that he was to be executed. Therefore, though he put the cup to his lips, he did not drink the whole cup of coffee. He drank just a little which was not sufficient to kill him. His hands were shivering while he drank the coffee. The most part of the coffee was spilled on the ground. Then he fell down on the ground. We waited for a while, but the drug was not effective. He sat up and looked very suffering. As it seemed to me that the drug was not effective enough to kill him, I sent my orderly, Kurihara, to the battalion commander to ask what to do. Then Kurihara returned and reported to me that the battalion commander had told him to kill (the native) by stabbing. As Leading Private Koyama and the first class private had rifles with fixed bayonets, I relayed the order of the battalion commander to Koyama and had him stab (the native). About 50 meters from us were many personnel of the headquarters watching the execution.

Then, before I told one of the guards to bring another native, I thought that the same procedure would not be successful if the native did not know that he was to be executed. I explained the circumstances to the personnel of the headquarters who had been watching the execution, had them sit down and chat at the table which was at the scene, and made up an atmosphere that they

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were having tea and coffee. Then I told one of the guards to bring the (next) native. On the table I put (a cup of) coffee mixed with cyanide potassium. I served it to the native and told him to drink. As soon as he drank it, he died. I told four Korean gunzokus of the headquarters who were then at the scene to take the dead bodies to a spot about 100 meters from the scene of the execution, and had them buried.

After that I reported to the battalion commander that the execution of the natives had been finished.

I don't know whether or not somebody ordered the battalion commander to execute the natives. I don't know any instance of execution of natives performed at a place other than the battalion headquarters, Rota Island.

I swear that the foregoing statement is true according to my knowledge and recollection.

June 16, 1948 /s/ TAKAHASHI, Yoshio

I reread the foregoing statement and made corrections. I swear that the above is the truth according to my recollection.

December 7, 1948 /s/ TAKAHASHI, Yoshio

I recall that the native who was executed first was wearing a black, long clothing.

December 7, 1948 /s/ TAKAHASHI, Yoshio

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

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

Exhibit 2(a)(2)

0190

昭和十九年三月某日ロタ島ニ上陸ス

同年六月某日ヨリ米空軍ノ激烈ナル空襲砲撃ヲ連日受ケタヨウニ記憶シテオル

三、同年六月某日私ハ衛兵ニ出頭ヲ命ゼラレ衛兵ニ出頭スルト共ニ「スパイ」行動ヲ取ッタトイッテ死刑ノ宣告ヲ受ケタ島民二名ヲ處刑スルタメ」衛兵ヲ行動ヲ共ニセヨ」ト言ッテ命令ガ下ッタ

私ハ命令ニ復従シテ島民(死刑ノ宣告ヲ受ケタ島民)ヲ連レテ死刑場ニ行ッタ他ノ一名ハ誰ガ連レテ来タノカ知ラナイ

死刑執行ニアタッテ一名ハ薬ヲノマセタノハ高橋中尉ノヨウニ記憶シテオルガ詳シイコトハ全々知ラナイ

受刑者ガ苦シガッテオルノデ徳永大隊長ト高橋中尉ガ可哀想ダカラ安ラカニ死ナセテヤレト私ニ命令シタノデ私ハドウシテモ軍人トシテ上官ノ命令ニソムク良ク出来ルカ迷ッタガ日本ノ

[illegible]

Exhibit 3 (1)

1. Landed on Rota Island one day in March, 1944.

2. I recall that from one day in June of the same year, we received severe air raids and shelling attacks daily.

3. As two natives who were said to have taken part in spy activities and had been sentenced to death were to be executed one day in June of the same year while I was on guard detail, the order was given, "Guards also will take part." Obeying the order, I went to the scene of execution bringing /T.N. one of/ the natives (who had been sentenced to death). I do not know who brought the other native.

When it came to the carrying out of the execution one native drank the medicine and afterwards seemed to be in great pain. I recall that First Lieutenant Takahashi was the one who made /T.N. the native/ drink the medicine, but I do not recall the details.

As the /T.N. native/ who was being executed seemed to be in great pain, Battalion Commander TOKUNAGA and First Lieutenant TAKAHASHI said that it was very pitiful and ordered me to stab.

I wondered what was the right thing to do, but for Japanese military personnel disobedience to orders of superior officers was the same as disobedience to orders of the emperor, and consequently I had to obey. Therefore as there was no other alternative, I stabbed as ordered.

I do not know about the other /T.N. 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.

4. Over and above the severity of the American air raids, shelling attacks, and bombings, there was virtually no food; there was much uneasiness and fear; there was no communication between the various units and our conscious moments seemed very dim. Consequently, I do not know anything about any other facts.

As communication from Japan came through one day in August, 1945, giving the order that the war was over, we then followed the orders of the American forces.

One day in September, 1945, I was confined on Guam Island as a POW.

KOYAMA, Shigeo
Then Leading Private, IJA.

11 July 1948.

C-E-R-T-I-F-I-C-A-T-I-O-N

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

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.
Translator.

Tokyo, Japan,
July 14, 1948.

Exhibit 3(a)(1)

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私 小山茂雄 は正当に宣誓された後、前記 2 頁
から成る、昭和 18 年 7 月 11 日附の私、陳述の英訳
文を読み聞かされ、これを理解し私の知っている限り又信ずる
限り それが真実であることを宣誓します。 小山茂雄

I KOYAMA, Shigeo being duly sworn on oath, state that I have had read to me and understand the translation of the fore-going transcription of my statement dated the 11 day of July 1943, and consisting of 2 pages, and that it is the truth to the best of my knowledge and belief.

KOYAMA, SHIGEO

Subscribed and sworn to before me this the 7 day of December 1945.

Jo. A. Regan. Lieut. USN

Guam, M.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature, thereto.

Frederick A. Savory
Interpreter.

Subscribed and sworn to before me this the 7 day of December 1945.

Jo. A. Regan Lieut.

Exhibit 3(a)(2)

0195

昭和二十二年 12月7日

1. 裏リヲ歩ンダ島民ハ皆シガンデヰタノデ高橋中尉ノ可愛
想ダカラ宮ケト私ニ命令シタ私ハ仕方ナク命令ニ服従
シテ営ミマシタ 其ノ時ハ座ツテヰタ様ニ憶エテヰマス
~~若シガンデヰタガオガイキテヰル~~ 私ガ仕方ナク営イタ時ハ末ガ
若シガンデヰタノデ生キテヰタ事ヲ知ラメイシマス

小山茂雄

Exhibit 4

0196

1. Because the native who drank the medicine was suffering from pain, 1st Lieutenant Takahashi told me it was very pitiful and ordered me to stab. Having no alternative, I obeyed the order and stabbed. I certify that he was alive at that time, because he was still suffering from pain when I stabbed him having no other way but to obey the order.

/s/ KOYAMA, Shigeo

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

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

Exhibit 4(a)

0197

AFFIDAVIT

IN THE MATTER OF executions	:	AFFIDAVIT OF Akira Tokunaga, former
on Rota Island, Marianas Islands,	:	major, Imperial Japanese Army, and
in 1944.	:	commanding officer of Rota Island.

Taken at Sugamo Prison, Tokyo, Japan.

In the presence of Commander Maurice E. Currie, United States Naval Reserve; Sergeant Hoshio Yokoi, United States Army; and Joseph Kase, junior, yeoman first class, United States Navy.

On October 28 and November 1, 1948.

1. Q. Will you please state your name and former rank at the time of demobilization?
A. Tokunaga, Akira, former major, Imperial Japanese Army.

2. Q. Were you ever stationed on Rota Island?
A. Yes.

3. Q. When did you go to Rota Island?
A. In the latter part of March, 1944.

4. Q. When did you leave Rota Island?
A. September 4, 1945.

5. Q. What was your rank while you were on Rota Island?
A. Captain. I was promoted to major in December, 1944.

6. Q. What was your position and duties while you were on Rota Island?
A. I was the Garrison Commander of Rota Island from the time I landed on Rota until sometime after the twentieth of July, 1944; thereafter, I was the commander of the Taruga Area under Major Imagawa.

7. Q. Where did you establish garrison headquarters when you first went to Rota?
A. In Shinaparu.

8. Q. Was your headquarters ever moved?
A. Yes.

9. Q. Where did they move to?
A. For a while headquarters was in Songsong and later moved to Taruga.

10. Q. Was your headquarters in Taruga in a building or was it in a cave?
A. By the cave. Caves and houses were still under construction when I went there.

Exhibit 5 (1)

0198

TOKUNAGA

11. Q. When did you go to Taruga?
A. I do not know the exact date, but in the early part of July.

12. Q. While you were Garrison Commander on Rota, did you ever suspect that spy activities were being carried on on Rota?
A. Yes.

13. Q. Did you take any steps to investigate these suspected spy activities?
A. Yes.

14. Q. What did you do?
A. After receiving various reports of spy activities from units on Rota, I dispatched secret scouts and also patrols to have them investigate these matters. Also I assembled all the village masters at Songsong and instructed them of black out regulations being inforced and warned them against further occurrences of any spy activities, and also asked their further cooperation with the military authorities. These were the two steps I had taken after the air raids of June 11. Prior to this, sometime in the middle of April, there were indications of frequent spy activities on Rota; therefore, I ordered Lieutenant Okuyama of the Tatacho Area to investigate these matters. Also after the air raid of June 11, I assigned Policemen Tokunaga and Ichimura and had them investigate the spy activities.

15. Q. What did this investigation reveal?
A. By investigation of the suspects, we found that spy activities had been committed.

16. Q. What did these spy activities consist of?
A. The result of the investigation made by Lieutenant Okuyama and his men: notes and letters were found in the possession of the natives. These notes contained the situation of airfields, position of Japanese army installations on Rota, and strength of forces and equipment on Rota. During the day, at the time of the air raids, although we warned them, a few men did not evacuate and signaled enemy planes by waving colored cloths. Also, reports were received from Lieutenant Okuyama that some men set bonfires at intervals during the night and signaled to the enemy fleet. At the time of the intensive battle on Saipan, they intentionally spread such rumors as the enemy landing is imminent and disturbed the feelings of the men on Rota.

17. Q. Did Okuyama report to you personally the result of these investigations?
A. Yes.

18. Q. Did he make a written report or did he make an oral report?
A. Okuyama presented this to me in the form of a diary with evidence he confiscated.

19. Q. By whom was this diary written?
A. Okuyama himself.

Exhibit 5 (2)

0199

20. Q. And this diary contained all the evidence that you just told us was discovered?
A. Yes.

21. Q. Did Ichimura and Tokunaga report to you the results of their investigations?
A. Yes.

22. Q. Did they give you a written report or an oral report?
A. I think there were some written reports.

23. Q. What was the substance of the report Ichimura and Sergeant Tokunaga gave you?
A. Their reports of the investigation were similar to the one submitted by Lieutenant Okuyama; however, the report submitted by Lieutenant Okuyama was much more in detail.

24. Q. Were there any arrests made as a result of these investigations?
A. Yes.

25. Q. How many men were arrested?
A. About ten were arrested; however, six or seven were taken into custody. First, about ten were arrested, but finding a few of these men were not guilty of any spy activities, they were released.

26. Q. What happened to the men who were retained in custody?
A. Among them five were later executed and one died in jail as a result of the American bombing.

27. Q. Did you order the execution of these five men?
A. By order of the division commander, I ordered my men to carry out the execution.

28. Q. What do you mean by "by order of the division commander"?
A. I received this order after I reported to the Twenty-ninth Division Commander on Guam the details of alleged spy activities and requested the disposition of these men who committed spy activities.

29. Q. Was your unit attached to the Twenty-ninth Division on Guam?
A. Yes.

30. Q. How did you make this report to Guam headquarters?
A. By wireless code.

31. Q. Was the message sent in code?
A. Yes.

32. Q. When was this dispatch sent and where was your headquarters at that time?
A. My headquarters was at Songsong, and the message was sent sometime in June.

Exhibit 5(3)

0200

33. Q. How many messages were sent requesting instructions relative to disposition of suspected spies?
A. One message was sent; however, it was broken into three parts for coding, but it was sent to Guam as one message.

34. Q. Did you include the number of suspects in the message sent to Guam?
A. Yes.

35. Q. What was the number you reported?
A. Five.

36. Q. Did you include the names of the suspects?
A. No, I did not.

37. Q. Did you include the nationality or occupation of the suspects?
A. I sent it as five natives.

38. Q. What was the content of the reply from Guam to this dispatch?
A. I do not recall what articles, but the dispatch from Guam stated: "In accordance with Military Criminal Law such-and-such, punish them with capital punishment."

39. Q. Did you execute all these men at one time?
A. I planned to execute them at two times, but it was carried out on three different occasions.

40. Q. How long after receiving the dispatch from Guam did you carry out the first execution?
A. A day or two days later.

41. Q. How long was it from the first execution until the next execution was carried out?
A. Around ten days later.

42. Q. How long was it from the time the second execution was carried out until the third execution was carried out?
A. I think it was two or three days before the third execution was carried out.

43. Q. Why did you wait for a period of ten days after the first execution to carry out the second execution?
A. I executed two men in the Tatacho Area because they were found guilty of alleged spy activities; however, the second execution was carried out about ten days later because even though we found they were guilty of spy acts, I wanted a little more confirmation of the evidence and besides the situation of the war at that time required me to move my headquarters, for command purposes, to the Taruga Area.

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44. Q. Why was the third execution postponed until two or three days after the second execution?

A. I recall the second execution was the one that we poisoned at Taruga headquarters and the third execution was the one that was carried out by the Shiono Unit. The reason I postponed the execution of the third incident was I could not stand the agony of a man who died from poisoning; therefore, from the point of humanity and considering the feeling of the men who previously carried out the execution by poisoning, I sent the last man to the Shiono Unit for execution by rifle.

45. Q. After the first execution, did you get further information relative to the spy activities of the two men executed at Taruga?

A. Yes.

46. Q. What did this information consist of?

A. Although we knew they were guilty of alleged spy activities, we wanted to get further verification of this information and as a result of the re-examination of these persons, we found them guilty.

47. Q. Who conducted this re-examination?

A. Mainly Policeman Tokunaga conducted the investigation.

48. Q. You referred to a re-investigation. Were they written investigations or oral investigations?

A. Just oral investigations.

49. Q. Did you hear these oral investigations?

A. No, I did not hear the investigations directly from them, but that is what Tokunaga reported to me.

50. Q. Did you witness any of these executions?

A. Yes.

51. Q. Which ones did you witness?

A. The ones executed by the Yasui Platoon at Tatacho.

52. Q. Would you describe the details of this execution?

A. First I ordered the preparation of the execution to Warrant Officer Yasui through Lieutenant Odanaka. This was in the morning. In the afternoon, I went to the Tatacho Area taking two natives and guards. Near the cliff in the Tatacho Area, I ordered Warrant Officer Yasui to carry out the execution of the two men by a squad which consisted of six men. By my request, Lieutenant Odanaka was with me at the scene at that time, and I read the sentence to these two men who were to be executed. Then I ordered Warrant Officer Yasui to perform the execution by shooting.

53. Q. Did you read the sentence of execution to these men in the presence of the execution squad?

A. I recall Lieutenant Odanaka and Warrant Officer Yasui were there, but I do not recall the position of the members of the squad, the shooters.

54. Q. Did you watch the completion of the execution?

A. Yes.

0202

55. Q. Do you know the identity of these two men--the ones that were executed at Tatacho?
A. I know one of the two men executed at the Tatacho area was a shoe maker in the Tatacho area, but I do not recall their features or appearances.

56. Q. Do you know their nationality?
A. They were natives.

57. Q. Did you witness the execution by poisoning at Taruga?
A. No.

58. Q. Did you see the persons who were to be executed prior to the execution by poisoning?
A. Yes, I saw them, and I read them the sentence of execution.

59. Q. Did these men speak Japanese?
A. I heard from Policeman Tokunaga that they understood Japanese.

60. Q. Did they make an answer to you when you read them the sentence of execution?
A. No, they did not say anything.

61. Q. Did you read them this sentence of execution while they were together or did you read the sentence of execution to each one separately?
A. Two, together.

62. Q. Where were you at the time you read this sentence of execution to these two men?
A. I read this sentence in front of my quarters at headquarters.

63. Q. What time of day did you read this execution to the men in front of your quarters?
A. I recall it was in the morning, around eight or nine o'clock in the morning.

64. Q. Who was present at the time you read the sentence to these two men?
A. Sergeant Tokunaga.

65. Q. Was he the only one?
A. Yes.

66. Q. Could you be seen from anyone nearby?
A. My quarters were situated in the woods and I doubt that anybody could see us.

67. Q. Where had these two men been incarcerated from the time they had been first arrested until the time they were brought to your quarters that morning?
A. First, they were incarcerated in the jail of the South Sea Island Government office at Songsong. Later they were taken to one of the caves in the Songsong area.

68. Q. Were they brought directly to your quarters from the cave where they were incarcerated?
A. Yes.

69. Q. Do you know the identity of these two men?
A. I recall one of them was young, wearing simple working cloths. I recall the other was past middle age wearing clothes similar to a raincoat.

70. Q. Was it raining that day?
A. No, it was not raining that day.

71. Q. Do you know the occupation of these two men?
A. One of them was the servant to the missionary who died. I do not recall the other.

72. Q. Do you know their nationality?
A. Yes.

73. Q. What was their nationality?
A. They were both natives.

74. Q. Do you recognize this picture? [Picture bearing the caption: "H. Miguel Timoner, Misionero de Rota (Marianas).- Espanol. 52 anos." was shown the affiant.]
A. No.

75. Q. Did you ever see that man before?
A. No.

76. Q. That is the picture of a servant of the Catholic missionary who died.
A. I do not remember his features.

77. Q. Did one of the men you read your sentence of death to have a beard?
A. No, I don't think he had a beard.

78. Q. Did you witness the third execution?
A. No.

79. Q. Did you see the man who was executed by the Shiono Unit?
A. Yes.

80. Q. When did you see him?
A. I saw this man prior to handing him over to Lieutenant Shiono.

81. Q. Did you speak to this man?
A. No.

82. Q. You did not speak to him?
A. No, I did not speak to him.

0204

83. Q. Did you read the death sentence to this man?
A. Yes, I read him the sentence.

84. Q. Well, when you say you did not speak to him you mean you didn't talk to him?
A. Yes, I mean that.

85. Q. What were the circumstances leading up to your reading the death sentence of this man?
A. I recall that Sergeant Tokunaga brought this man to my headquarters a day or two days after the second execution.

86. Q. Is that where you read him the sentence of execution?
A. This man was brought to the cave in front of headquarters and he was handed over to the men of headquarters.

87. Q. Do you know the identity of this man?
A. I do not recall.

88. Q. Do you know his nationality?
A. He was a native.

89. Q. How was the second execution carried out?
A. They were executed by using potassium cyanide.

90. Q. Who carried out the execution?
A. Lieutenant Takahashi.

91. Q. Did Takahashi carry out this execution by poisoning immediately after you read off the death sentence?
A. About half an hour or an hour after I read the sentence of execution to them, they were executed by using potassium cyanide.

92. Q. Where did Takahashi carry out this execution?
A. The execution was carried out about a hundred meters, I think, west of the headquarters.

93. Q. Were there any incidents during the execution that were brought to your attention?
A. Yes, there was a certain instance.

94. Q. What was this instance?
A. I do not recall who he was, but one messenger was sent from Lieutenant Takahashi asking me what was to be done for one of the natives who was not quite dead and in great pain from drinking the poison.

95. Q. Did you send a message back to Takahashi?
A. Yes.

96. Q. What message did you send?
A. "No use leaving him in a state of agony, so finish him off."

Exhibit 5 (8)

0205

97. Q. Did Lieutenant Takahashi report to you that the execution had been carried out?
A. Yes.

98. Q. Did Lieutenant Shiono report to you that the execution he had conducted had been carried out?
A. Yes.

99. Q. Did you make a report to Guam upon the completion of these executions?
A. I had in mind to make a report, but it was not accomplished because the communication to Guam was cut off as a result of annihilation of Japanese forces on Guam. During the month of July, the communications were rather few because of the condition of the war at that time.

100. Q. Did you give any of the suspected spies a trial before having them executed? M.G. A.J. CONDITIONS OF WAR DID NOT PERMIT A TRIAL BESIDES WE
A. No. HAD NO LEGAL PERSONNEL TO CARRY OUT TRIALS.

101. Q. In what language did you read the sentences of executions to the suspected spies?
A. In Japanese. We knew that they understood Japanese.

102. Q. Did you confer or request the advise of any of your officers relative to the investigations and punishment of these suspected spies?
A. I conferred with Major Imagawa who was the Tactical Advisor and had a talk with Lieutenant Okuyama prior to their execution.

103. Q. Did the investigation reveal the nationality of the suspected spies?
A. The investigation showed that the suspected spies were natives.

104. Q. What became of the written investigation that was made on these suspected spies?
A. I had planned to take them back to Japan with my other belongings; however, just before I left Rota I saw these things were being disposed of by the Americans by burning. We were assembled with our personal belongings at Tatacho, but because of difficulty in transferring all our things, we were deprived of these things before we were shipped to Guam.

105. Q. Your office records, what happened to them? Were not the investigations part of the battalion's official records?
A. This investigation had nothing to do with the battalion official records.

106. Q. What did you do with these investigation reports?
A. I had this investigation report in my personal belongings together with other materials such as war diaries and records that belonged to the battalion headquarters.

107. Q. What became of them?
A. They were burned on Rota.

0206

108. Q. By whom?
A. By American troops that landed there. I think a marine Lieutenant Colonel King was in charge on Rota at that time.

109. Q. Did the American forces question you on Rota relative to the execution of spy suspects?
A. No, because we only stayed there two days after the Americans made a landing. Two or three months after I was transferred to Guam, I was questioned.

110. Q. When were the first American air raids on Rota Island?
A. I think the first air raid was in February or March, 1944.

111. Q. What did the raid in February of March there consist of?
A. The air raid was by the planes dispatched from carriers; however, June 11 was the first time we received the news that a large American task force was near.

ALLIED OCCUPATION FORCES)
) ss.
TOKYO, JAPAN)

I, Akira Tokunaga, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my affidavit consisting of nine and one-half (9½) pages, and that the foregoing affidavit is true to the best of my knowledge and belief.

徳永 明
Akira Tokunaga.

Subscribed and sworn to before me this 5th day of November, 1948.

Maurice E. Currie
Maurice E. Currie,
Commander,
United States Naval Reserve.

I, Hoshio Yokoi, sergeant, United States Army, being thoroughly conversant with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing affidavit consisting of nine and one-half (9½) pages to the affiant; and that the affiant thereupon, in my presence, affixed his signature thereto.

Hoshio Yokoi
Hoshio Yokoi,
Sergeant,
United States Army.

0207

TOKUNAGA

CERTIFICATE

We, Maurice E. Currie, commander, United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the twenty-eighth day of October and the first day of November, 1948, Akira Tokunaga personally appeared before us and according to Hoshio Yokoi, sergeant, United States Army, gave the foregoing answers to the several questions set forth therein; that after his affidavit had been transcribed, the said Akira Tokunaga again appeared before us on the 5th day of November, 1948, and had read to him the same by Hoshio Yokoi, sergeant, United States Army; and the said Akira Tokunaga affixed his signature thereto in our presence.

Maurice E. Currie
Maurice E. Currie,
Commander,
United States Naval Reserve.

Joseph Kase Jr.
Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

0208

法規ノ配布ニ関スル証明

左記書類ハ戦争中日本陸軍ニ於テ使用シタルモノデアッテ、ガム島ニ配布シタルコトヲ證明スル

昭和二十三年七月三十日

引揚援護庁復員局
庶務課長　美山要蔵

左

一、戒規類聚記　一乃至六巻
二、俘虜ニ関スル法規類集
三、戦時高等司令部勤務令
四、陸軍刑法、同軍令部令
五、陸軍懲罰令
六、作戦要務令　一乃至二部
七、憲兵令
八、憲兵服務規定、同細則
九、憲兵隊服務規定
一〇、陸軍司法警察執務心得
一一、憲兵隊経理事務通則

備考　印刷シタ書類ハ戒規類聚トナキモノデアッテモ爾後改正サレタル戒規類聚ニアッテモ

前記ハ、原本ノ通実且正確ナル写ニ相違ナイコトヲ証明スル

昭和二十四年二月五日

鑑定人　佐藤毅

Exhibit 6

0209

#1

TRANSMITTAL OF CERTAIN LAWS, ORDINANCES AND REGULATIONS OF THE JAPANESE ARMED FORCES.

I certify that the below listed documents were in force in the Japanese Army during the War and that these documents are forwarded to the Defense Counsel on Guam.

30 July, 1948

MIYAMA, Yozo (seal)

Chief of General Affairs Section,
Demobilization Bureau,
Repatriation Relief Agency.

List of Documents

1. Army Regulations, Vol. I through Vol. VI.
2. Certain Laws and Regulations concerning Prisoners of War.
3. Ordinance governing Superior Headquarters in Time of War.
4. Army Criminal Code and Army Court Martial Law.
5. Ordinance governing Army Disciplinary Punishment.
6. Army Field Manual, Vol. I and Vol. II.
7. Ordinance governing Kempei.
8. Kempei Service Regulations. (comprehensive)
9. Administrative Manual of the Kempeitai.
10. Instructions relative to the Duties of Army Judicial Police.
11. Regulations governing the Kempeitai intendance office.

Note. The mimeographed documents are laws and regulations which are not included in the Army Regulations, or which are included in the Army Regulations, but which were later revised.

I hereby certify the above to be a true and correct copy of the original.

February 5, 1949

Sadamu Sanagi

SANAGI, Sadamu,
Defense Counsel.

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

Eugene F. Clark,
Lieutenant (jg), USN.,
Interpreter.

Exhibit 6 (a)

軍機保護法（昭一二、法律七二）
改正加除　昭一六、法律五八

枢密院会議ノ協賛ヲ経タル軍機保護法改正法律
ヲ裁可シ茲ニ之ヲ公布セシム

軍機保護法

第一條　本法ニ於テ軍事上ノ秘密ト稱スルハ作戦、用兵、
動員、出師其ノ他軍事上秘密ヲ要スル事項又ハ圖書
物件ヲ謂フ
前項ノ事項又ハ圖書物件ノ種類範圍ハ陸軍大臣
又ハ海軍大臣命令ヲ以テ之ヲ定ム
第二條　～　省略
第三條　～　省略
第四條　軍事上ノ秘密ヲ探知シ又ハ収集シタル者又ハ他
人ニ漏泄シタル者ハ三年以上ノ懲役ニ處ス
軍事上ノ秘密ヲ探知シ又ハ収集シタル者ハ公ニシ又
ハ外國若ハ外國ノ爲ニ行動シタル者ニ漏泄シタルトキハ
死刑又ハ無期若ハ三年以上ノ懲役ニ處ス
第五條乃至
第二十一條　～　省略

前記條文ハ第一復員局庶務課長美山要蔵
ガ戦争中日本陸軍ニ於テ便用シテアッテ、ガ今
島幕僚團ニ配布シタモノデアルコトヲ証明セル
成規整製本第五巻中ノ一ノ正シキ抜萃ニ相違ナイコトヲ
証明スル

昭和二十四年二月五日

弁護人　作薙毅

Exhibit 7

MILITARY SECRETS SECURITY LAW

(August 13, 1937, Law 72)

Revised and supplemented 1941, Law 58.

We, the Emperor of Japan, with the consent of the Diet, hereby sanction the revised Military Secrets Security Law and cause it to be promulgated.

Military Secrets Security Law.

Article 1. By the term "military secrets" is meant matters, or documents, relating to operations, strategy and tactics, mobilization, expeditions and other matters necessitating secrecy from a military viewpoint.

As to the scope and range of the matters and documents referred to above (which are to be classified as military secrets) the Ministers of War and Navy shall determine by (appropriate) orders.

Article 2. (omitted)

Article 3. (omitted)

Article 4. A person who detects a military secret or who gathers military secrets and discloses them (or it) to others shall be sentenced to life or more than two years' imprisonment.

A person who detects a military secret or who gathers military secrets and exposes it or them in public or who discloses it or them to foreigners or those acting for foreigners shall be condemned to death, or sentenced to life imprisonment or imprisonment for not less than three years.

Article 5.)
.)
.) (omitted)
.)
Article 21.)

I hereby certify that the above articles are true and correct excerpts from Japanese Army Regulations, Vol. V, which the Chief of the General Affairs Section, 1st Demobilization Bureau, MIYAMA, Yozo certified to have in effect in the Japanese Army during the War and which he forwarded to Defense Counsel on Guam.

February 5, 1949

Sadamu Sanagi

SANAGI, Sadamu,
Defense Counsel.

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

Eugene F. Clark,
Lieutenant (jg), USN,
Interpreter. Exhibit 5 (a)

F3

軍機保護法施行規則

（昭和一二、一〇、七 陸者令四三）

改正加除 昭一四陸者令五九、昭一六、同六、同二〇、同五八、

軍機保護法施行規則左ノ通定ム

軍機保護法施行規則

第一條 軍機保護法第一條第二項ノ規定ニ依ル陸軍ノ軍事上秘密ヲ要スル事項又ハ圖書物件ノ種類範圍左ノ如シ

一、宮闕守衛ニ関スル事項

イ、

ロ、～

二、国防、作戦又ハ用兵ニ関スル諸計画ノ事項

イ、国防又ハ作戦ニ関スル国防、作戦、用兵ノ準備又ハ

ロ、現在及将来ニ亘ル国家ノ政略

実施ニ関スル命令ノ内容、発受令者、下達時期、下達地点

ハ、外国ニ駐在スル軍隊又ハ戦時若ハ事変ニ際シ出征若ハ派遣スル軍隊又ハ其ノ軍需品ニ関スル左ノ事項

甲、戦斗序列又ハ軍隊区分ニ基ク隷属系統

イ、部隊号、部隊数又ハ部隊ノ人員数若ハ其ノ損耗数

ロ、前号ニ掲グル部隊ノ装備又ハ軍需品ノ種類数量、若ハ其ノ消耗数

乙、現在及将来ニ亘ル任務又ハ企圖

丙、現在及将来ニ亘ル部署、配備又ハ行動

丁、現在及将来ニ亘ル陣地又ハ軍用飛行場ノ位置、構成、設備又ハ強度

Exhibit 8 (1)

二、軍事ニ関スル外国トノ約定

三、編制、装備又ハ動員ニ関スル事項

イ、編制又ハ装備ニ関スル諸計画ノ内容又ハ其ノ実施ノ状況

ロ、戦時編制又ハ其ノ装備

ハ、……省略

ニ、……省略

ホ、……

第二條 省略

第三條 省略

前記條文ハ第一復員局庶務課長美山要蔵ガ戦争中日本陸軍ニ於テ使用シタモノデアルガ鳥瞰図ニ配布シタモノデアルコトヲ証明シ陸軍成規類聚第五巻中ヨリ抜萃ニ相違ナイコトヲ証明シタ

昭和二十四年二月五日

辯護人 佐藤 毅

Exhibit 8 (2)

#3

REGULATIONS GOVERNING SECURITY OF MILITARY SECRETS

(Issued by War Ministry Order No. 43 of
October 7, 1937.)
Revised and amended by War Ministry Order No. 59
of 1939 and War Ministry Orders 6, 20 and 58
of 1941.

Regulations governing the security of Military Secrets are as follows:

Article 1. The subjects and extent of matters and documents which require military security as set forth in Paragraph 2 of Article 1 of the Military Secrets Security Law are as follows:

1. Matters relating to the guarding of the Imperial Palace.
   (a) omitted.
   (b) omitted.
2. Matters relating to national defense, operations and logistics.
   (a) Content of plans pertaining to national defense and operations.
   (b) The content, originator, addressee and place, time of transmittal of orders pertaining to preparations and the implimentation of national defense, operations and logistics, in the present and in the future.
   (c) The following matters regarding troop equipment and troops stationed in foreign countries, or troops despatched in war or emergency.
      (1) Organization of forces according to order of battle or force composition, unit designations, number of men and equipment, and losses sustained.
      (2) The supplies equipment, type and quantity of munitions, and their expenditure of the units mentioned in the preceding sub-paragraph.
      (3) Present and future mission and intentions.
      (4) Present and future station, disposition and movement.
      (5) Present and future location, composition, installations and strength of positions and airfields for exclusive military use.
   (d) Agreements with foreign countries relating to military matters.

3. Matters pertaining to organization, equipment and mobilization.
   (a) Content of plans and their method of execution regarding organization and equipment.
   (b) Wartime organization and equipment.
   (c) } omitted
   ⋮ }
   (m) }

4. } omitted
⋮ }
10 }

Article 2. }
⋮ } omitted
Article 25 }

-1-

Exhibit 8 (a) (1)

I hereby certify that the above article is a true excerpt taken from Japanese Army Regulations Vol. V, which the Chief of the General Affairs Section, 1st Demobilization Bureau MIYAMA, Yozo certified to have been in effect in the Japanese Army during the War and which he sent Defense Counsel on Guam.

February 5, 1949

SANAGI, Sadamu,
Defense Counsel.
Sadamu Sanagi

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

Eugene F. Clark,
Lieutenant (j.g.), USN.,
Interpreter.

Exhibit 8 (a) (2)

0216

南洋群島ニ於ケル軍機保護ニ関スル件
（昭和十六年八月二十日　陸軍省令三七号）

南洋群島ニ於ケル軍機保護ニ関スル件左ノ通定ム

南洋群島裁判事務取扱令ニ於テ依ルコトヲ定メタル軍機保護法ノ施行ニ関シテハ昭和十二年陸軍省令第四十三號軍機保護法施行規則ニ依ル但シ同規則中警察署長トアルハ支庁長又ハ支庁出張所長第八條中逓信大臣及庁十三條中主務大臣トアルハ南洋庁長官、第十五條中昭和十二年海軍省令庁二十八號軍機保護法施行規則トアルハ昭和十六年海軍省令庁三十三号南洋群島ニ於ケル軍機保護ニ関スル件トス

附　則

本令ハ公布ノ日ヨリ之ヲ施行ス

前記條文ハ第一復員局庶務課長美山要蔵ガ戦争中日本陸軍ニ於テ使用シタモノデアルガ島嶼援護團ニ配布シタモノデアル。成規数、繋第五巻中ヨリ抜萃ニ相違ナイコトヲ証明スル

昭和三四年二月五日

嶼援護人　佐藤毅

Exhibit 9

REGULATIONS GOVERNING THE SECURITY OF MILITARY SECRETS
IN THE SOUTH SEA ISLANDS

(War Ministry Order No. 37 dated
20 August, 1941.)

The following regulations are promulgated in connection with the security of military secrets in the South Sea Islands.

Article 1. In regard to the enforcement of the Law on Security of Military Secrets as determined in the Ordinance for the Treatment of Judicial Affairs in the South Sea Islands, War Ministry Order No. 43 - "Regulations governing Security of Military Secrets," - 1936 shall be followed.

However, where it reads "Chief of Police", in the Regulations it shall read "Chief of Branch Government." Where, in Article 8, it reads "The Minister of Communications", and, in Article 12, "The Minister in Charge" it shall read, "The Governor of the South Sea Government Office." Where, in Artilce 15 it reads "War Ministry Order No. 43 of 1937 (Regulations Governing Security of Military Secrets) it shall read "War Ministry Order No. 37 of 1941" (Regulations Governing the Security of Military Secrets in the South Sea Islands).

Annexed Regulation.
This order shall be effective from the day of its promulgation.

I hereby certify that the above article is a true copy taken from the Japanese Army Regulations, Vol. V, which the Chief of the General Affairs Section, 1st Demobilization Bureau MIYAMA, Yozo certified to have been in effect in the Japanese Army during the War and which he sent to Defense Counsel on Guam.

February 5, 1949

s/s SANAGI, Sadamu,
Defense Counsel.

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

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

Exhibit 9 (a)

0218

陸軍刑法

第一編 総則

第一條 本法ハ陸軍軍人ニシテ罪ヲ犯シタル者ニ之ヲ適用ス

第二條 本法ハ陸軍軍人ニ非スト雖左ニ記載シタル罪ヲ犯シタル者ニ之ヲ適用スル者ニ之ヲ適用ス。

一 第六十四條乃至第六十七條、罪及此等ノ罪ノ未遂罪。
二 第七十四條ノ罪。
三 第七十九條乃至第八十五條、罪
四 第八十六條乃至第八十九條、罪。
五 第九十一條乃至第九十三條、罪及第九十一條、第九十二條ノ未遂罪
六 第九十五條、第一項、第九十六條、第二項、及第九十九條ノ罪。

第六條 陸軍ト共同作戦ニ従フ海軍軍人ニ対スル行為ハ其ノ職務、官等、等級又ハ階級ニ相当スル陸軍軍人ニ対スル行為ト看做ス。

第九條 部隊ト稱スルハ陸軍、軍隊、官衙、學校、特務機関及戦時ニ於ケル陸軍ノ特設機関ヲ謂フ。

第二十條　軍中ト稱スルハ左ニ記載シタル部隊ニ在ル場合ヲ謂フ。

一、我軍ノ作戰ヲ執リタル部隊但シ我地以外ノ地ニ在ル部隊ニシテ対敵状態ニ在ラサルモノヲ除ク。

二、我軍ノ作戰ヲ執ラサルモ対敵状態ニ在ル部隊。

三、事変又ハ一地方ノ騒擾ニ際シ其ノ鎮定ニ従事スル部隊。

第二十一條　多衆共同ノ暴行ヲ鎮圧スル爲又ハ敵ノ刑ニ在ル部隊、急迫ニ臨ミ軍紀ヲ保持スル爲已ムコトヲ得サルニ出テタル行爲ハ之ヲ罰セス。

必要ノ程度ヲ超エタル行爲ハ情状ニ因リ其ノ刑ヲ減輕又ハ免除スルコトヲ得。

第二十二條　前條ノ規定ハ刑法又ハ他ノ法令ノ罪ト爲ルヘキ行爲ニ之ヲ適用ス。

第二編　罪

第一章　叛乱ノ罪

第二十七條　左ニ記載シタル行爲ヲ爲シタル者ハ死刑ニ處ス

二、敵国ノ爲ニ間諜ヲ爲シ又ハ敵国ノ間諜ヲ幇助スルコト

三、軍事上ノ機密ヲ敵国ニ漏泄スルコト

第二十九條　前二條ニ記載シタル以外ノ方法ヲ以テ敵国ニ軍事上ノ利益ヲ與ヘ又ハ帝国ノ軍事上ノ利益ヲ害シタル者ハ死刑又ハ無期若ハ五年以上ノ懲役ニ處ス

第三十一條　前六條ノ未遂罪ハ之ヲ罰ス

第二章 擅权ノ罪
第三章 侵職ノ罪
第四章 抗命ノ罪

第五十七條 上官ノ命令ニ反抗シ又ハ之ニ服従セサル者ハ左ノ区別ニ従テ處断ス

一、敵ニ対シテルトキハ死刑又ハ無期若ハ十年以上ノ禁錮ニ處ス

二、軍中又ハ戒嚴地境ナルトキハ二年以上十年以下ノ禁錮ニ處ス

三、其ノ他ノ場合ナル時ハ五年以下ノ禁錮ニ處ス

第五章 暴行脅迫及殺傷ノ罪

第六章 侮辱ノ罪

第七章 逃亡ノ罪

第八章 軍用物損壊ノ罪

第七十九條 陸軍ノ工場、船舶、航空機、兵車、戦闘用ニ供スル建造物、汽車、電車、自動車、若ハ橋梁又ハ陸軍ノ軍用ニ供スル物ヲ毀棄スル倉庫ヲ焼燬シタル者ハ死刑又ハ無期若ハ十年以上ノ懲役ニ處ス

第八十二條 第七十九條ニ記載シタル物又ハ陸軍兵閘用ニ供スル鉄道、電線若ハ水陸ノ通路ヲ損壊シ又ハ便用スルコトヲ能ハサルニ至ラシメタル者ハ無期又ハ二年以上ノ懲役ニ處ス

第九章 掠奪及強姦ノ罪
第十章 俘虜ニ関スル罪
第十一章 違令ノ罪

0223

第九十九條　戰時又ハ事變ノ際ニ軍事ニ關シ造言飛語ヲ爲シタル者ハ七年以下ノ懲役又ハ禁錮ニ處ス

上記ノ條文ハ復員局法務課長美山要藏ガ戰時中日本陸軍ニ於テ使用サレテ居タモノデアツテ、ガム島辯護團ニ配布シタモノデアルコトヲ證明シ陸軍刑法中ニ右ノ正確ナル抜萃ヲ相違ナイコトヲ證明ス

昭和二十四年十二月五日

辯護人　佐藤　毅

Exhibit 10 (4)

ARMY CRIMINAL LAW

RIKUGUN KEIHO

We, the Emperor, have sanctioned Military Criminal Law which obtained the approval of the Imperial Diet and hereupon have it promulgated.

- - - - - - - - - - - - - -

PART I

GENERAL RULES (SOSOKU)

Article 1. - This law shall be applied to the military army officers and soldiers who commit crimes.

Article 2. - This law shall also be applied to those who commit the crimes mentioned below, though they are not the military army officers and soldiers.

1. - The Crimes of Arts. from 64 to 67 and these attempted crimes.
2. - The Crimes of Article 74.
3. - The Crimes of Arts. from 79 to 85.
4. - The Crimes of Arts. from 86 to 89.
5. - The Crimes of Arts. from 91 to 93 and the attempted Crimes of Arts. from 91 and 92.
6. - The Crimes of clause 1 of Art. 96, Clause 2 of Art. 97 and Art. 99.

Article 6. - The crime committed against naval officers and sailors engaging in cooperation with the Army is treated as that committed against the army officers and soldiers whose duties, official ranks and classes or grade are corresponding to the formers.

Article 19. - The army unit means army troops, army officers, army schools and army special service organizations as well as specially established army organizations at the time of war.

Article 20. - The so-called "Gunghu" means the case in which the army unit is in the followint situation:

1. - The army units put on a war basis, except the army unit which, being out of the front, is not in the hostile situation.
2. - The army unit which is in the hostile situation though not yet put on a war basis.
3. - The army unit which is being engaged in putting down an incident or disturbance.

Article 22. - The action which has inevitably been taken in order to put down the violence of people or to keep the military discipline in the strained situation of the army unit in the face of the enemy, are not liable to be punished.

The punishment for the action carried out beyond necessity shall be reduced or exempted according to the circumstance.

Article 23. - The previous Article shall also be applied to the action which comes under the crime of criminal law or any other laws and ordinances.

EXHIBIT 10 (a)(1)

0223

PART II
CRIMES

CHAPTER I

Crime of Rebellion

Article 27. - Those who have done the actions described in the following shall be condemned to death.

2. - To spy for the benefit of the hostile powers, or help hostile powers in espionage.
3. - To convey military secrets to the enemy powers.

Article 29. - Those who have given military advantage to the enemy powers or injured the military advantage of the Japanese Empire, in a manner other than those described in the above two Articles, shall be condemned to death, or life imprisonment, or not less than five years' imprisonment with labour.

Article 31. - The attempted crimes of the above six articles are liable on conviction to be punished.

CHAPTER II

Crime of Abusing Authority

CHAPTER III

Misconduct in Office

Chapter IV

Crimes of Resistance to Orders .

Article 57. - Any one who resists the superior officer's orders or who is not obedient to it, shall be punished according to the distinctions as follows:

1. - When it is in the face of the enemy, he shall be condemned to death, or sentenced to life or not less than ten years' confinement.
2. - When it is in the "Gunchu", or in the district under the martial law, he shall be sentenced to from one to ten years' confinement.
3. - In other cases, he shall be sentenced to not over five years' confinement.

CHAPTER V

Crimes of Violence, Threat, as well as Murder

CHAPTER VI

Crimes of Insulting

CHAPTER VII

Crimes of Desertion

EXHIBIT 10 (a) (2)

0224

CHAPTER VIII

Crimes of Destroying the Things for Military Use

Article 79. - Those who burn down the military factories, vessels, aircraft, or tanks, buildings, trains, electric cars, motor cars, or bridges for battle use; or warehouses in which the article for military use are stored, shall be condemned to death, or sentenced to life or not less than ten years' imprisonment with labour.

Article 82. - Those who destroy the things named in Art. 79, or railways, telegraph wires or passages on land and sea for military war use, shall be sentenced to life imprisonment or not less than two years' imprisonment.

CHAPTER IX

Crimes of Despoilment and Rape

CHAPTER X

Crimes Relating to Prisoners of War

CHAPTER XI

Crimes of Disobedience to Orders

Article 99. - Those who have made a false report, order or information relating to military affairs in wartime or in disturbances, shall be sentenced to not more than seven years' imprisonment with labour or confinement.

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.

EXHIBIT 10 (a) (3)

0225

I hereby certify that the above articles are true and correct excerpts taken from the Japanese Army Criminal Code, which the Chief of the General Affairs Section, 1st Demobilization Bureau, MIYAMA, Yozo certified to have been in effect in the Japanese Army during the War and which were forwarded to Defense Counsel on Guam.

February 5, 1949

Sadamu Sanagi

SANAGI, Sadamu,
Defense Counsel.

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

Eugene F. Clark,
Lieutenant (jg), USN.,
Interpreter.

0226

陸軍軍法会議法（大正十年四月二十三日法律第八十五号）

改正：昭和二六・一法律八、昭和二七・七法律七八、昭和二八・一法律三八
昭和二〇・一法律四

第一編　軍法会議

第一章　軍法会議ノ裁判権

第一條　軍法会議ハ左ニ記載シタル者ニ対シ其ノ犯罪ニ付裁判権ヲ有ス

一、陸軍刑法第八條第一号乃至第三号、第四号後段第五号及第九條ニ記載シタルモノ

二、陸軍用船、船員

三、前二号ニ記載シタル者ヲ除ク外陸軍ノ部隊ニ属シ又ハ従ヲ者

四、俘虜

前項第二号及第三号ニ記載シタル者ト雖特ニ除外スヘキ者アルトキハ命令ヲ以テ之ヲ定ム

第六條　軍法会議ハ我将卒交ニ際シ軍ノ安寧ヲ保持スル為必要アルトキハ第一條ニ記載シタル以外ノ者ニ対シ犯罪ニ付裁判権ヲ行フコトヲ得

第二章　軍法会議ノ管轄権

第十條　高等軍法会議ハ陸軍大臣ヲ以テ長官トス

軍軍法会議ハ軍司令官ヲ以テ長官トス

師団軍法会議ハ師団長ヲ以テ長官トス

特設軍法会議ハ軍法会議ヲ設置シタル部隊又ハ地域ノ司令官ヲ以テ長官トス

0228

第六章　検察機関

第六十六條　長官ハ所管軍法会議、管轄ニ属スル事件ニ付公訴ヲ指揮ス　長官ハ所管軍法会議、管轄ニ属スル事件、之ト牽連スル事件及所管部隊内ノ犯罪事件ニ付捜査ヲ指揮ス

第七十三條　憲兵ノ将校、准士官又ハ下士官ハ陸軍司法警察官トシテ捜査ヲ為ス陸軍大臣ハ所管、大臣ト協議シテ警察官ヨリ陸軍司法警察官トシテ勤務スル者ヲ指定スルコトヲ得

第七十四條　左ニ記載シタル部隊ノ長ハ其ノ部下ニ属スル者及監督ヲ受クル者ノ犯罪ニ付陸軍司法警察官ノ職務ヲ行フ

一、中隊以上ノ軍隊及之ニ準スヘキ軍隊

二、官衙、学校、特務機関及戦時ニ於ケル特設機関

臨時集成部隊ノ長ハ其ノ部隊本属部隊、所在地ト遠隔ノ地ニ在ル場合ニ限リ前項ノ規定ニ準シ陸軍司法警察官ノ職務ヲ行フ

第七十五條　前條ニ記載シタル部隊ノ長ハ部下、将校ニ委任シテ特定ノ事件ニ付陸軍司法警察官ノ職務ヲ行ハシムルコトヲ得

第七十六條　陸軍司法警察官又ハ陸軍司法警察官ノ職務ヲ行フ者ハ捜査ヲ為スニ付上官ノ命令ニ従フ

上記、條文、其一但書ニ規定ス
ル戰時國際法中、日本國ニ關シ
適用ニ關シテハ、之ヲ變更シ又
ハ廢止スル旨ノ通告ヲ爲シタル
場合ヲ除クノ外、本條約ノ規定
ニ從ヒ、之ヲ適用スルモノトス
昭和二十四年三月五日
署名者
ABC DEF
GHI

Exhibit 11 (3)

Army Court-Martial Law

Law No. 85, April 25, 1921.
Revised in 1941 by Law No. 8; in 1942 by Law No. 78; in 1943 by Law No. 38; in 1945 by Law No. 4.

Book I Court-Martial

Chapter 1 The jurisdiction of a Court-Martial.

Article 1.- A court-martial has jurisdiction over the persons mentioned below for their offenses.

1. The persons specified in the 1st, the 2nd, the 3rd, the latter part of the 4th, and the 5th items of Article 8, and Article 9 of Army Criminal Law.

2. The crew of a ship chartered by the army.

3. A person attached to or serving the army forces besides those mentioned in the preceding two items.

4. A prisoner of war.

In case there is any person specifically to be excluded from those mentioned in the 2nd and the 3rd items of the preceding paragraph, they shall be determined by order.

Article 6.- When it is necessary for the maintenance of peace and order of the army in time of war or emergency, a court-martial may exercise jurisdiction over those other than mentioned in Article 1 for their offenses.

Chapter 2 The jurisdiction of Courts-martial.

Article 10.- In the Supreme Court-Martial, the War Minister shall be the director.

In the Army Court-Martial, the commander of the army shall be the director.

In the Army Division Court-Martial, the division commander shall be the director.

In a Special Court-Martial, the commander of the unit or the area in which the court-martial is established shall be the director.

Chapter 6 The Prosecutors.

Article 86.- The director shall direct the prosecution of cases under the jurisdiction of the court-martial under his command.

The director shall direct the inquiry of cases under the jurisdiction of the court-martial under his command, cases connected therewith, and criminal cases committed within the unit under his command.

Exhibit 11 (a) (1)

Article 73.- An Officer, warrant officer, or noncommissioned officer of the Military Police shall conduct the inquiry as Military Judicial Police.

The War Minister may assign a police official to serve as Military Judicial Police by mutual consent of the ministers concerned.

Article 74.- The commander of the following units shall exercise the functions of Military Judicial Police for crimes committed by persons subordinated or superintended by him.

1. A company and units higher than a company, and troops corresponding thereto.

2. Government offices, schools, Special Service Organization, and specially established units in war time.

The commander of a temporary organized unit shall exercise the functions of Military Judicial Police in accordance with the provision of the preceding paragraph mutatis mutandis, provided that the locality of the unit is distant from that of the original unit.

Article 75.- The unit commander of the preceding article may charge his subordinate officer with the functions of Military Police in a specific case.

Article 76.- The Military Judicial Police or persons exercising its functions as substitutes shall follow the orders of their senior officers in making inquiry.

I hereby certify that the above articles are true excerpts from the Army Court-martial Law which the chief of General Affairs Section, First Demobilization Bureau, MIYAMA, Yozo certified to have been in effect in the Japanese army during the war and to be delivered to the defense counsel on Guam.

/s/ SANAGI, Sadamu,
Defense Counsel.

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

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

Exhibit 11(a)(2)

陸軍司法警察執務心得（昭一六、八、一陸訓二七）

陸軍司法警察執務心得

第一章　總則

第一條　陸軍司法警察官吏及陸軍司法警察官吏ノ職務ヲ行フ者（以下陸軍司法警察官ト稱ス）犯罪ノ捜査其ノ他ノ職務ヲ行フニハ陸軍刑法陸軍懲罰令ニ依ル外本令ノ遵守スベシ

第二條　陸軍司法警察官ノ職務ヲ行フ部隊長ハ其ノ部下ニ屬スル者又ハ監督ヲ受ケ若ハ其ノ他部隊又ハ陸軍以外ニ關係アルモノノ犯罪事実捜査困難ナルモノハ之ガ捜査ヲ陸軍司法警察官ニ委スルヲ例トス

第三條　陸軍司法警察官ノ職務ヲ行フニハ迅速ニシテ機宜ヲ失ハザル周密ニシテ遺漏ナカラシムルヲ期スベシ

第四條　陸軍司法警察官ノ職務ヲ行フニハ被疑者ニシテ逮捕ヲ厳守スベキ者ノ捜査、陣地、艦船、航空機、人心ノ動揺ヲ阻止シ又ハ被告人其ノ他ノ者ノ名誉ヲ毀損セザルコトニ注意スベシ

第二章　捜査ノ端緒

第十條　陸軍司法警察官又ハ其ノ職務ヲ行フ者左ノ場合ニ於テ犯罪アリト思料スルトキハ速ニ最寄ノ管轄軍法會議ノ長官ニ報告スベシ

一、刑法第二編、第二章乃至第四章ノ罪

二、陸軍刑法第二編、第一章ノ罪

三、軍機保護法、国防保安法又ハ治安維持法ニ違反スル罪

四、死刑又ハ無期刑ニ該ル罪

五、多数共同シテ犯シタル罪
六、高等官同行過通者、有爵者、従四位、勲三等又ハ功三級以上ノ者ノ禁錮以上ノ刑ニ該ル罪
七、陸軍ノ部隊ニ属シ又ハ従ノ外国武官ノ犯シタル罪
八、軍律会議長官ヨリ特ニ報告ヲ命ゼラレタル罪
前項ノ報告ヲ為スニハ報告書ヲ検察官ニ送付スベシ

第三章　捜査ノ実行

第一節　通則

第二十九條　捜査ヲナスニ当リテハ被告人ニ関シ左ノ事項ヲ明ニスベシ
一、氏名、年齢、所属部隊、役種、官級、本籍、住所又ハ生地
二、性格、経歴、境遇ノ素行
三、犯罪ノ原因、性質、方法、情状、日時、場所、被害ノ状況及ノ犯罪後ノ情況
四、前科ノ有無、前科アルトキハ其ノ罪名、刑名、刑期、金額、裁判ヲナシタル廳名、又ハ其ノ年月日
五、爵位勲功、褒賞、記章、恩給、年金ノ有無、之ヲ有スルトキハ其ノ種類、等級

第三十條　捜査ヲナスニ当リテハ犯罪ノ嫌疑ノ存否ヲ判断スル為メ必要ナル一切ノ事項ヲ明ニシ自白ヲナシタルトキト雖モ之ニヨリテハ被告人ノ利益ヲ為スベキ事項ヲモ明ニスベシ

第三十一條　被告人ノ犯罪事実ヲ取調ベタル後、適当ナル證據ノ有無ヲ取調ベタルトキハ直ニ捜査ヲ終了スベシ

第二節　通常捜査

第三十二條　通常捜査ハ左ノ事項ニ付之ヲ為スベシ
一、犯罪ノ嫌疑ノ有無
二、犯罪ノ原因、動機、方法、情状、日時、場所、被害ノ状況
三、犯罪後ノ情況
四、前科ノ有無
五、爵位勲功、褒賞、記章、恩給、年金ノ有無

第三十三條　捜査ハ被告人ノ住所、居所又ハ其ノ犯罪ノ行ハレタル場所ニ於テ之ヲ為スベシ

第三十四條　被告人ノ住所、居所又ハ其ノ犯罪ノ行ハレタル場所ニ於テ捜査ヲ為スニ付テハ警察官又ハ其ノ職務ヲ行フ者ニ捜査ノ執行ヲ嘱託スルトキハ速ニ最寄ノ軍司法警察官ニ捜査ノ処理ヲ為サシムベシ。但シ即決ヲ要スル場合ニ於テハ自ラ捜査ヲ為シ又ハ検察官ニ事件ヲ送致スベシ。但シ即

Exhibit 12 (2)

来スベキ事件ニシテ告訴、告発若クハ自首ニ係ルモノハコノ限リニ非ズ

被告事件軍法会議ノ裁判権ニ属セザルコト明ナルニ至リタルトキハ事件ヲ相当官署ニ送付スベシ但刑事訴訟法第一條又ハ第三條ニ規定スル事件ニシテ検察官ノ指示ヲ請フベキモノハ此ノ限リニ在ラズ

第六十六條　捜査ノ報告書ニハ左ノ事項ヲ記載スベシ

一、第二十九條ニ掲グル事項

二、被告人ニ利益ト為ルベキ事情アルトキハ其ノ事項

三、其ノ他参考トナルベキ事項

四、事件処理ニ関スル意見

報告書ニハ被告人ノ身上明細等ノ書、

其他身上調査ニ関スル書面ヲ添付スベシ

報告書ニハ書類又ハ證拠物ノ目録ヲ添付スベシ

上記ノ條文ハ第一復員局厚生部長兼第一復員局庶務課長美山要蔵ガ戦時中日本陸軍ニ使用サレタモノデアリテ、ガム綴ノ復員ニ配布シタモノデアリテ陸軍成規類聚第六巻中ヨリノ正確ナル抜萃ニ相違ナイコトヲ証明スル

昭和二十四年二月五日

弁護人　北雄毅

Exhibit 12 (3)

INSTRUCTIONS RELATIVE TO THE DUTIES OF ARMY JUDICIAL POLICE.

(War Ministry Directive No. 27 of
4 August, 1941.)

Chapter I General Provisions.

Article 1. The Army Judicial Police Officers and persons acting in the capacity of Army Judicial Police Officers (hereafter termed "persons with duties of Army Judicial Police Officer") in investigating crimes and in the discharge of their other duties shall, in addition to observing these instructions, conform to the Army Court Martial Law and other pertinent orders and regulations.

Article 2. It is a rule for the commanding officer of a unit, acting in the capacity of an Army Judicial Police Officer, to leave the following matters to the Army Judicial Police Officer. In short, inspection of locality of criminal offenses committed by subordinates of the commanding officer or by persons under his supervision, and investigation of criminal evidence involving personnel of other units or non-military personnel when such investigation is difficult to conduct and complicated.

Article 5. In the discharge of his duties, the Army Judicial Police Officer must act expeditiously and timely, with thoroughness and attention to detail.

Article 6. In the discharge of his duties, the Army Judicial Police Officer must maintain close security of secrets, eliminate and prevent the spreading of lawlessness and creation of public tension and insecurity. The Army Judicial Police Officer is cautioned to avoid the defamation of name and honor of an accused and others.

Chapter II Commencement of Investigation

Article 10. The Army Judicial Police Officer, or persons acting in that capacity, shall advise the Director of the Court Martial of the nearest jurisdiction whenever he suspects the commission of any of the offenses listed below:

1. Crimes of Chapter I through Chapter IV, Part II of the Criminal Code.
2. Crimes of Chapter I, Part II of the Army Criminal Code.
3. Crimes in violation of the Military Secrets Security Law and the Law of National Defense and Security and Maintenance of Peace and Order.
4. Crimes for which the punishment of death or life imprisonment may be imposed.
5. Crimes committed in concert.
6. Crimes for which the punishment of confinement or heavier may be imposed on persons of the following rank and higher. Namely, higher officials (kotokan), or persons holding a rank status equivalent to a higher official (kotokan), titled persons, persons of fourth court rank junior grade, or persons with Order of Merit Third Class.
7. Crimes committed by foreign attaches serving with or attached to an army unit.
8. Crimes for which the Director of a Court Martial may specifically order a report made.

In making such reports, they must be written and submitted to the judge advocate.

Chapter III Conducting of Investigation

Section 1. General Rules.

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Article 29. In conducting an investigation the following matters regarding the accused must be determined.

1. Name, age, unit attached, specialty, rank, permanent domicile, present address, and place of birth.
2. Character, record, environment, conduct.
3. Reason for crime, its nature, method, the extenuating circumstances, date, place, nature of damage, situation subsequent to the commission of the crime.
4. Whether or not the accused had previous convictions, and if so for what crimes he was charged at the time, together with the sentence (term of penal servitude, fine, etc.,), the name of the office which conducted the trial and the date of the trial.
5. Whether or not the accused possessed title, court rank, Order of Merit, Class of Merit, award, medal, pension, annuity, and, if so, the class and order.

Article 30. In conducting an investigation, foregone conclusions must be avoided and the investigator must endeavor to clarify conditions which might be favorable to the accused.

Article 31. Even in the event of a confession of a crime by the accused, caution shall be exercised that investigation be held to ascertain the existence of appropriate facts to substantiate (such confession).

Section 2. Usual Investigation

Section 3. Investigation by Force

CHAPTER IV Execution of Warrants

CHAPTER V Disposal of Incidents under Investigation

Article 64. The Army Judicial Police Officer, or persons acting in that capacity shall in the event of an investigation of an accused, immediately report (the results of) such investigation to the Director or refer the case to the judge advocate, except such incidents which do not concern the indictment charges, or confessions and cases which require immediate action. If it becomes apparent that the case against the accused is without the jurisdiction of the Court Martial, it should be forwarded to the Court Martial having jurisdiction. Should the case be applicable to the provisions set forth in Articles 1 or 3 or the Law Relating to the Preliminary Discussions for Criminal Cases, it should await the decision of the judge advocate.

Article 66. The report on investigations must incorporate such information as is listed in the following:

1. As provided for in Article 29.
2. Such circumstances as are favorable to the accused.
3. Other matters which might be relevant to the case.
4. Opinion regarding action which should be taken in the case.

A copy of the service record and a detailed account of the personal life of the accused, and other documents relating to the inquiry into his personal life and circumstances should be attached to the report.

An index of the documents and evidence should be appended to the report.

EXHIBIT 12 (a) (2)

0236

I hereby certify that the above articles are true and correct excerpts taken from the Japanese Army Regulations, Vol. VI, which the Chief of the General Affairs Section, 1st Demobilization Bureau, MIYAMA, Yoso certified to have been in effect in the Japanese Army during the War and which he forwarded to Defense Counsel on Guam.

February 5, 1949

Sadamu Sanagi

SANAGI, Sadamu,
Defense Counsel.

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

Eugene F. Clark,
Lieutenant (jg), USN.,
Interpreter.

Exhibit 12 (a) (3)

0237

INTERROGATORIES

UNITED STATES

v.

TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

January 21, 1949

The following interrogatories are requested to be propounded to OGAWA, Setsuichi, now residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Naval Forces, Marianas (by precept dated 19 January 1949), agreed upon by both parties in advance of the assembling of the Commission and subject to objections and exceptions, in accordance with the authority of paragraph 5 of said precept and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. AG 000.5 (5 December 1945)LS, Subject "Regulations Governing the Trials of Accused War Criminals", especially Section 5 d (1) (c) thereof, which authorises the use in evidence of affidavits, depositions, or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer be assigned to take, or cause to be taken the deposition of the said witness thereon:

First Interrogatory:	State your name and present address.
Second Interrogatory:	Did you ever have duties on Rota Island, Marianas Islands? If so, state what your duties were and during what period.
Third Interrogatory:	What was the name of the civil government office which handled administrative, judicial and police affairs around June or July 1944 on Rota Island? What was its relation with the higher government office?
Fourth Interrogatory:	Was there any command relationship between the civil government on Rota Island and the commanding officer of the armed forces of Japan which was stationed there? Will you tell about such relationship from December 8, 1941 until July 1944?
Fifth Interrogatory:	Was the commanding officer of the armed forces of Japan on Rota Island given administrative, judicial and police authority over the island before July 1944?
Sixth Interrogatory:	If answer to fifth interrogatory is yes, tell when and on what grounds such authority was vested in the commanding officer.

Exhibit 13(1)

0238

Seventh Interrogatory:	Please explain clearly about the laws or regulations concerning punishment of criminals and military security which were effective on Rota Island around June or July 1944.
Eighth Interrogatory:	The laws or regulations referred to in the seventh interrogatory, did they apply to all the Japanese and natives residing on Rota Island? If their application to the Japanese and the natives were different, please explain the difference.
Ninth Interrogatory:	Explain the trial procedure and the organization of the trial which were applied to Rota natives who committed felonies.
Tenth Interrogatory:	Was it actually possible to perform the trial procedure mentioned in the ninth interrogatory around the end of June or the beginning of July 1944? If it was not possible, how were they dealt with?
Eleventh Interrogatory:	Was Martial Law enforced on Rota Island around the end of June or the beginning of July 1944?
Twelfth Interrogatory:	During your tour of duty were there any missionaries on Rota Island? If so, how many?
Thirteenth Interrogatory:	State the names, the nationality of the missionaries, and what happened to them.
Fourteenth Interrogatory:	Were there any servants of the missionaries mentioned in the twelfth and thirteenth interrogatories? If so, state their names, nationality, occupation, and what happened to them.
Fifteenth Interrogatory:	Do you know a native called Miguel Timoner? If so, state his nationality, occupation and what happened to him.
Sixteenth Interrogatory:	Persons mentioned in Interrogatories 12 - 15, inclusive, were they ever confined during the period from the beginning of the war, December 1941 until their death?
Seventeenth Interrogatory:	Were the official records of the nationality and status of the persons named in Interrogatories 12 - 15 inclusive kept at the Rota Branch office of the South Seas Government or other offices? Where are these records now? If you know please state their whereabouts.

Exhibit 13(2)

0239

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, this 21st day of January 1949.

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

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

Exhibit 13(3)

0240

Deposition

Setsuichi Ogawa, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: My name is Ogawa, Setsuichi. My address is Yamaguchi-ken, Hofu-shi, Tateichi, 414.

To the second interrogatory: From November, 1939, to September, 1945, I was Secretary of General Affairs, Rota Branch Office of the Northern Branch of the South Sea Islands Government. From September 2, 1945, to February 3, 1946, I was in charge of civil affairs under the American Military Government.

To the third interrogatory: The name of the civil government office was Rota Branch Office of the Northern Branch of the South Sea Islands Government. The Rota Branch Office came directly under the Northern Branch of the South Sea Islands Government Office.

To the fourth interrogatory: Civil affairs were handled at the Government Office (Rota Branch Office) until June 12, 1944. Operations in the Marianas began on June 12, and all the government office installations were destroyed. Documents also were burned up and lost. The civilians abandoned everything and fled to the mountains. Thereupon, a group of us from the government office, together with the directors of the Kohatsu Company, set up a headquarters for the refugees and worked on housing and food for the refugees. Consequently, our function as a government office was lost, and we had to follow the directions of the military.

To the fifth interrogatory: As communications were stopped, I don't know; but in every way we acted according to the orders of the military forces which were there.

To the sixth interrogatory: As communications were impossible, I don't know. However, as Rota Island became a battlefield after June 12, the situation was such that in order to protect the lives of the five thousand civilians, there was nothing else to do but follow the instructions and orders of the military.

To the seventh interrogatory: As that business was not part of my duties, I don't know about it.

To the eighth interrogatory: Same as above.

To the ninth interrogatory: Same as above.

To the tenth interrogatory: Same as above.

To the eleventh interrogatory: As communications were impossible, I don't know. However, actually, as all of Rota Island became a battlefield, the result was the same as if martial law were in effect.

Exhibit 13(4)

0241

To the twelfth interrogatory: There was one missionary.

To the thirteenth interrogatory: I don't know his name or nationality. At the time I arrived he was healthy, but after that he became sick and went to Saipan and Japan for treatment. I heard that he died in Japan.

To the fourteenth interrogatory: There was a servant. I don't know his name or nationality. I heard from the natives that during the absence of the missionary, he was doing all the work of the church. I do not know the cause of his death or the date he died.

To the fifteenth interrogatory: No, I don't know him.

To the sixteenth interrogatory: I don't believe they were ever confined before June 12, 1944. As it wasn't my duty, I don't know what happened after that.

To the seventeenth interrogatory: There may have been official records, but even if there were, they were probably burned.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Setsuichi Ogawa, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one and one-half (1½) pages, and that the foregoing testimony is true to the best of my knowledge and belief.

Setsuichi Ogawa.

Subscribed and sworn to before me this 31st day of January, 1949.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

I, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, being thoroughly conversant with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one and one-half (1½) pages to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Exhibit 13(5)

0242

CERTIFICATE

We, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the 29th day of January, 1949, Setsuichi Ogawa personally appeared before us and according to Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Setsuichi Ogawa again appeared before us on the 31st day of January, 1949, and had read to him the same by Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve; and the said Setsuichi Ogawa affixed his signature thereto in our presence.

Frederick F. Tremayne

Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Joseph Kase

Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Exhibit 13(6)

0243

昭和二十四年一月二十八日

左ノ証人書ヲ東京明治ビル八二〇弁室ニ於テ受ケマス

小川節一

合衆國
対
徳永明、高橋義雄、及十山茂雄

訊問事項

左記訊問事項マリアナ方面海軍部隊司令官により召喚せられる（一九四八年七月二十四日附召喚命令書及其の修正による）軍法委員会の認可に基き、被事側に反対訊問事項を提出する為の相當ふる機會を与へられた上、異議又は抗告に服し、前記召喚命令書中六項の権限及其の召喚命令書に含まれてゐる権限に基き、更に口供書、宣誓口供書及其他の署名せられた陳述書を証據に用ゐることを認可してゐる連合軍最高司令官發布の証據法規（即ちスキャップ書翰AG〇〇〇・五号（一九四五年一二月五日附）LS記「戦争犯罪人被告の裁判に関する規定」特に同規定第五節(一)(D)に從ひ現在東京法務部に於ける裁判中の前記訴訟に於ける午護側証人現在中の小川節一

に提出せられることを要求ヒられてゐる。

此等の訊問事項は、適切ふる士官が上前記証人の宣誓口供書をとり又はとらしめる為に指定せられ人ことの要求と共に、證人で連合軍最高司令官東京法務部に提出せられる。

第一問　貴方の氏名現住所を述べて下さい。

第二問　貴方は當てはまりアナ諸島ロタ島に於て動務したことがありますか。若しあれば職名及職務期間を述べて下さい。

第三問　昭和十九年六、七月頃ロタ島に於て民政司法及裁判事務を取扱ふ官庁は何と言ふ官庁でしたか。其の上級官庁との指揮系統を述べて下さい。

1-1

Exhibit 13(a)(1)

カナ問 昭和十六年六月頃の日本人の移住状況は如何。

ア、昭和十六年六月頃の日本人の移住状況は如何。

答 昭和十六年六月頃の日本人の移住状況は如何。

Exhibit 13(a)(3)

ジョセフ・ハーバー
ニューヨーク州南部地区連邦地
裁判事

ラッセル・ヒトベンダー
ニューヨーク州南部地区連邦地
裁判事

ラッセル・ヒトベンダー判事殿

ジョセフ・ハーバー判事殿

1977年1月1日付

OGAWA

昭和二十四年一月三十八日
東京明治ビル八二〇 鹿堂ニテ記ス

第一問　山口縣防府市立市四一四　小川節一

第二問　昭和十年十二月ヨリ　南洋艦北部支艦
昭和二十年　九月マデ　ロタ出張所　総務課長
昭和二十年九月二日ヨリ　米國軍政府　民政部長
昭和二十二年二月三日マデ

第三問　南洋艦北部支艦ロタ出張所

南洋艦ー南洋艦北部支艦ー今ロタ出張所

第四問　昭和十九年六月十二日マデハ市民ニ對スルコトハ
官廳（ロタ出張所）デヤリマシタ
六月十二日マリアナ作戦ガ初マッテ官廳ノ施設ハ
全部破壊セラレ書類モ燒ケテ無クナリマシタ
ソレテ市民ハ凡テノモノヲ棄テテ山ノ中ニ逃ゲ
マレタ
ソレテ私達官廳ノ一部ノモノト興業會社ノ幹部
ノモノデ避難者ノ本部ヲ設ケテ避難民ノ食糧、住
居等ニ就テノ仕事ヲシテマシタ
從ッテ官廳ノ機能ヲ失ヒ軍ノ指揮ニ從ハザルヲ
得ナイ狀態ニナリマシタ

第五問　交通通信ガ途絶シタタメニ判リマセンデシタガ
私達現在軍ノ命ニ依ッテノ凡テノ行動ヲシマシタ

-12-

Exhibit 13(a)(4)

第六問　無通信不能ノタメヨク　ワカリマセンガ　ロタ島ガ
六月十二日カラ戦場トナッタノデ　五千人ノ市民
ノ生命ヲ保護スル為ニスベテ軍ノ指示命令ニ
従ノ外ナキ状態トナリマシタ
第七問　私ノ担任事務ナイノデ判リマセン
第八問　右ニ同シ
第九問　左ニ同シ
第十問　左ニ同シ
第十一問　交通通信不能ノ為ハッキリ判リマセン
右ニ同シ事実ハロタ島全地ガ戦場トナッタ為ニ戦署令
施行ニ等シイ結果トナリマシタ
第十二問　宣教師一名オリマシタ　知リマセン
第十三問　氏名国籍ハワカリマセン
私ガ着任シタトキハ元気デアリマシタガ其後病気
ニナッテ　サイパント　日本ヘ療養ニ行キマシタ
ソシテ日本デ死ンダト聞キマシタ
第十四問　偉人ガオリマシタ　氏名・国籍ハワカリマセン
彼ハ宣教師一ト在中ハ教会ノ一切ノ仕事ヲシテ
オリマシタト島民カラ聞キマシタ
昭和十九年一ヶ月カ八月　彼ノ死ンダト聞キマシタ
其ノ死亡ノ原因ト其ノ月日ハ知リマセン
第十五問　知リマセン
第十六問　昭和十九年一六月十二日マデハ監禁シタコトハ
ナイト思ヒマス　私ノ係ハ其ノ後ハ係タナイカラ
知リマセン

Exhibit 13(a)(5)

OGAWA

0 2 8 4 5

OGAWA

第十四　宣誓供述書ニアリマスヨウニ
アノ様ナ事ヲシマシタデショウ

尚ホ述ベタ外、記憶ニ残ル範囲ニ於テ事実相違ナキ
コトヲ誓ヒマス

昭和二十四年一月二十八日

小川誠一

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

Subscribed and sworn to before me this 28th day of January, 1949.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.
Interpreter.
Commander Naval Forces Marianas
Liaison Officer to Legal Section,
GHQ, SCAP, Tokyo, Japan.

Tokyo, Japan,
January 28, 1949.

Exhibit 13(a)(6)

0249

INTERROGATORIES

UNITED STATES
v.
TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

January 21, 1949.

The following interrogatories are requested to be propounded to KAWASHIMA, Katsutaro, now residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Naval Forces, Marianas (by precept dated 19 January 1949), agreed upon by both parties in advance of the assembling of the Commission and subject to objections and exceptions, in accordance with the authority of paragraph 5 of said precept and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. AG 000.5 (5 December 1945)LS, Subject "Regulations Governing the Trials of Accused War Criminals", especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions, or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer be assigned to take, or cause to be taken the deposition of the said witness thereon:

First Interrogatory:	State your name and present address.
Second Interrogatory:	Have you ever lived on Rota Island, Marianas Islands?
Third Interrogatory:	If the answer to the second interrogatory is yes, please state the term of your residence and your occupation.
Fourth Interrogatory:	During the time you were on Rota Island, did you know if there was a missionary (or missionaries) living on Rota Island?
Fifth Interrogatory:	If the answer to the fourth interrogatory is yes, How many were there?
Sixth Interrogatory:	Please state the nationality or nationalities and names of these missionaries.
Seventh Interrogatory:	State the basis by which you came to know of their nationalities.
Eighth Interrogatory:	State what happened to these missionaries if you know.
Ninth Interrogatory:	Do you know if there was any person living with the missionaries?
Tenth Interrogatory:	If the answer to the ninth interrogatory is yes, state the name, nationality, and occupation of such person or persons.

Exhibit 14(1)

0250

Eleventh Interrogatory: State the basis by which you came to know of his nationality and his profession.

Twelfth Interrogatory: If you know what happened to the persons mentioned in the eighth interrogatory, please state.

Thirteenth Interrogatory: Did you know a person called Miguel Timoner?

Fourteenth Interrogatory: If the answer to the thirteenth interrogatory is yes, please state his nationality, occupation, and what happened to him.

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, this 21st day of January 1949.

Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the accused.

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

0251

Deposition

Katsutaro Kawashima, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: My name is Kawashima, Katsutaro. My address is Ishikawa-ken, Hoshi-gun, Monzen-machi, Aza-Tatchi, 2-7 banchi.

To the second interrogatory: Yes, I have.

To the third interrogatory: I was on Rota Island from April 14, 1938, until about May 20, 1944. At first I obtained employment as a primary school teacher. From April, 1939, I was the principal of the public school.

To the fourth interrogatory: There was a missionary on Rota.

To the fifth interrogatory: There was one.

To the sixth interrogatory: His nationality was Spanish. I believe he was called something like Juan Ponce, but I am not sure.

To the seventh interrogatory: I heard this from the local residents (natives), but I have no exact basis.

To the eighth interrogatory: The missionary seemed to be bothered by disease in his legs, and around the end of 1943 he died either from old age or because of his legs. I am not sure of the date on which he died.

To the ninth interrogatory: There was one servant living with the above mentioned missionary.

To the tenth interrogatory: I believe his nationality was Spanish, but I am not sure what his occupation was.

To the eleventh interrogatory: It was conversation heard from the local residents (natives). However, I have no exact basis.

To the twelfth interrogatory: I do not know anything else besides what I answered to the eighth interrogatory.

To the thirteenth interrogatory: I do not know him, nor did I ever hear his name.

To the fourteenth interrogatory: As I do not know him, I do not know.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Katsutaro Kawashima, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one (1) page, and that the foregoing testimony is true to the best of my knowledge and belief.

川島勝太郎
Katsutaro Kawashima.

Subscribed and sworn to before me this
31st day of January, 1949:

Frederick F. Tremayne
Frederick F. Tremayne, Lieutenant (junior grade), U. S. Naval Reserve.

Exhibit 14(3)

I, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, being thoroughly conversant with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one (1) page to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

C E R T I F I C A T E

We, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the 31st day of January 1949, Katsutaro Kawashima personally appeared before us and according to Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Katsutaro Kawashima had read to him the same by Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve; and the said Katsutaro Kawashima affixed his signature thereto in our presence.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Joseph Kase, jr.
Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Exhibit 14(4)

0253

KAWASHIMA

昭和二十四年一月三十一日

合衆国　対　徳永明、高橋義猪、及十山英雄

左ノ訴訟事項ニ付弁護人東京都千代田区有楽町一丁目一番地明治ビル八二〇室三川島勝太郎ヲ選任ス

訴訟事項

左記訴訟事項マリアナ方面海軍部隊司令官により召集せられたる（一九四八年七月二十四日附召集命令書及其の修正による）軍法委員会の認可に基き、検事側に反対訊問事項を提出する為の相当ある機会を与へられた上、異議又は抗告に服し、前記召集命令書中六項の権限及其の召集命令書に含まれてゐる権限の基き、更に口供書、宣誓口供書及其他の署名せられた陳述書を証拠に用ゐることを認可してみる連合軍最高司令官発布の証拠法規即ちスキップ書翰AG000.5号（一九四五年一二月五日附）LS記「戦争犯罪人被告の裁判に関する規定」特に同規定第五節(一)(10)に従ひ、現在東京法務部に提出せられることを要求ヒ

に提出せられてゐる。

此等の訊問事項は、適切ある士官が前記証人の宣誓口供書をとり又はとらしめる為に指定せられ人ことの要求と共に、謹んで連合軍最高司令官東京法務部に提出せられる。

第一問　貴方の氏名及現住所を述べて下さい。

第二問　貴方は当てマリアナ諸島ロタ島に住んでゐたことがありますか。

第三問　若し第二問に対する答がはいふならば貴方の居住の期間及職業を述べて下さい。

Exhibit 17(a)(1)

025 54

Exhibit 14(a)(2)

(日露戦争ノ開戦ヲ報ズル
詔勅ノ謄本ニ
署名セル者ノ氏名)

ロシア ヒ ヤーシ
ロシア国ニ対スル宣戦ノ詔勅ニ署名シタル者ノ氏名ハ左ノ如シ。

枢密院議長 兼 従一位勲一等 公爵 伊藤博文

従一位勲一等 公爵 山縣有朋

正二位勲一等 公爵 黒田清隆

正二位勲一等 公爵 松方正義

正二位勲一等 侯爵 西郷従道

正二位勲一等 侯爵 大山巌

正二位勲一等 侯爵 井上馨

正二位勲一等 侯爵 大隈重信

正二位勲一等 伯爵 山田顯義

正二位勲一等 伯爵 大鳥圭介

正二位勲一等 伯爵 佐野常民

正二位勲一等 伯爵 樺山資紀

正二位勲一等 伯爵 西鄕従徳

正二位勲一等 伯爵 松方正作

正二位勲一等 伯爵 土方久元

正二位勲一等 伯爵 渡辺国武

正二位勲一等 伯爵 清浦奎吾

正二位勲一等 伯爵 芳川顯正

正二位勲一等 伯爵 曾禰荒助

正二位勲一等 伯爵 金子堅太郎

正二位勲一等 伯爵 田中光顯

正二位勲一等 伯爵 奥保鞏

正二位勲一等 伯爵 児玉源太郎

正二位勲一等 伯爵 大島義昌

正二位勲一等 伯爵 桂太郎

正二位勲一等 伯爵 寺内正毅

正二位勲一等 伯爵 山本権兵衛

正二位勲一等 伯爵 斎藤実

正二位勲一等 伯爵 仙石貢

正二位勲一等 伯爵 一木喜徳郎

正二位勲一等 伯爵 牧野伸顯

正二位勲一等 伯爵 松井慶四郎

正二位勲一等 伯爵 石井菊次郎

正二位勲一等 伯爵 内田康哉

正二位勲一等 伯爵 後藤新平

正二位勲一等 伯爵 平田東助

正二位勲一等 伯爵 岡市之助

正二位勲一等 伯爵 仲小路廉

正二位勲一等 伯爵 一戸兵衛

正二位勲一等 伯爵 大谷喜久蔵

正二位勲一等 伯爵 阪谷芳郎

正二位勲一等 伯爵 荒川巳次

正二位勲一等 伯爵 河村譲三郎

正二位勲一等 伯爵 秋山好古

正二位勲一等 伯爵 鎮目惣治

正二位勲一等 伯爵 大浦兼武

正二位勲一等 伯爵 松浦厚

正二位勲一等 伯爵 岡野敬次郎

正二位勲一等 伯爵 水野錬太郎

正二位勲一等 伯爵 荒井賢太郎

正二位勲一等 伯爵 一宮房治郎

正二位勲一等 伯爵 赤池濃

正二位勲一等 伯爵 大木遠吉

正二位勲一等 伯爵 大木喬任

Exhibit 14(a)(3)

Deposition

Katsutaro Kawashima, the withess above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and write for full answers to the foregoing interrogatories, as follows:

Exhibit 14(a)(4)

0257

KAWASHIMA

昭和二十四年一月三十日
東京 明治ビル八二〇 弁護士ニテ記ス

第一問について　川島勝太郎
石川縣鳳至郡門前町字舘ニテ番地

第二問について
ありません

第三問について　昭和十四年四月十四日より
昭和十九年五月二十日頃まで
最初 國民学校訓導にて就職
昭和十五年四月より公学校長に
かわりました
ロタ島に宮教師に居た

第四問について　一人居た

第五問について　國籍はスペイン
氏名 ワンポンスとめ言ひました
と思いますが はっきりして居ません

第六問について　昭和十五年四月より国民学校訓導にて就職
最初 國民学校訓導にて就職
昭和十九年五月二十日頃まで
ロタ島に宮教師に居た

第七問について　現住民（島民）より聞いたのです
かはっきりした根據はありません
宮教師は神の病気のため困って
居た様ですが老衰と病気のためです
か昭和十九年終りころ死亡しました
死亡の日は はっきりして居りません

第八問について　前記の宮教師と一しよに召使の男一人
居ました

第九問について　國籍 スペイン人と思ひますが職業
はっきりして居ません

第十問について　現住民（島民）に聞いた話ではっき
りした根據がありません

第十一問について　八問のほかに別に知りません

Exhibit 14(a)(5)

0258

KAWASHIMA

第十三回について　聞いたこともなく、知りません

第十四回について　知ることがありません

右記録は事実に相違ありません

昭和二十四年一月三十一日

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

Subscribed and sworn to before me this 31st day of January, 1949:

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.
Interpreter.
Commander Naval Forces Marianas
Liaison Officer to Legal Section,
GHQ, SCAP, Tokyo, Japan.

Tokyo, Japan.
January 31, 1949.

Exhibit 14(a)(6)

0259

INTERROGATORIES

UNITED STATES

v.

TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

January 21, 1949.

The following interrogatories are requested to be propounded to KAWABATA, Masayoshi, now residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Naval Forces, Marianas (by precept dated 19 January 1949), agreed upon by both parties in advance of the assembling of the Commission and subject to objections and exceptions, in accordance with the authority of paragraph 5 of said precept and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. AG 000.5 (5 December 1945)LS, Subject "Regulations Governing the Trials of Accused War Criminals", especially Section 5d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions, or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer be assigned to take, or cause to be taken the deposition of the said witness thereon:

First Interrogatory:	State your name and present address.
Second Interrogatory:	Did you ever serve in the former Imperial Japanese Army?
Third Interrogatory:	During your service in the Imperial Japanese Army were you ever stationed on Rota Island, Marianas Islands?
Fourth Interrogatory:	If the answer to the third interrogatory is yes, state the period.
Fifth Interrogatory:	State your rank, position while on Rota, and your duties around June of 1944.
Sixth Interrogatory:	Around June of 1944 do you know whether Rota natives were captured for spy activities or for gathering military secrets and exposing them?
Seventh Interrogatory:	If the answer to the sixth interrogatory is yes, how did you come to know of this?
Eighth Interrogatory:	State what you know regarding these captured natives, their names, their attire, their description, and, if you know, their profession or work.
Ninth Interrogatory:	Who captured these natives or this native and state, if you know, who investigated them.

Exhibit 15(1)

0260

Tenth Interrogatory: Did you witness this investigation mentioned in the ninth interrogatory?

Eleventh Interrogatory: State what you know regarding matters which came to light as a result of the investigation concerning spy activities and gathering of military secrets committed by these natives.

Twelfth Interrogatory: As a result of the investigation, were these natives removed to some place?

Thirteenth Interrogatory: If the answer to the twelfth interrogatory is yes, state, if you know, where they were taken and by whom.

Fourteenth Interrogatory: State briefly the battle conditions on Rota Island which existed during the occurrence of the above-mentioned spy incident in July, 1944.

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam Marianas Islands, this 21st day of January, 1949.

Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the accused.

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

Exhibit 15(2)

02b 1

Deposition

Masayoshi Kawabata, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: My name is Kawabata, Masayoshi. My address is Tokyo-to, Suginami-ku, Narimune, 3 chome, 486 banchi.

To the second interrogatory: Yes, I did.

To the third interrogatory: Yes, I was.

To the fourth interrogatory: From March, 1944, until the end of the war, August, 1945.

To the fifth interrogatory: First lieutenant, Imperial Japanese Army. I was stationed at Taruga as head of the engineering unit, and at the end of June, I was transferred to Tatacho.

To the sixth interrogatory: Yes, I do know.

To the seventh interrogatory: While I was stationed in Tatacho, I saw some who were captured.

To the eighth interrogatory: I do not remember the names or the attire of the natives who were captured, but I heard that one with a beard was a priest and that among the others there was a shoemaker.

To the ninth interrogatory: Second Lieutenant Okuyama captured them, and Second Lieutenant Okuyama investigated them at Tatacho.

To the tenth interrogatory: Yes, I witnessed it. At the time, Second Lieutenant Okuyama was interrogating them.

To the eleventh interrogatory: These natives did not talk about anything. They only said, "Please let us go."

To the twelfth interrogatory: Yes, they were moved.

To the thirteenth interrogatory: Second Lieutenant Okuyama took them towards Songsong.

To the fourteenth interrogatory: American ships were often lurking in the nearby waters. At night they came especially close to the coastline and set off signal flares. The air forces neutralized the air. The Rota defense units labored desperately to construct coastal positions and prepare for a battle on the beach. On account of this, the headquarters was set up in Taruga and seven defense units were set up.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Masayoshi Kawabata, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one (1) page, and that the foregoing testimony is true, to the best of my knowledge and belief.

川畑昌義

Masayoshi Kawabata.

Subscribed and sworn to before me this 2nd day of February, 1949:

Frederick F. Tremayne

Frederick F. Tremayne, Lieutenant (junior grade), USNR.

Exhibit 15(3)

0262

I, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, being thoroughly conversant with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one (1) page to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

C E R T I F I C A T E

We, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the 2nd day of February, 1949, Masayoshi Kawabata personally appeared before us and according to Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Masayoshi Kawabata had read to him the same by Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve; and the said Masayoshi Kawabata affixed his signature thereto in our presence.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Joseph Kase
Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Exhibit 15(4)

0263

昭和二十四年一二月二日

左の訊問書を東京明治ビル第八号法廷に於て…
…た、…

合衆国
対
徳永明、高橋義雄、小山茂雄

訊問事項

左記訊問事項マリアナ方面海軍部隊司令官により召集せられた(一九四八年七月二十四日附召集命令書及其の修正による)軍法委員會の認可に基き検事側に反対訊問事項を提出する為の相當ふる機會を与へられた上、異議又は抗告に服し、前記召集命令書中六項の権限及其の召集命令書に含まれてゐる権限に基き、更に口供書、宣誓口供書及其他の署名せられた陳述書を証據に用ゐることを認可してゐる連合軍最高司令官發布の証據法規(即ちスキップ書翰A4000-LS記「戦争犯罪人被告の五号(一九四五年一二月五日附)」)裁判に関する規定」特に同規定中五部(一)(10)に従ひ、現在當法委員會に於て裁判中の前記訴訟に於ける弁護側証人現在居住する川島昌義に提出せられることを要求せられてゐる。

此等の訊問事項は、適切ふる士官が前記証人の宣誓口供書をとり又はとりしめる為に指定せられた人ことの要求と共に、證人で連合軍最高司令官東京法務部に提出せられる。

第一問　貴方の氏名及現住所を述べてください。

第二問　貴方は元日本陸軍に勤務したことがありますか。

第三問　貴方が元日本陸軍に勤務中マリアナ群島ロタ島に勤務したことがありますか。

Exhibit 15(a)(1)

0264

0265

第四向 若し第三向に対する答えが「はい」なら其の期間を述べてください。

第五向 昭和十九年六月頃貴方の階級及任務を述べて下さい。

第六向 昭和十九年六月頃貴方はロタ島民がスパイ行為或軍機蒐集、暴露に依って捕えられたかどうか知って居ましたか。

第七向 若し第六向の答えが「はい」なら貴方はどうして夫れを知るに至ったか。

第八向 捕えられた島民の氏名、服装、容貌につき又若し知って居るなら職業、仕事に就て述べてください。

第九向 此の島民或は是等の島民は誰に依って捕えられたか知って居ればその人の誰に依って取調べられたか知って居ればその人に就て述べて下さい。

第十向 第九向に言及した取調を目撃しましたか。

第十一向 其の取調の結果是等島民のスパイ行為及軍機蒐集に就て判明した事項、自白を貴方の知って居ることを述べてください。

第十二向 取調の結果是等の島民は何処かに移されましたか。

第十三問. 若し第十二問に対する答えが「はい」ならば誰によって何処に移されたかを知って居れば述べて下さい。

第十四問　昭和十九年六月三十日迄のスパイ事件があった当時のロタ島に於ける状況を簡単に述べて下さい。

マリアナ諸島、グアム島、マリアナ海軍部隊司令官司令部に於て昭和二十四年一月二十一日附.

マルチン E. カールソン
合衆国海軍予備中佐
被告の弁護人

ヨセフ・A・リーガン
合衆国海軍少佐
検事

0266

Deposition

Masayoshi Kawabata, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and write for full answers to the foregoing interrogatories, as follows:

0267

昭和二十四年二月二日
私は訊問書を東京明治ビル第八二〇号室に於て讀みました
川畑昌義

昭和二十四年二月二日
私は東京明治ビル第八二〇号室に於て左記解答を書きました
川畑昌義

第一問 東京都杉並区成宗三丁目四八六番地
川畑昌義

第二問 あります

第三問 あります

第四問 昭和十九年三月より昭和二十年八月終戦迄です

第五問 陸軍中尉
工兵隊長としてタルガに駐屯し六月末タ・ムヨに移駐しました

第六問 知って居ます

第七問 タ・ムヨに移駐した時捕へられて居つたのを見ました

Exhibit 15(a)(5)

0268

第八問　捕えられた重光氏の氏名、服装は違ってゐたと聞きましたが他に何か特徴のありました人物でありましたか

第九問　東山少尉が捕えたと、サヨで東山少尉が取調べてゐりました

第十問　巨漢でありました

第十一問　此の重光氏は何も話しませんでした。唯ウーウーと言ってゐりました

第十二問　移されました

第十三問　東山少尉がソコヘ連れて行きました

第十四問　米國の艦船が盛んに近海に出没し夜間は特に海岸近く迄接近し発光信号をなし空軍は上空を制圧し日ソ守備隊は大童に海岸線の構築に従事すると共に水際戦斗を準備しましたことが原因で今御話しました様に皆が配置されました

右記述は私の記憶の範囲に於て事實に相違なきことを宣誓致します

昭和二十四年二月二日

ALLIED OCCUPATION FORCES
TOKYO, JAPAN } SS

Subscribed and sworn to before me this 2nd day of February 1949.

Frederick F. Tremayne

Frederick F. Tremayne,
Lieutenant (junior grade), United States Naval Reserve.
Interpreter.
Commander Naval Forces Marianas Liaison Officer to Legal Section, GHQ, SCAP,
Tokyo, Japan.

Exhibit 15(a)(6)

0269

INTERROGATORIES

UNITED STATES
v.
TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

January 21, 1949

The following interrogatories are requested to be propounded to HITOTSUYA, Masami (member of the code division at the time leading private, Tokunaga Battalion), now residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Naval Forces, Marianas (by precept dated 19 January 1949), agreed upon by both parties in advance of the assembling of the Commission and subject to objections and exceptions, in accordance with the authority of paragraph 5 of said precept and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP Ltr. AG 000.5 (5 December 1945) LS, Subject "Regulations Governing the Trials of Accused War Criminals", especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions, or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer be assigned to take, or cause to be taken the deposition of the said witness thereon:

First Interrogatory: State your name and present address.

Second Interrogatory: Have you ever served with the Japanese armed forces on Rota Island, Marianas Islands? If so, state your term of service there.

Third Interrogatory: State the designation of the unit to which you were attached around June or July of 1944, on Rota Island and the rank and name of the Commanding Officer of that unit.

Fourth Interrogatory: State your rank, duty station, and duties around June or July 1944.

Fifth Interrogatory: Did you around June or July 1944 handle a dispatch concerning the disposal of an espionage incident? If so, from whom was it sent and to whom was it addressed?

Sixth Interrogatory: State in detail concerning the contents of this dispatch to the best of your knowledge.

Seventh Interrogatory: Was there a reply to this dispatch from Division Headquarters? If so, state the substance of the reply.

Eighth Interrogatory: Where is the record of that dispatch presently filed?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, this 21st day of January 1949.

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

JOSEPH T. REGAN,
Lieutenant Commander, U. S. Navy,
Judge Advocate.

Exhibit 16(1)

0270

Deposition

Masami Hitotsuya, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: My name is Hitotsuya, Masami. My address is Tokyo-to, Ota-ku, Kochiya-machi, 2391 banchi, in care of Nakaoka.

To the second interrogatory: I served on Rota Island from March, 1944, until September, 1945.

To the third interrogatory: First Battalion, Tenth Independent Mixed Regiment. The Commanding Officer was Tokunaga, Akira, captain, Imperial Japanese Army.

To the fourth interrogatory: Leading private, Imperial Japanese Army; code clerk at battalion headquarters.

To the fifth interrogatory: I handled one. I sent a dispatch from Battalion Commander Tokunaga to Chief of Staff, Division Headquarters, concerning the question of disposition of persons who had engaged in spy activities.

To the sixth interrogatory: I do not remember the exact words, but I recall it was to the effect: "What disposition should be made of the persons who engaged in spy activities."

To the seventh interrogatory: There was a reply. I do not remember clearly the exact words, but I recall that it was to the effect: "Dispose of them in accordance with the Army Penal Code."

To the eighth interrogatory: They were burned on Rota Island at the end of the war.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Masami Hitotsuya, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one (1) page, and that the foregoing testimony is true, to the best of my knowledge and belief.

一家將美

Masami Hitotsuya.

Subscribed and sworn to before me this 26th day of January, 1949.

Frederick F. Tremayne

Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Exhibit 16(2)

0271

I, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, being thoroughly conversant with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one (1) page to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

C E R T I F I C A T E

We, Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the 26th day of January, 1949, Masami Hitotsuya personally appeared before us and according to Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Masami Hitotsuya had read to him the same by Frederick F. Tremayne, lieutenant (junior grade), United States Naval Reserve; and the said Masami Hitotsuya affixed his signature thereto in our presence.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve.

Joseph Kase, jr.
Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Tokyo, Japan,
January 26, 1949.

Exhibit 16(3)

0272

合衆国
対
徳永明、高橋義雄、小山茂雄、

訊問事項

左記訊問事項マリアナ方面海軍部隊司令官により召集せられたる（一九四八年七月二十四日附召集命令書及其の修正による）軍法委員會の認可に基き、検事側に反対訊問事項を提出する為の相當ふる機會を与へられた上、異議又は抗告ㇵ服し、前記召集命令書中六項の権限及其の召集命令書に含まれてゐる権限ハ基き、更に口供書、宣誓書口供書及其他の署名せられた陳述書を証據に用ゐることを認可してゐる連合軍最高司令官發布の証據法規即ちスキャップ書翰A9000（一九四五年一二月五日附）LS記「戦争犯罪人被告の裁判に関する規定」特ㇵ同規定中五(一)(10)に従ひ現在日本に居住する一家將美（當時上等兵、後ㇵ人現在日本に居住する一家將美（當時上等兵、後ㇵ人現在日本に居住する一家將美（當時上等兵、後ㇵ人

第三問、昭和十九年六、七月頃貴方がロタ島で勤務した部隊の名、部隊長の官氏名を述べてください。

第四問　昭和十九年六、七月頃の貴方の階級、配置及任務を述べてください。

第五問、生島方は昭和十九年六月中旬頃スパイ行為者の処置に関する電報を取扱ったことがありますか。若しあんな其の電報は誰れから誰れに宛て発信し若しくは電報でしたか。

第六問　其の電報の収容に就て記憶して居る事柄をやく詳しく述べて下さい。

第七問　其の電報に対して師団司令部から返事がありましたか、若しあったならば其の返電の収容に就て述べてください。

第八問　其の電報記録は現在どこに保存されて居ますか。

マリアナ諸島グアム島マクナカ回答手記司令部司令官より
て本日昭和二十二年一月二十一日附
マーケン E カールソン
合衆国海軍予備中佐
被告弁護人

ジョセフ A リーガン
合衆国海軍中佐
検事

昭和二十四年一月二十六日　右の質問書を明治ビル八二〇号で讀み上げ

一家・將美

-12-

Exhibit 16(a)(2)

Deposition

Masami Hitotsuya, the witness above named, having been first duly sworn by me, Lieutenant (junior grade) Frederick F. Tremayne, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, Tokyo, Japan, doth depose and write for full answers to the foregoing interrogatories, as follows:

Exhibit 16(a)(3)

0275

HITOTSUYA

昭和二十四年一月二十六日

東京都丸ノ内明治ビル八階八二〇號室
ニ於テ之ヲ記ス。

第一問ニ就テ

東京都大田區北糀谷町二三九一番地中岡方
一家將美

第二問ニ就テ、

昭和十九年三月ヨリ昭和二十年九月迄ロタ島ニ
勤務シマシタ、

第三問ニ就テ、

獨立混成第十聯隊第一大隊
陸軍大尉
德永明

第四問ニ就テ、

陸軍兵長 大隊本部 暗號手.

第五問ニ就テ、

取扱ヒマシタ、スパイ行爲者ノ處置ニ就テ
ノ質問ニ就テ德永大隊長カラ師團司令部
參謀長宛ニ電報ヲ打チマシタ.

Exhibit 26(B)(4)

027

HITOTSUYA

第六問ニ就テ、
語句ヲ正確ニ記憶シテ居リマセンガ、「スパイ行為者デアッタ事ヲ知リ乍ラ」ト云フ様ナ意味ノ事ヲ記憶シテ居リマス。

第七問ニ就テ、
語句ヲ明確ニ記憶シテ居リマセンガ「陸軍刑法ニ依ッテ処罰スル事」ト云フ様ナ意味デアッタ事ヲ記憶シテ居リマス。

第八問ニ就テ、
終戦ト同時ニ日ノ丸ニ於テ焼却致シマシタ。

右ノ事項ハ、私ノ良心ニ従ヒ正確デアル事ヲ誓ヒマス。

昭和二十四年一月二十六日　于東京

Subscribed and sworn to before me this 26th day of January, 1949:

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade), USNR,
Interpreter.
Commander Naval Forces Marianas
Liaison Officer to Legal Section,
GHQ, SCAP, Tokyo, Japan.

Exhibit 16(a)(5)

0277

嘆願書

現在戦犯容疑者として巣鴨に拘置されて居る陸軍中佐
徳永明氏は曽て吉林に住まれ吉林に育つた人で我々は幼少の頃
から其の人物識見兼備且人一倍身上の事より論家庭の瑣細
な事柄に至るまで詳しく知つて居る
彼が昨年九月戦犯容疑者として拘引せらるゝや何とかして
人間徳永を米軍当局者に知つて戴き度い、而して寛大な
る処置を執つて頂き度いと言ふ村民一般の同情と嘆願が期せず
して起り茲に議成り村民の嘆願書を提出する次第である
徳永明は資性温厚篤実稀に見る偏屈にして明朗而も正義感の
強い好漢であつたが将校時代から勇猛果敢で我が村民も彼の
将来を大いに嘱望してゐたのであるが遂に昨年戦犯の容疑で
拘留せらるゝに至つたことは誠に遺憾なことである。然し乍ら素
にして而も正義を愛する好紳士たる彼の人格を最もよく知つ
てゐる我々としては彼に神の加護のあることを信じて疑
はない、亦彼の家庭は極めて同情すべき事情に置かれて居る現
在家には年老つた両親と弟妹がゐる 七十四才にもなる老父は病
身の老母と彼の弟妹を守りつゝ老父はわづかの畑を耕作してゐるの
であるが勿論自家消費量の何分の一にも当らない僅かな収穫で
ある其の他の収入としては彼の内職の僅な給であるがそれとて現在の物
価高の時代に於ては殆んど問題にするに足りない些細なものであ
る従つてその生活状態は只生きて行けるだけの最低生活である
誠に同情すべき事情にある尚彼には愛妻と子供がゐる昨年
拘引される直前に妻帯した。彼にとつては新婚生活も束の間

0179

来の間で正に人生最大の悲劇であらう子供は今年の三月に生れた愛の結晶を得た時は彼自身は既に拘留せられてゐたのである

これを不過と云はずして何と云ふ

徳永明の無事釋放を祈る老父母、幼い弟妹愛すやさ妻子の心は茲に我々が千万言を費しても到底盡すことは不可能である亦人一倍親孝行者で弟妹妻子思ひの彼の胸中も筆舌に盡すことも出来ない、だらう、家庭の情況はこの様な悲しむべき事情にある我々村民一同正に万斛の涙を禁じ得ない

幾くの如く経済的にも精神的にも家庭の中心たるべき徳永明の無事釋放こそ大局的人類愛の最も適切なる處置であると信じ村民の署名を以て茲に嘆願するものである

神の御名の前に

彼の釋放の一日も早からんことを祈りつゝ

熊本縣鹿本郡吉松村長　平　隆

吉松村助役　橋本誠太郎

吉松村吏員　佐藤出喜

吉松村役場書記　前田利作

同　村川成幸

同　平田研大

同　津田司

同　出井俊次

角田正義

角田義隆

前田義綱
上野一次
平山幸夫
平山吉喜
高木正男
園木香
二平田悦雄
石田千秋
本田登平
緒方喜久夫
緒方武人
土井友幸

牧野清人
園木行晴
平山重登
中田卯平次
生井安水
上村恵
原田敏明
松井小代
緒方文太郎
平山丑男
平山憲男

平山信朗
荒井数男
井上俊朗
角田正度
迫本工
栗山恵裕
野路アイ子
前田保子
小泉萬之
田中美穂子
坂口清
田中忠光

高田聖
角田晴
平山植雄
高木西平
出井惟
福田良治
内藤三雄
青木兼喜
平山真直
平山三郎
平山末彦
安達蟠海

上田栗亮
平山博
出井政光
平山一男
平山某次
岡木休
香賀高美
平山徳男
平山貞男
平山評治

薩川義大
村川進
土島久
徳野倉人
西一男
平石器夫
岩下隆法
田中正一
椙本信吾
立蛸了
松葉智雄
坂本トミ工

橋本郁雄
猫本文子
藤川熙治
軒熊松郎
留田有
子訴之
鉛方留男

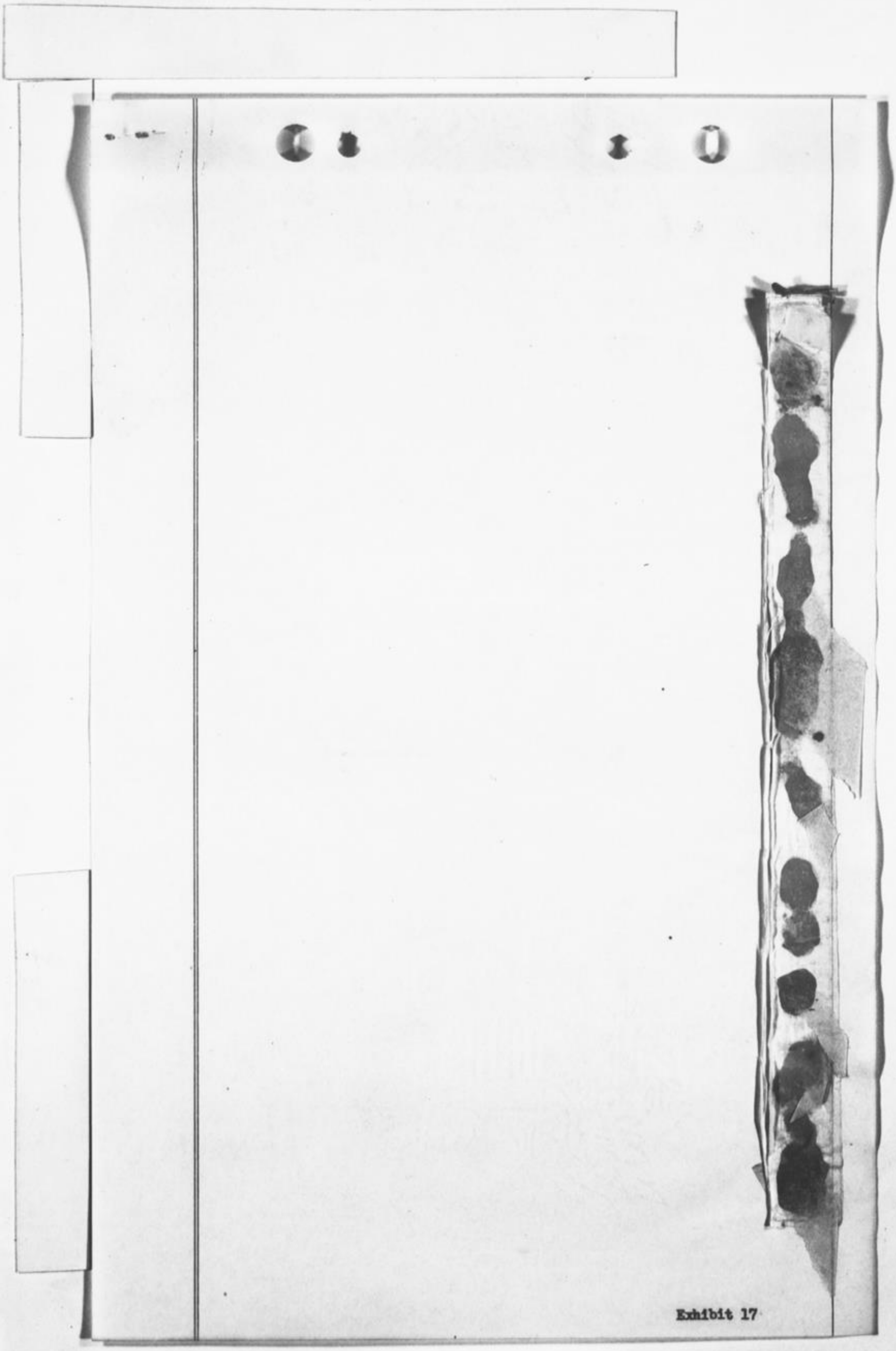

Exhibit 17

0282

Petition

The undersigned know the character and personality, the personal and family affairs of TOKUNAGA, Akira, former Major, Imperial Japanese Army, who is presently confined in Sugamo Prison, from the circumstances that he was born and raised in our village of Yoshimatsu.

Ever since he was interned in September of last year as a war criminal suspect, all the villagers have been anxious for the American authorities to know the character of the man Tokunaga, that they may deal leniently with him, and the result of the spontaneous sympathy of these men has taken the form of this present petition.

Akira Tokunaga was by nature gentle and meek, trustworthy and faithful, good and obedient, bright and cheerful and possessed a strong sense of righteousness and of his duties and responsibilities. He was a very bright boy from the time he was attending grade school. The villagers placed great hopes in his future.

To our deep regret, he was arrested as a war criminal suspect. However we still believe in him and in God's protection over him, for we know well his character to be good and righteous.

Besides, his family circumstances at present are worthy of sympathy. Both his parents are very old and he was a brother and sister, both younger than himself. His seventy-four year old father and his mother who is of weakly constitution, are cultivating their farm which is only a fifth of an acre in area in order to raise his younger brother and sister.

The return yielded by this farm is not sufficient to meet their needs. The only other source of income is the money earned by the younger sister, who does some work at home. However this income is a mere pittance in the light of the high cost of living of the present time.

Moreover he has a wife and child. He was married just shortly before he was incarcerated. His married life consequently has been a very short one. His wife bore him a child during his absence in prison, in March of this year. How shall we term it if not a tragedy, the arrival of the pearl of their love during his confinement?

Our rustic and uncouth tongues cannot express the anxiety and longing with which his aging parents, his wife and younger brother and sister pray for his early release. It is not possible for us unlearned men even if we knew and used ten thousand words to express what Tokunaga is thinking of his family, Tokunaga who was a most devoted and obedient son and a good husband and brother.

His family circumstances being as above described, the sympathy of every villager goes out to him.

It is our firm conviction that from the wide viewpoint of humanity and of brotherly love, the most appropriate way to dispose of Tokunaga is to release him. The villagers, affixing their names and seals to this petition, submit this plea.

In the Name of God, we pray for his early release.

Respectfully,
KAZUTAKA, Taira and 88 others.

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

Eugene F. Clark,
Lieutenant (junior grade), USN,
Interpreter.

Exhibit 17 (a)

歎願書

東京都中野区鷺宮二丁目七七五番地

高橋嘉雄の妻　京子

私は戦犯の容疑で巣鴨拘置所に収容されました元軍医中尉高橋嘉雄の妻京子でございます。聞く所によりますと、夫が収容されましたのは、終戦前に勤務致して居りました口ノ島でスパイ嫌疑の原住民を処分した問題についてでございますが、夫は当時大隊付軍医として衛生業務を主務にして居りましたもので、若しその様な事件がありましても夫が自主的に行ったとは思はれません多分上官の命令によって軍律に従って処分したものと存じます。

右の次第を充分に御考慮の上公正なる裁判と温情ある処置の程を御懇願申し上げます。

右かことにつきまして当時夫と同じ隊に勤務して此の事件の事を知って

いらっしゃる方々から伺きした事を述べさせて頂き裁判の御参考にして頂きたいと存じます

當時處刑されました原住民はスパイ行爲と認められるやうな行動をしたのださうで夜にふると赤と白の信号燈を点滅し、屋と注意一ましたが監視の目をはづすと又そうかへーて居たということでございます。その爲ですか他の地区は空襲が行はれましたが原住民の住んでゐる地区は全然空襲が無かったのださうでございます

又アメリカ軍の飛行機が飛んで来た時に「濠に避難せよ」と日本軍から注意されても原住民達は「此處だけは空襲されるない」と云って濠に入ることをきかなかったとの事でございます

當時師團司令部は台湾に居りまして大隊本部では スパイの處分につき師團長に電信で指揮を仰ぎましたところ師團長から大隊長に對して「處分せよ」との命令があったさうでございます

その師團司令部から発信された電信命令を當時大隊本部の通信

0285

掛でありました一家將美・酒井春民・西氏が受信をして居るとの事で
ございます

更に夫が大隊長から命令を受けたと云ふことは當時隊長の側に居ら
れた山本晴久氏が承知して居られます

尚處分實施には隊長も立會つて居られた樣でございます

又夫の言ふ所では「あの時は大隊長から云はれた通り取調べやその他の法
律的な處置は全部濟んでその上で姦殺と言ふ刑が決つたのだと思ひ
命令されるまゝに行動したのだ」と云ふ事でございます

次に夫の性格につきまして一言述べさせていただきます

夫は小さい時から大人しい性質で行事も人の先に立つてやると云ふ所
がなくいつも欠伸だと始終言はれて居りました位でございます又
その反面やるべき事はやると言ふ風で軍隊に居る
時にも事情の許す限り必ず毎月一度同じ頃に留守宅へ音信して
居りました

尚夫々性格につきましては夫々収容さいまして
参りました別添の歎願書を以参照下さいます様
以上申し述べてまいりました所を總合致しますとこの事件に
関係いたしましたのは全く宮の命令によって行ばれましたもうび
決して夫が自主的に行った事ではございません
こう点を充分に御諒承下さいまして行方の処置を御願ひ
申し上げる次第でございます

Exhibit 18

0287

PETITION

July, 1948.

Dear Sir:

I am the wife of Yoshio Takahashi, former surgeon first lieutenant, IJA who is now kept in confinement at Sugamo Prison as a war criminal suspect. I heard that my husband was arrested because he was said to have participated in the disposition of natives who were suspected as spies when he was serving on Rota Island during the war. But he was then a surgeon attached to the battalion and was in charge of medical affairs. Even if such an incident did actually occur, I am convinced that he was compelled to punish them by the order of his superior officer, or in accordance with military law.

I beseech you to consider the above mentioned points and give him a fair and just trial and judge him not too harshly.

----------(This portion omitted and not admitted in evidence at the request of the accused, ---------- Takahashi, Yoshio).

I would like to add a few lines about the character of my husband. Ever since his childhood days he was so gentle and reserved that he was never able to take a leader's role in anything but carried out what he was supposed to do. Even in the military service, he used to write a letter only once a month as far as circumstances permitted.

As to his personal character, I hope you will refer to the attached petition.

In short, my husband was involved in this affair not on his own volition but by the order of his superiors.

I beg to ask your understanding concerning the circumstances I have mentioned above and implore you to give him a fair and lenient judgement.

Yours respectfully,

Kyoko Takahashi,
775, 2 chome, Saginomiya,
Nakano-ku, Tokyo.

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

Eugene F. Clark,
Lieutenant (junior grade), USN,
Interpreter.

Exhibit 18 (a)

P E T I T I O N

TAKAHASHI Yoshio (35), my son-in-law, is now detained at the Sugamo Prison as a war crime suspect involved in the murder of the natives of the Island of Lota in the Marianas. According to his story, ~~this is~~ how he became involved in this case, is as follows:

In 1941, he entered the service of the No. 981 Manchurian Detachment where he worked in the capacity of a surgeon on short-term active service until ~~toward~~ the end of March 1944 when he was transfered to Lota.

On this Island, he was made a senior surgeon attached to the headquarters of the Tokunaga Battalion in charge of the defense of the island.

Following the start of the United States Army's Mariana operations in June of the same year, it was rumored that there were spies among the natives. As a result of investigations, several native spies were caught and two of them were brought to the headquarters of the Battalion. With the permission of the division~~-1~~ commander Lieutenant General Hyo Takashina (at Guam: subsequently killed in action), the Battalion Commander executed the two spies by shooting.

The shooting, however, failed to kill the spies who suffered terribly with pain. Thereupon the Battalion Commander ordered Takahashi, then surgeon-lieutenant, to kill the wounded spies with pottassium syanide. Obeying the order, Takahashi poisoned the spies to death with the lethal poison.

Exhibit 19

0289

It was under such unavoidable circumstances that Takahashi became involved in the murder case.

Being the eldest son of the family, Takahashi has to support his aged father, 66, and mother, 56, besides his wife (my daughter) and a baby born in August this year. He is the only supporter of the family and his absence is a matter of life and death to the rest of the family. As father of his wife, I can hardly look on idly when I think of the plight of her family.

Allow me, therefore, to take the opportunity of requesting you to kindly look into the aforementioned circumstances and grant Takahashi a linient treatment.

Yours obediently,

Yasuichi Hamada

- - - - - - - - - - - - - - - - -

(Yasuichi H A M A D A)
No. 28 Higashi Matsushita-cho,
Chiyoda-ku, Tokyo-to.

Exhibit 19

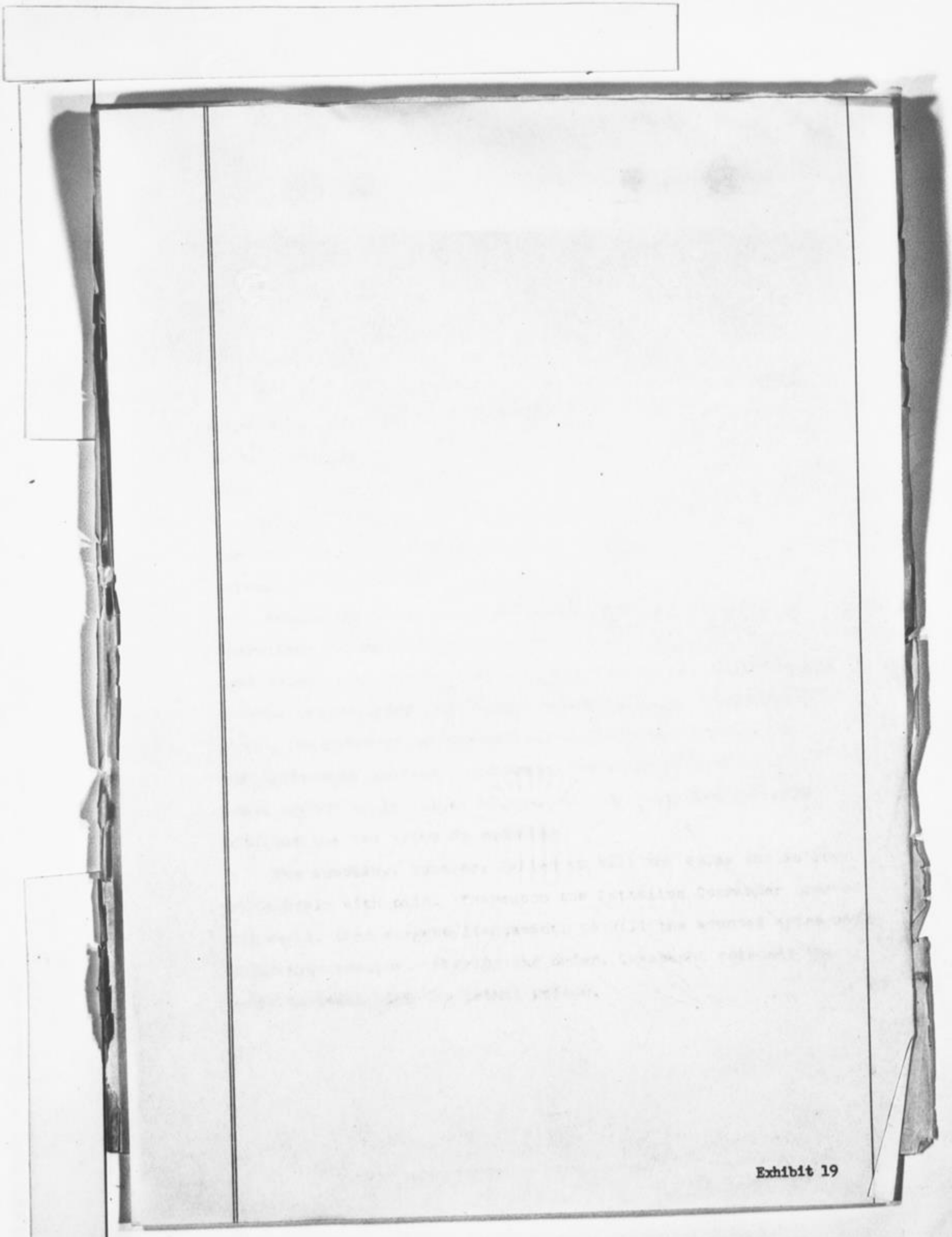

Exhibit 19

0291

性格書

東京都杉並区東田町二ノ一七四
元陸軍中尉　小倉健子

私は元徳永大隊副官を勤めて居た者であります。
軍医中尉高橋義雄君とは満州より復員に至る五ヶ年余同一隊に勤務し同君の性格を知悉して居ります。
特に勤員以来終戦に至る間起居を共にし親しくして参りました関係上同君の性情の一面を具体的に述べ以て人情味ある所を裁判官各位に御理解戴き御寛大なる御所置を賜る事を切に祈る者であります。
私達が奉山より一ヶ月に近い輸送船の生活は当時船舶の不足に伴ひ六千噸に六千名其の他弾薬、糧秣を満載し船室は一杯四方に十名近い配当にて膝を屈するにも出来ぬ状況にて勿論食事も睡眠も思うに任せぬ衛生状態は最悪の状況下にありました。其の間同君は日々の健康状態を観察し一名の患者も出さず無事上陸せしめた事は満足感を覚えました。
ロタ島上陸後も食糧不足、洞窟生活に依る栄養失調、マラリヤ、デング熱等の蔓延せる隊員の健康状態を極度に悪化し特に上陸当初より隊員の患者は数十名の患者有りしも非常に守備隊員を恐怖に陥れその経過を案ぜられましたが此間真に不眠不休之が看護と防止に当り幸ひ大部隊の隊員の患者は一名に止め得に至り実に驚嘆に値するものであります。
更に激化せる敵下爆撃の際に於ける築養失調患者の看護は誠に涙ぐましきものがありました。其の当時船舶の満足な設備も無く又薬品も乏しく今日の如く多くの患者は殆ど全部が栄養失調にて体力を全く消耗し切り生死の境を彷徨する者多数にして之が治療に当っては容易ならざる苦心を払われました。
本部隊員奉山上陸当時より栄養失調にて衰弱し殊に脚気患者の多数発生し三日間予断を許さざる状態にありましたが又同僚との親交も相当深く今尚その温情を忘れ得ず感激に耐えません。
生活に温和な性質は勿論勇敢にして信望厚く又軍紀厳正にして部下の統率指導宜しきを得ありました。

diligent

0202

あります。

以上概略的に今后の性格を述べましたが漏れる例は勿論多々あります。これを以て足りとは致しません。なお言葉でありますが何卒今后の人情味ある温厚な性情を御高配賜りますことを切に御願い申上げます。

以上。

Exhibit 20

0293

PETITION

January 26, 1949.

Dear Sir:

I was formerly the adjutant of the Tokunaga Battalion. I served together with Takahashi in the same unit for five years from the time we were in Manchuria till the day of our demobilization, and I know his personal character very well. I had lived with him and associated very intimately during the said period. I wish to state an aspect of his humane, diligent, honest and mild character during his service in the army. I ask for your kind consideration, and sincerely hope that you will be lenient with him.

During the time we spent aboard a transport from Fuzan to Rota Island which took us about one month, owing to the serious shortage of ships we had a very hard time. The 6,000 ton transport which we boarded was carrying a great deal of ammunition and provisions as well as 6,000 soldiers. We were all cramped up into a narrow space and only three square feet were allotted to ten men so we could not even sit down. Our meals were strictly rationed. Besides all this owing to the extreme heat of the South Seas sanitary conditions were at its worst. During the voyage, chief surgeon first lieutenant Takahashi, without regard for his own health took great care of the other members of the troop, and took precautions to check disease, so that all the members of the troop arrived at the destination in good health. This fact is nothing but the result of his self-sacrificing devotion to his duties.

After landing on Rota Island, shortage of food and life in caves caused the health of the unit to deteriorate. Especially as the result of an epidemic which swept over the Island at the time of our arrival soldiers by the tens were infected and the others were thrown into a panic. Under these circumstances he exerted all his efforts to prevent the epidemic from spreading any further and took care of the sick day and night until the number of patients at the headquarters finally diminished to just two. Moreover, under intense enemy air raids in an extreme shortage of food, he devoted himself to the task of treating the wounded and those suffering from malnutrition. Because he hardly rested we were worried about his health, but he would pay no heed to our cautions and concentrated his attention to the work of preventing the spread of epidemics, transportation of patients, and surgical operations.

For instance, when superior private Moriyama, a member of the headquarters fell in critical condition caused by malnutrition, first lieutenant Takahashi stayed with the patient for three continuous days. We were all much impressed by his act of complete self-sacrifice.

I stated his character fragmentarily, but I beseech you to take into consideration his humane and mild character.

Yours very truly,

OGURA, Kenji
Former first lieutenant, IJA.
No. 174, Higashida-cho,
Suginami-ku, Tokyo.

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

Eugene F. Clark,
Lieutenant (junior grade), USN,
Interpreter.

Exhibit 20 (a)

0294

誓願書

0295

非到"ッ"も一數願書

私達は昭和十九年五月日多島に送ら
関係ありとされ昭和二十二年八月二日葉鳥物置所に
入所昭和二十三年十月十二日多島へ移送され
日本國民に有しく忘れられ事の出ない昭和二十年

日本建設
國民は悲惨な戦禍を被はれ、平和日本建設
のため あらゆる努力を續ケ 民主日本の礎を築
きつゝあることは誠に慶賀に堪へないところであります。
國よりも平和を愛好する私共國民は、戦禍の如何は
悲惨であり人類の一大悲劇であることを十分承知

0297

して居りました、然し當時の爲政者達は聖
戦の美名のもとに私共を眞に好まざる戦禍に追ひ
込んだのであります。
併し敵戦と共に外地に出動して居た者の殆んど全
部が、温い家庭の一家團欒の裡に再建日本の
ため、貴命の如力を盡いたして居りますことは聯合軍

0298

司令官閣下以下各位の皆様にして仁愛ある御
施政に依るものと平和を愛好する我々國民の喜しく
謝意を表するところであります。
私共一家の者も茂雄が遠く故郷を離れ、南海
の孤島に移されまして早や死未明であります一日
として心の安まる事なく悲嘆に暮れて居

0299

ましたが 昭和二十年十月二十日突然健全な
体で帰還いたしましたので夢ではないかと喜びに包まれ
大家
団欒の裡に暮らしてまいりました。
然し此の喜びも束の間でした。
病弱の父母を援け十三人の大家族の杖とも柱とも頼む
我雄は突然去る昭和二十三年十月二日戦犯容

疑惑となって
家は茂雄の将来を案じつゝ施す術もなく
に籠められ兵隊悲嘆の涙に暮れつゝ日を送るばかりで
あります。
茂雄
開くところに依りますと果は台湾に兵隊として召集さ
れて居た時に部隊で行はれた集住民の事件に

関係して居ると云ふ容疑がそうであります。

この事につき一旦の者は心配のあまり茂雄始め其の當時

の方々に茂雄の行動を聞いて見ましたところ茂雄は兵官

の命令で兵隊として止むなくとった行動の様であります。

以下私達の聞きました事を述べさせて頂きます。

事件當日茂雄が衛兵司令の元で衛兵生務に就き

居ると云「ムベイ神社」に参詣して、鳥氏を處刑するから、衛兵
は行動を共にせよ」といふ命令がありました。
そこで衛兵、任務について居た茂雄と秋垣某、豊田某
の三名は命令に従って現場に行って高橋軍醫中尉の
さし使役になりました。
茂雄は此の傷害が元で死刑の宣告を受けて居るもの

0303

と思ってました。

茂雄が現場に行ったときには早や庭刑の準備が出来

上って居りそこには高橋軍醫中尉と加藤衛生軍曹と

吉崎衛生軍曹と外に十名位の兵が居るように茂雄

は言って居ります。

縛りた二人のスパイに對して毒薬に依る庭刑をしたのを茂

雄は見 その一名は薬を呑んだが、死亡せず苦しんで居た
が丁度其の時高橋軍醫中尉の直ぐ側に居た茂雄
に高橋軍醫中尉は「可愛想だから止めを刺せ」と命令し
ました。
茂雄はどうしたら良いか 今から行かうとするが突然の事であ
り上官の命令なので 遂ふことも出まず仕方なく突いたそう

0305

であります。

終ると衛兵は帰って任務を續行せよと云ふ命令を受け

ので帰って任務についたので其の後の事はどうなったか分り

ません。そうであります。

茂雄は性来温和實直で自分から進んで斯る行爲

をいたしたとは私達は全然考へられません。

當日多忙な命令を受け參内した事であって、當時の日
本陸軍の軍紀から見ましては一兵卒それて上官の命令
に數々事が出来ず眞に致方なく下級者として上官の命令に
從つて爲した行爲と思ひます。
かゝる述べました樣な眞よき警告を得ぬ行動と思はれま
すので何卒寛大にして溫情ある事實審理の上

0307

無罪として御釋放下さることを念じつゝ茂雄の歸宅
を待ち說のて居ります
何卒私達一家の悲嘆と苦衷と御憐察下され私
達の具陳を御聽取下さいまして公正なる御裁決
と寛大なる御憐愍賜り一日も早く御釋放下さりま
すよう謹んで數額書を捧呈する次第であります。

0308

昭和三年三月二十八日

京都南多摩郡

元八王子村九八王子一一三番地

小山久吉

小山利政

小山美代子

小山芳雄

小山鋪次郎

小山正勝

0309

Exhibit 21

PETITION

December 28, 1948.

We are the family of Koyama, Shigeo who was incarcerated in Sugamo Prison on suspicion of having been connected with an incident which took place on Rota Island on a certain day in June 1944, and who was removed to Guam on November 12, 1948.

August 15, 1945 is a day not to be forgotten by the people of Japan. It is truly a source of great and ineffable joy that the people were saved from the tragic ravages of war and are now turning all their efforts to lay the foundations of a democratic Japan for the construction of a peace loving nation. We the people of Japan, who have always loved peace, well know how tragic were the ravages of war and what a great tragedy it was for humanity.

However the so-called statesmen of the time forced upon us a war which was not desired by us under the fine sounding name of a Holy War.

However with the termination of the war, nearly all those men who were sent overseas returned to Japan to exert all their efforts for the reconstruction of Japan in the warm environments of their families. We realise that all this has been made possible through the magnanimous and merciful-loving policy of his Excellency, the Commander in Chief of the Occupation Forces, and are as a peace-loving people deeply grateful.

As we did not know whether Shigeo who was sent to an isolated island deep in the South Seas far away from home was alive or dead we were deeply concerned and did not have peace for a single day. Suddenly on the 28th of November 1946 Shigeo returned in good health. We were so overjoyed that we thought we were dreaming. We passed our days in happiness. But this joy too was to be of short duration.

Shigeo who was helping his parents who were ill and who was the prop and beam supporting the large family of thirteen was suddenly arrested and interned in Sugamo Prison as a war criminal suspect on the 2nd of August 1948.

Our family, although we worried for Shigeo's future knew of no steps which we could taken, and again we were thrown back to our sorrows and tears.

According to what we hear, Shigeo is being suspected for having been connected with an incident involving native residents which took place in a unit on Rota Island during the time Shigeo was serving on that island as a soldier.

---------- (This portion omitted and not admitted in
---------- evidence at the request of the accused,
Koyama, Shigeo.)

Shigeo is an innately warm-hearted, honest man, and we cannot even visualise his doing anything like this of his own free will.

He did what he did because he was suddenly ordered to do it. We believe when we refer to the military discipline of the Japanese Army in those days that he acted as he did because he could not disobey the order of a superior officer and had no alternative whatsoever than to carry out the order of his superior as a subordinate.

Exhibit 21 (a) (1)

As stated above, as it is to be believed that the act was one which was really unavoidable, we pray that after lenient and sympathetic deliberation of the facts, Shigeo be released and returned to his home.

We pray that you have sympathy for the tragedy and sorrow which have visited our house and after listening to our plea judge Shigeo with leniency and release him as soon as possible.

We respectfully present our petition.

1213 Hachioji, Moto Hachioji-mura, Minami Tamagawa-gun, Tokyo.

KOYAMA, Hisakichi
KOYAMA, Sumi
KOYAMA, Toshimasa
KOYAMA, Miyoko
KOYAMA, Yoshio
KOYAMA, Kinuko
KOYAMA, Masakatsu
KOYAMA, Isamu
KOYAMA, Sadako
KOYAMA, Eiko
KOYAMA, Tatsuko
KOYAMA, Sachiko

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

Eugene F. Clark,
Lieutenant (junior grade), USN,
Interpreter.

Exhibit 21 (a) (2)

0312

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C2-JDM-ce
2156

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

9 APR 1949

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 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; 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 '46). 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 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
C. A. POWNALL,
Rear Admiral, U.S. Navy,
The Commander Naval Forces Marianas.

0313

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

File:
A17-25

Serial: 1451

9 MAY 1949

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 28 November 1945, transmitted to the Judge Advocate General of the Navy.

Arthur W. Radford

ARTHUR W. RADFORD,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.