WAKABAYASHI, SEISAKU (29 Jul 1948)

(166096)
PART 1 OF 4

0710

In reply refer to Initials and No.

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

Op-222B/wj
Serial 659P22

28 JUN 1949

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

Subject: Case of Seisaku WAKABAYASHI.

Enclosure: (A) File of proceedings in the case of Seisaku WAKABAYASHI.

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

P. G. Hale,
By Direction.

RECEIVED
29 JUN 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT
WASHINGTON 25, D. C.

JAG:I:WAC:bem
00-Wakabayashi, Seisaku/A17-10 00
(6-30-49) 166096

8 JUL 1949

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, are approved.

Dan A. Kimball.

DAN A. KIMBALL
Acting Secretary of the Navy.

FINISHED FILE 5 JUL 1949

00-WAKABAYASHI, Seisaku/A17-10 OQ
I (6-3-49) WAC:bem 166096

MEMORANDUM IN THE MILITARY COMMISSION TRIAL OF: Seisaku WAKABAYASHI, former vice admiral, IJN

Place of Trial	Date of Trial	Date Received
Hq. Commander Marianas, Guam, Marianas Is.	29 July 1948	3 February 1949

CHARGE	Pleas	Findings
VIOLATION OF THE LAW AND CUSTOMS OF WAR	NG	G
Spec 1 - Period from 26 July 1943 to February 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying them proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 February, 1944.	NG	Proved
Spec 2 - Period from 26 July 1943, to 22 February 1944, accused as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to take measures to protect American prisoners of war held captive under his command and permitted the unlawful torture, abuse, inhumane treatment and killing of such prisoners of war, specifically (a) the torture, abuse and inhumane treatment of forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small unsanitary cells, denying them proper medical care and repeatedly beating them with fists and clubs; (b) the unlawful killing of six American prisoners of war by injections of virulent bacteria and shock as medical experiments; (c) the unlawful killing of two American Prisoners of War by strangulation and explosions of dynamite; (d) the unlawful killing of seven American Prisoners of war on 17 Feb. 1944.	NG	Proved

SENTENCE: To be confined for a period of fifteen (15) years.

C.A. ACTION: PF&S approved. Confinement reduced to twelve (12) years and six (6) months.

FACTS: The accused assumed command as Commandant of the Fourth Base Force, Dublon Island, Truk Atoll, Caroline Islands, on or about 26 July 1943, and remained in command until 23 February 1944. His headquarters were located on Dublon Island as was the Forty-first Naval Guard Unit, a subordinate command where all prisoners of war were confined. The Fourth Naval Hospital was not under the Fourth Base Force.

OO-WAKABAYASHI, Seisaku/A17-10 OQ

MINEMATSU, Yasuo, was the commanding officer of the Forty-first Naval Guard Unit from September 1943 until Dec. 1943 when he was relieved by Tanaka, Masaharu who remained in command until February 21, 1944.

On 20 November 1943, forty-two survivors of the U.S.S. SCULPIN, arrived at Truk and were confined at the Forty-first Naval Guard Unit by order of the Fourth Base Force which had been informed by dispatch of the pending arrival of prisoners and by messenger of their actual arrival. The forty-two prisoners were crowded into three solitary cells measuring about five feet in the brig Forty-first Naval Guard Unit from 20 November 1943 to 30 November. These prisoners were individually questioned by Japanese officers from the Sixth Fleet. The interrogation took place at the Forty-first Naval Guard Unit with guards from that Unit present. During their interrogation they were beaten by these guards with fists and clubs. Commander HIGUCHI, Senior Staff Officer of the Fourth Base Force was present on at least two occasions when these prisoners were so interrogated. During their confinement the prisoners were repeatedly beaten with fists and clubs by their Japanese guards. The prisoners were denied medical treatment the first five days of their confinement although there were many badly wounded among them. Those who were finally taken for medical treatment were beaten en route to the hospital. Three prisoners underwent amputations without anaesthesia. The cells were so overcrowded as to prevent reclining, and were totally unsanitary. During their confinement the prisoners were given an inadequate amount of food and water and were repeatedly beaten by the guards with fists and clubs.

On or about 17 February 17, 1944, seven American prisoners of war confined at the Forty-first Naval Guard Unit, were killed by firearms and sword by the direct order of Captain Tanaka, the commanding officer of the Forty-first Naval Guard Unit, who had allegedly obtained approval for such killings from Fourth Base Force Headquarters. The killings were accomplished during an American air raid, on Truk. Thereafter, at a conference called by the Fourth Base Force, at which accused was present, a report of the killing of these prisoners was made.

On or about 30 January 1944, six American prisoners of war, confined at the Forty-first Naval Guard Unit, were killed by medical personnel of the Fourth Naval Hospital using injections of bacteria and induced shock. Prior to this time the commanding officer of the Fourth Naval Hospital, Iwanami, had requested the chief surgeon of the Fourth Base Force, Iino to supply prisoners of war for physical experiments. Iino had refused this request and had reported it to the accused who at that time was a patient under the care of Iwanami and being visited by Iwanami daily. On about February 1, 1944, two American prisoners of war, confined at the Forty-first Naval Guard Unit, were killed by explosions of dynamite and strangulation by officers of the Fourth Naval Hospital.

Accused, testifying on his own behalf, stated that he was familiar with his duty under international law to protect prisoners of war and to control the acts of his subordinates but that during his tour of duty as Commandant of the Fourth Base Force he issued no instructions concerning the handling or treatment of prisoners of war and that no system of accounting for such prisoners was established.

DEFENSE

A witness, Nakase, testified that since the Forty-first Naval Guard Unit Brig was not large enough to take care of the forty-two American prisoners of war from the U.S.S. Sculpin, ten of them had been removed to the guardhouse, and that they had received prompt medical treatment.

Iino, chief surgeon of the 4th Base Force, testified that the accused was

suffering from a stomach ailment, which made him practically bedfast, about the time of the February 17, 1944, American air raid on Truk when the seven prisoners were killed.

Iwanami, commanding officer of the Fourth Naval Hospital denied requesting permission from anyone to experiment on prisoners of war although admitting that he was convicted of the murder of six American prisoners, occurring on 30 Jan. 1944, and of the murder of two American prisoners, occurring on 20 July 1944 by such methods. He denied the murder of the six American prisoners.

The accused took the stand in his own behalf and testified that he had been informed that because of the smallness of the brig some of the Sculpin prisoners of war were removed to the barracks, and that he had issued instructions that these prisoners of war were to be treated with special kindness and consideration since the accused himself was a submariner. He denied that a report concerning prisoners of war was made at the conference following the air raid on February 17, 1944, and he denied ever receiving a report that a request had been made by anyone for the use of prisoners of war under his control for the pruposes of physical expermiments. He testified that while communications were open to headquarters during the air raid, the telephone system in use would prohibit a subordinate command from initiating a call, and that no request for authority to execute prisoners could have been made at that time. Accused explained his failure to issue any orders or instructions regarding prisoners of war on the ground that the subject was completely covered in Japanese Naval Regulations by which all subordinate commands were bound.

STATEMENT OF LAW AND DISCUSSION

The accused made a plea to the jurisdiction on the ground that (1) the commission lacked jurisdiction since the international law does not recognize neglect of duty of a superior in the armed forces to control and supervise his subordinates as a war crime; (2) that trial in Guam is not as convenient to accused's defense as Japan would be; (3) that accused was not properly extradited from Japan, and (4) that the situs of the alleged crimes was not under the command of the convening authority at the time the offenses were committed. The plea to the jurisdiction was properly denied. As to (1) above, such neglect of duty was recognized as a crime in Yamashita v. Styer, 327 U.S. 1; as to (2) and (4) above, jurisdiction in war crimes cases is primarily based upon custody of the accused at the time of trial and not on territorial principles of jurisdiction (SCAP); as to (3) above, the laws relative to the extradition of criminals generally are not applicable to war criminals and the Supreme Commander Allied Powers in his Legal Section Memorandum dated 22 June 1946, provided that any command outside of the Far East Theater could obtain suspected war criminals (such as accused) by submitting a request therefor, together with certain required information which was properly supplied in this case.

The accused made a plea in bar of trial on the ground that the alleged offenses occurred more than two years before the charge and specifications were drawn and were therefore, barred by the statute of limitations. In war crimes there is no statute of limitations. "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or immediately prior to the Mukden Incident of 18 December 1931" SCAP.

The accused made a plea in abatement on the grounds that Article 60, Geneva (Prisoners of War) Convention of 27 July 1929, had not been complied with in that protecting power had not been advised of the judicial proceedings against the accused. The accused was not a prisoner of war, having been arrested subsequent to the surrender of Japan and the article relied upon does not apply. (In re Yamashita, 327 U.S. 1,16). The plea in abatement was properly denied.

The accused objected to the charges and specifications on the grounds

(1) that specification 2 was duplicitous of specification 1, (2) the allegation contained in both specifications that the acts were "in violation of the law and customs of war" did not fully inform the accused of the nature of the accusation against him, (3) the specifications were vague and indefinite, (4) that the specifications did not allege a crime, and (5), that the order for trial antedated the precept. As to (1) above, specification 1 alleges a failure to control subordinates under his command in their treatment of prisoners of war and specification 2 alleges a failure to protect prisoners of war who were under his control. By international law the accused had a duty both to control his own subordinates and to affirmatively protect prisoners of war (In re Yamashita). Therefore, the specifications in the instant case set forth separate and distinct offenses even though two of the specific instances are the same in both specifications. The objections set forth under (3) and (4) above are considered to be without merit since the language here used in the specifications has been held (in the Yamashita case) to allege crimes in terms sufficiently clear to apprise an accused of the offense intended to be charged against him. As to (5) above, the commission in the instant case was authorized by its precept to take up the cases then pending before a commission in being when the charge and specifications against this accused were drawn. In view of this fact, the objection was properly overruled. (Sec. 542 n. 13, Naval Courts and Boards).

The accused objected to three members of the commission on the ground that they had served on commissions which had tried other persons for the same offenses here tried. These members admitted those facts but denied any personal interest or prejudice against the accused in the instant case. Accordingly, the objections of the accused in this regard were properly overruled (para. 9, SCAP rules)

The accused made a motion for a bill of particulars urging therein the same grounds as were set forth in accused's objections to the charge and specification as discussed above. There is no provision in Naval Courts and Boards for such a motion and it was properly overruled since the questions presented therein had already been ruled upon after objections to the charge and specification which is the counterpart in naval law to such a motion.

After the prosecution rested, the accused moved for a directed acquittal on the grounds of failure of proof. There is a provision for such motion in SCAP Rules. However, it was here properly overruled in view of the fact that sufficient evidence was then before the court to sustain a finding of guilty if such evidence was not rebutted. After rebuttal evidence by the prosecution the accused again moved for a directed acquittal. No provision is made by the SCAP rules for such a motion at that stage of proceedings and it would appear that in all cases where an accused has introduced evidence, such a motion could never amount to anything more than an argument as to the merits of the case itself. This second motion was properly overruled.

Throughout the entire trial, accused made numerous objections to the introduction of documentary evidence and to hearsay and opinion testimony by witnesses. The majority of these objections were overruled and, in view of the relaxed rules of evidence authorized by SCAP, properly so.

CONCLUSIONS AND RECOMMENDATIONS

It is considered that there was ample competent evidence adduced during the trial to sustain the findings of "guilty" by the court and it is recommended that the case be passed as legal without comment.

I have read the subject case and concur.

W.A. COLLIER
LCDR., USN.

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO:

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

24 JUN 1949

MCC
E.B.M.

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

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

Referred for information.

G. [illegible] RUSSELL
Judge Advocate General of the Navy.

MILITARY COMMISSION REFERRAL 6-6-49 bem Case No. 166096

Name	Rank	Date Received
Seisaku WAKABAYASHI,	former vice adm., IJN	3 Feb. 1949

Trial Held	Date of Trial
Hq. Com. Marianas, Guam, Marianas Is.	29 July 1948

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

Spec 2 - Period from 26 July 1943 to 22 Feb. 1944, accused as commandant of said force,, failed to take measures to protect American prisoners of war held captive under his command and permitted the unlawful torture, abuse, inhumane treatment and killing of such prisoners of war, specifically, (a) the torture, abuse and inhumane treatment of forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small unsanitary cells, denying them proper medical care and repeatedly beating them with fists and clubs; (b) the unlawful killing of six American prisoners of war by injections of virulent bacteria and shock as medical experiments; (c) the unlawful killing of two American prisoners of war by strangulation and explosions of dynamite; (d) the unlawful killing of seven American prisoners of war on 17 Feb. 1944.

Pleas

NG

Findings

G (2 specs proved)

Sentence

To be confined for a period of fifteen (15) years.

C.A. Action

PF&S approved. Confinement red to twelve (12) years and six (6) months.

Reviewing Authority Action

PF&S as mitigated, approved. The record is, in conformity with App. D-14, NC&B, 1937, and CNO Ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

MILITARY COMMISSION REFERRAL 6-6-46 bm Case No. 166096

Name	Rank	Date Received
Seimaku WAKABAYASHI,	former vice adm., IJN	8 Feb. 1949
Trial Held Hq. 3rd. Marianas, Guam, Marianas Is.		Date of Trial 29 July 1948

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

Spec 2 - Period from 26 July 1943 to 22 Feb. 1944, accused as commandant of said force, failed to take measures to protect American prisoners of war held captive under his command and permitted the unlawful torture, abuse, inhumane treatment and killing of such prisoners of war, specifically, (a) the torture, abuse and inhumane treatment of forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small unsanitary cells, denying them proper medical care and repeatedly beating them with fists and clubs; (b) the unlawful killing of six American prisoners of war by injections of virulent bacteria and shock as medical experiments; (c) the unlawful killing of two American prisoners of war by strangulation and explosions of dynamite; (d) the unlawful killing of seven American prisoners of war on 17 Feb. 1944.

Plea
NG

Findings
G (2 specs proved)

Sentence
To be confined for a period of fifteen (15) years.

C.A. Action
PF&S approved. Confinement red to twelve (12) years and six (6) months.

Reviewing Authority Action

PF&S as mitigated, approved. The record is, in conformity with App. B-14, MCAB, 1937, and CNO Ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

24 JUN 1949

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

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

Referred for information.

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

MILITARY COMMISSION REFERRAL 6-6-49 bm Case No. 166096

Name	Rank	Date Received
Seigaku WAKABAYASHI,	former vice adm., IJN	3 Feb. 1949

Trial Held	Date of Trial
Hq. Oca. Marianas, Guam, Marianas Is.	29 July 1948

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

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Pleas

NG

Findings

G (2 specs proved)

Sentence

To be confined for a period of fifteen (15) years.

C.A. Action

PF&S approved. Confinement red to twelve (12) years and six (6) months.

Reviewing Authority Action

PF&S as mitigated, approved. The record is, in conformity with App. B-14, NCAR, 1937, and CNO Ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

-1-

24 JUN 1949

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

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

Referred for information.

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

MILITARY COMMISSION REFERRAL 6-6-46 hm Case No. 166096

Name	Rank	Date Received
Seimbu WAKABAYASHI,	former vice adm., IJN	3 Feb. 1949
Trial Held Hq. Gen. Marianas, Guam, Marianas Is.		Date of Trial 29 July 1946

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

Spec 2 - Period from 26 July 1943 to 22 Feb. 1944, accused as commandant of said forces, failed to take measures to protect American prisoners of war held captive under his command and permitted the unlawful torture, abuse, inhumane treatment and killing of such prisoners of war, specifically, (a) the torture, abuse and inhumane treatment of forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small unsanitary cells, denying them proper medical care and repeatedly beating them with fists and clubs; (b) the unlawful killing of six American prisoners of war by injections of virulent bacteria and shock as medical experiments; (c) the unlawful killing of two American prisoners of war by strangulation and explosions of dynamite; (d) the unlawful killing of seven American prisoners of war on 17 Feb. 1944.

Pleas

NG

Findings

G (2 specs proved)

Sentence

To be confined for a period of fifteen (15) years.

C.A. Action

PF&S approved. Confinement red to twelve (12) years and six (6) months.

Reviewing Authority Action

PF&S as mitigated, approved. The record is, in conformity with App. D-14, MCM, 1937, and CINC Ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

-2-

24 JUN 1949

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

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

Referred for information.

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

MILITARY COMMISSION REFERRAL 6-6-49 bm Case No. 166096

Name	Rank	Date Received
Seigaku WAKAMATSHI,	former vice adm., IJN	3 Feb. 1949
Trial Held		**Date of Trial**
Hq. Com. Marianas, Guam, Marianas Is.		29 July 1948

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

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Pleas

NG

Findings

G (2 specs proved)

Sentence

To be confined for a period of fifteen (15) years.

C.A. Action

PF&S approved. Confinement red to twelve (12) years and six (6) months.

Reviewing Authority Action

PF&S as mitigated, approved. The record is, in conformity with App. B-14, NCAB, 1937, and CNO Ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

-2-

24 JUN 1949

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

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

Referred for information.

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

MILITARY COMMISSION RECORD — 6-8-49 hm — Case No. 166096

Name	Rank	Date Received
Seigaku WAKABAYASHI,	former vice adm., IJN	3 Feb. 1949
Trial Held Hq. Gen., Marianas, Guam, Marianas Is.		Date of Trial 29 July 1948

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Period from 26 July 1943 to Feb. 22, 1944, accused, as Commandant of Fourth Base Force, IJN, at Truk Atoll, Caroline Is., failed to discharge his duty to control members of his command, and permitted them to torture, abuse, inhumanely treat, and kill American prisoners of war, specifically, (a) to torture, and abuse forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small, unsanitary cells, denying the proper medical care, and repeatedly beating them with fists and clubs; (b) unlawfully killing seven American prisoners of war on 17 Feb. 1944.

Spec 2 - Period from 26 July 1943 to 22 Feb. 1944, accused as commandant of said force, failed to take measures to protect American prisoners of war held captive under his command and permitted the unlawful torture, abuse, inhumane treatment and killing of such prisoners of war, specifically, (a) the torture, abuse and inhumane treatment of forty-two American prisoners of war during the period from 20 Nov. 1943 to 28 Nov. 1943, by crowding them into small unsanitary cells, denying them proper medical care and repeatedly beating them with fists and clubs; (b) the unlawful killing of six American prisoners of war by injections of virulent bacteria and shock as medical experiments; (c) the unlawful killing of two American prisoners of war by strangulation and explosions of dynamite; (d) the unlawful killing of seven American prisoners of war on 17 Feb. 1944.

Pleas

NG

Findings

G (2 specs proved)

Sentence

To be confined for a period of fifteen (15) years.

C.A. Action

FFAS approved. Confinement cut to twelve (12) years and six (6) months.

Reviewing Authority Action

FFAS as mitigated, approved. The record is, in conformity with Art. 14, NCAM, 1937, and CNO Ltr. 01P22 of 28 Nov. 1945, transmitted to the JAG.

-3-

0727

24 JUN 1949

To: The Chief of Naval Operations (Op-20)

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

Referred for information.

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

GENERAL COURT MARTIAL DATA SHEET — FORVEN

Wakabayashi, Seisaku, Yeoman 1/c, USN

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

C, WOC, 166096

(Review Panel No.) (Reviewing Officer) (Docket No.)

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

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

12 May 1949
(Date)

(Signature of reviewing officer)

Cincpacflt-Hlb

A17

Serial 199

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

FIRST ENDORSEMENT on
ComMarianas ltr FA5-10(z)
02-JDM-fek Serial 17790
dtd 28 Dec 1948.

18 JAN 1949

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

Subject: NAKABAYASHI, Seizaku, former vice admiral, IJN - petitions for clemency.

1. Forwarded.

2. Enclosures (A) to (D) inclusive appear to contain no facts justifying the exercise of clemency.

JOHN L. McCREA,
Deputy Cincpacflt.

Copy to: (1st end. only)
ComMarianas

Form No. Cincpacflt-24

FF12/A13-10(3)
02-JDM-fdk

17730

23 DEC 1948

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

Subject: WAKABAYASHI, Seisaku, former vice admiral, IJN - petitions for clemency.

Reference: (a) ComMarianas action, file FF12/A17-10(2) over 02-JDM-ee, serial 17404, dated 9 Dec. 1948, in the case of WAKABAYASHI, Seisaku.

Enclosures: (A) Petition from Zengo YOSHIDA, in Japanese with English translation, dated 10 August 1948.
(B) Petition from Takeo OKUBO, in Japanese with English translation, dated 28 July 1948.
(C) Petition from Kyugoro SHIMAMOTO, in Japanese with English translation, dated 11 August 1948.
(D) Petition from Ihei TERADA, in Japanese with English translation, undated.

1. A military commission convened by this command on Guam tried the subject named Japanese for neglect of duty in connection with war crimes committed against American prisoners of war while he was Commandant of the Fourth Base Force, Truk Atoll, Caroline Islands, during the period 26 July 1943 to 22 February 1944.

2. The record of proceedings in this case was acted upon by the Commander Naval Forces, Marianas on 9 December 1948 and forwarded to the Commander in Chief, Pacific and U.S. Pacific Fleet, the reviewing authority.

3. Enclosures (A) through (D) were received by this command subsequent to the trial of WAKABAYASHI and are forwarded for such action as may be considered appropriate.

L. S. FISKE

0732

FF12/F13-10(3)
CO-JDS-fsh

17730

23 DEC 1948

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

Subject: WAKABAYASHI, Seizaiu, former vice admiral, IJN - petitions for clemency.

References: (a) Commissions action, file FF12/A17-10(2) over CO-JDS-ec, serial 17403, dated 9 Dec. 1948, in the case of WAKABAYASHI, Seizaiu.

Enclosures: (A) Petition from Zengo YOSHIDA, in Japanese with English translation, dated 10 August 1948.
(B) Petition from Takeo OKUBO, in Japanese with English translation, dated 28 July 1948.
(C) Petition from Kyugoro SHIRAMOTO, in Japanese with English translation, dated 11 August 1948.
(D) Petition from Ihei TERADA, in Japanese with English translation, undated.

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2. The record of proceedings in this case was acted upon by the Commander Naval Forces, Marianas on 9 December 1948 and forwarded to the Commander in Chief, Pacific and U.S. Pacific Fleet, the reviewing authority.

3. Enclosures (A) through (D) were received by this command subsequent to the trial of WAKABAYASHI and are forwarded for such action as may be considered appropriate.

L. S. FISKE

Petition

To: Presiding Judge of Guam Military Court.

A senior to me and an intimate one in that respect, former Vice Admiral WAKABAYASHI Seisaku, who is currently under trial at your Excellency's Court, is unquestionably and indeed a man of noble character, rich in benevolence, in friendship, in mild disposition, and in self-sacrificing spirit for others without the least seeking after any recompense of whatever sort; and all those who happened to come in contact with him are greatly influenced by his high and excellent virtue.

There is, however, one pitiful plight hovering over his family. His family has been brought down to ruins, having no one who is able to sustain the very livelihood of the whole family. Then too, his aged father and mother are barely getting along in the mountains of his native place with his daughters; while his three young daughters, on the other hand, are literally yearning after their dear father, praying from the bottom of their heart day after day for the leniency for their father's sin.

Although the fact relating to his war crimes has been revealed while he was still in the hospital, WAKABAYASHI Seisaku, a man of high character, I believe, will to no small a degree take full responsibility even if this be the high-handed criminal act of his subordinates. I, therefore, would like to entreat your Excellency's leniency for him after taking the abovementioned circumstances into your kind consideration.

TERADA Ihei.

嘆願書

寺田伊一平

「グアム」島戦争犯罪裁判長様

貴裁判長様の御手許で審理中の元海軍中将若林清作氏は私と親交ある先輩で資性温厚、友義を重んじ慈愛深く、自己を犠牲にして他人の為に盡くし而も恩を求めず誠に高潔な人格者で持する人々は皆其の徳に感化せられます 但し気の毒なことには、彼の家庭は今や荒廃し生活能力ある家族は殆んど無く、老老せる父母は、頑是なき彼の子女を擁して故山で虫の息を繋ぎ、年若い娘三人は彼の留守宅で死線を彷徨し父を慕うて涙の乾いた日とてなく只管神に祈を捧げて罪の軽からんことを願望して居ります、中将の戦争犯罪事實は彼の病気入院中に惹起した由なるも人格高潔な彼は假令部下の事迹な犯罪行為でも恐らく其の責任を甘受するであろうと思ひますが前記の事情を斟酌せられ寛大な處決を仰ぎ度く

ご願致します

A17-2
File

24 JAN P.M.

A17

Serial 199

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

Chas Marshall

FIRST ENDORSEMENT on
ComMarianas ltr F13-10(3)
02-JDM-fsk Serial 17730
dtd 23 Dec 1948.

18 JAN 1949

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

Subject: WAKABAYASHI, Seisaku, former vice admiral, IJN - petitions for clemency.

1. Forwarded.

2. Enclosures (A) to (D) inclusive appear to contain no facts justifying the exercise of clemency.

J. L. McCrea

JOHN L. McCREA,
Deputy Cinopacflt.

2367

JAN 1949
RECEIVED
OFFICE OF JUDGE
ADVOCATE GENERAL

Copy to: (1st end. only)
ComMarianas

RECEIVED
25 JAN 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
U.C.M. SECTION

Form No. Cinopacflt-28

0736

FF12/F13-10(3)
O2-JDM-fak
Serial:
17730

CINCPAC FLT.
UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

DEC 28 4 05 PM 1948

23 DEC 1948

RECEIVED

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

Subject: WAKABAYASHI, Seisaku, former vice admiral, IJN - petitions for clemency.

Reference: (a) ComMarianas action, file FF12/A17-10(2) over O2-JDM-ce, serial 17404, dated 9 Dec. 1948, in the case of WAKABAYASHI, Seisaku.

Enclosures:
(A) Petition from Zengo YOSHIDA, in Japanese with English translation, dated 10 August 1948.
(B) Petition from Takeo OKUBO, in Japanese with English translation, dated 28 July 1948.
(C) Petition from Kyugoro SHIMAMOTO, in Japanese with English translation, dated 11 August 1948.
(D) Petition from Ihei TERADA, in Japanese with English translation, undated.

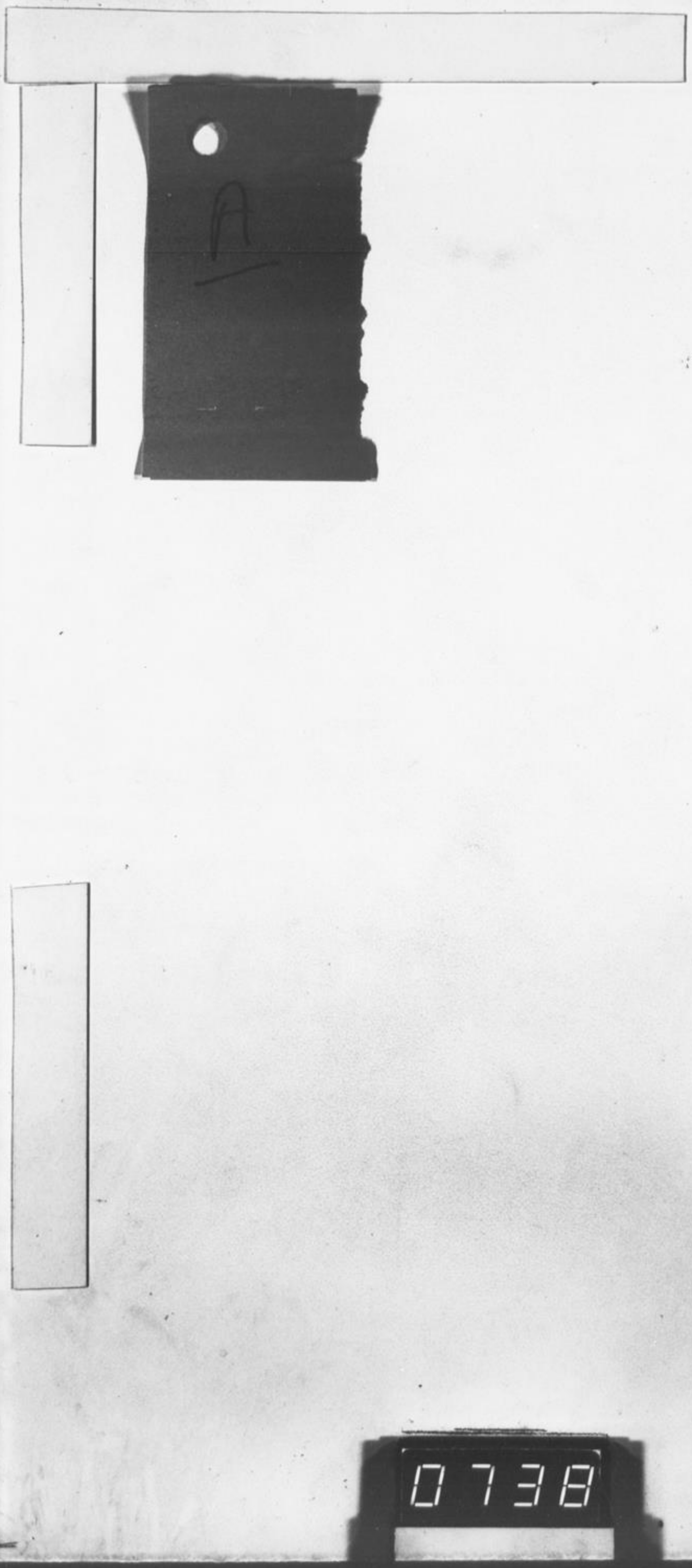
1. A military commission convened by this command on Guam tried the subject named Japanese for neglect of duty in connection with war crimes committed against American prisoners of war while he was Commandant of the Fourth Base Force, Truk Atoll, Caroline Islands, during the period 26 July 1943 to 22 February 1944.

2. The record of proceedings in this case was acted upon by the Commander Naval Forces, Marianas on 9 December 1948 and forwarded to the Commander in Chief, Pacific and U.S. Pacific Fleet, the reviewing authority.

3. Enclosures (A) through (D) were received by this command subsequent to the trial of WAKABAYASHI and are forwarded for such action as may be considered appropriate.

L. S. FISKE

0737


0738

Attestation to the Character of Seisaku Wakabayashi,
Ex-Vice Admiral of the Defunct Imperial Japanese Navy.

I was a Full Admiral of the defunct Imperial Japanese Navy who held, among other posts, that of Commander-in-Chief of the Combined Fleet and that of Navy Minister in succession. Seisaku Wakabayashi and I not only served together:-

1. For one year at the Naval Torpedo School when he was a Lieutenant, Student Officer in Senior Course and I, an Instructor of his class; and

2. For two years in the Navy Ministry when he was a Lt-Commander, Member, Military Affairs Bureau and I, his immediate superior, Chief of Section;

but also had come into close contact with each other on many occasions both before and later in the Central Office and in the same units afloat. Under these circumstances I naturally came to know him thoroughly.

He was meticulously honest, moderate and full of common sense, and was an honorable gentleman, justice-minded and full of benevolence. This is a fact which not only I recognize as true, but also, I firmly believe, nobody who came to know him would ever doubt. It has been widely known that because of his prolonged service in submarines he exerted himself strenuously for the study of international law.

It precludes even a stroke of my imagination that he who has toured through the Western countries and who has been deeply impressed with the good morals and manners of the Westerners should

commit a crime, if any, of atrocities toward POW's of the enemy countries.

Signed in Tokyo, on this tenth day of August, 1948.

Zengo YOSHIDA,
No.114, Kakinokizaka, Meguro-ku,
Tokyo-to.

元海軍中将 若林清作に対する人格証明書

東京都目黒区 柿ノ木坂一一四

吉田善吾

私は元日本海軍連合艦隊司令長官、海軍大臣等を歴任した海軍大将であります。私は若林清作とは

一、其の大尉時代水雷学校高等科学生たりし時担任の教官として一ヶ年間

二、其の少佐時代海軍省軍務局員たりし時直上の課長として二ヶ年間

勤務を共にしたるゆかりであり、其の前後に於ても中央官庁に於て又は同一艦隊内に在りて接触の機会極めて多く其の人柄を知るに最も好都合な境遇にありました。

若林は性質極めて正直温良、常識円満で正義心に富み且慈愛心深き好紳士であったことは独り予一人の認識に止まらず苟も彼を知る何人も疑はざる所であったと確信して居ります。

多年潜水艦に勤務した経歴上の関係もあり国際法

の研究に特に力を入れて居つたことは夙に信聞した所で
あります。
欧米各国をも巡歴して其の良風美俗を学び修
得する所が多かつた若林が敵国俘虜等に対し
苟且にも惨虐の挙に出づるが如きことは平素
深く本人の人格を知れる予の到底夢想だに
及ばざる所であります。

昭和二十三年八月十日　於東京

元海軍大将　吉田善吾

164, 2-chome, Ogikubo,
Suginami-ku, Tokyo-to.

Attestation to the Character of Seisaku Wakabayashi,
ex-Vice-Admiral of the Imperial Japanese Navy.

I, Takeo Okubo, am incumbent Director General, Maritime Safety Board of the Japanese Government. Ex-Vice-Admiral Wakabayashi was appointed in December 1941 Chief of Ship Crew Division, Maritime Board, a civilian post, while being retained in the Active List of the Navy. At that time I was Chief of a Section, Planning Board, and was in charge of affairs concerning maritime transportation. These circumstances brought us two into close contact with each other for about two years both in public and private. And I came to hold him in high esteem for his ability as a Naval administrator and not as a sailor of a fighting unit. Accordingly, I should like to state herewith a part of his character, his views and so on as I saw them at firsthand in the hope of furnishing to your equitable tribunal some data that will shed light on judging him.

1. Mr. Wakabayashi entertained tremendous interest and unusual zeal for the bringing up of crew personnel for the mercantile shipping of Japan. He drew up various reforming plans and put them into practice. In particular, he used to emphasize as guiding principle in educating them the following points:-

A member of ship-crew should always observe discipline and deliberately adhere to various regulations in navigation. He should also be well versed in international laws. Only after being qualified in these respects was he entitled to contribute

his share in the building up of the Japanese Merchant Marine that would be capable of taking an active part on the high seas of the world in open competition with the Western Powers. At the same time he should be free from racial prejudice, be righteous and faithful, and do his part in the progress of peace with the spirit of "fair play".

In the recent war the Japanese Mercantile Marine, though placed in unprecedented plights of various descriptions, kept itself upright through these plights always with fortitude and self-confidence, -- a fact which was fully testified by the rarity of cases of its being involved in scandals of international nature. This simply serves as a silent but powerful testimony to how influential Mr. Wakabayashi was in guiding them.

2. Since the civilian post of the Chief of Ship Crew Division was held by Mr. Wakabayashi, its subordinates and members of its affiliates in maritime transportation branch comprised varied sorts of people such as military personnel, gunzoku, civilian officials and ordinary men. In treating these diversified people he never discriminated them depending on their social standing or official status, but associated with them alike as human beings. Rather, he sided with weaklings, -- at least, so it seemed to me. Consequently, it is no wonder that he was loved and looked up as an honorable gentleman by everybody who came to know him. There was a time when the merchant marine circle of Japan was divided among factions of different schools from which they came and was tainted with factional feuds. He succeeded in eradicating such deplorable trend and in bringing about clear, healthy atmosphere in it thanks to his unswerving efforts along the lines set forth

above. This was to be recognized as one of his merits.

3. Mr. Wakabayashi, despite he was a sailor himself, wished the development of unarmed merchant ships rather than fighting ships and to contribute his part to the furtherance of world peace. This was a straightforward impression I received from him in my daily contact with him. Lather, he cut a clear figure as the president of Shimizu Higher Mercantile Marine School, one of the outstanding organs of fostering ships' officers for the Japanese mercantile marine, -- a fact which speaks by itself eloquently for his character and prestige in his daily life.

In summarizing what has been stated above, be it said that I who know his character and views full well do firmly believe, -- and I presume all other people who know him well may perhaps agree with me in this point, -- that Mr. Wakabayashi, as a commanding admiral of a fighting unit at the front in the recent war, never gave himself up in breaking the rules set forth in the international law and in committing crimes running counter to humanity, -- a fact, I sincerely believe, that will fully be testified in the holy tribunal of the United States of America.

Signed on this 28th day of July, 1948.

Takeo Okubo.

Takeo Okubo.

元海軍中將若林清作に對する人格證明書

東京都杉並區荻窪二丁目一六四

大久保武雄

私、大久保武雄は現在日本政府、海上保安廳長官の職に在る者でありますが當時私は日本政府企畫院課長をしており海軍省より派遣されていた關係上約二ケ年に亘り同氏と私とは公私を問はず屢々接觸しておりました。私は彼若林氏が作戰部隊に在る海軍軍人としてではなく軍政的方面を通じて示した彼の一般的行政手腕を高く評價しておりますので私が彼に對し切實に體驗した彼の人格識見等の一端を、神聖なる貴法廷の前に開陳し若林氏に對する裁判に關する偶りない資料と致したいと存じます

一、若林氏は海務院船員部長として、日本商船の船員養成に關しては多大の關心と異常なる熱意を有し自ら種々の改革を計畫し且實行しましたが特に敎育上の指導方針として常に彼が强調して居たことは次の通でありました。卽ち船員は常に「規律を重じ」「航海諸規則に忠實で」

且「國際公法に通曉」しなければならない、而して之あつてのみ先進歐米諸國に伍して世界の海に雄飛する日本商船隊を造り得るのである と、そして又船員たる者は先づ人種的偏見を捨て正義を尚び信義を重じ「フエアプレー」の精神を以て平和の進軍をしなければならないと說いておりました

今次戰爭中、屢々未だ曾てない種々の苦境に陷つた日本商船隊が常に勇氣と自信を以て守り續けたこの精神は商船隊に於ける國際的事故の極めて僅少であつた事實によつて充分に證明されるもので之こそ彼諸林氏の指導精神が與つて力があつた無言にして且有力なる證據となるであります

扨、若林氏が文官配置たる船員部長であつた關係上、其の部下や關係事業關係者の中には軍人、軍屬、文官、一般人等種々の人々がありました が[redacted]之等の人々に對し身分、地位、配置等によつて差別待遇をする樣な事はなく常に「人」として接觸し寧ろ弱い者に對しては特別の關心を有して居た樣に見受けられました。從つて彼は彼を識る凡ての階層の人々から敬愛されていた立派な紳士でありました。日本商船界に一時出身學校別に基く派閥的爭ひの樣な惡い氣風がありまし

たが若林氏の前述の様な方針と撓まぬ努力により全く解消し和やかな雰圍氣を作りましたことは彼の功績の一つであります

三、若林氏が海軍軍人であるに拘らず「戰鬪艦長」ではなく「武裝なき商船」の發展を念願し軍艦旗に依らず國旗「日の丸」によつて世界の平和に貢獻せんことを願つていたことは日々接觸していた私の若林氏に對する率直な感情でありました。後に至り日本商船の高級船員養成機關の中有力なる清水高等商船學校長として「若林清作」の名を剽まさたこの一事こそ彼の日頃の性格と信望とを擧實に於て示したものであります

以上を綜合致しまして若林氏が今次大東亞戰爭中第一作戰部隊指揮官として戰場に出た場合に於ても彼日頃の性格識見を熟知する私としては、彼を除る他の凡ての人がそうであると同樣に若林氏に限つて國際公法に悖り規律を破り人道に背馳する樣な行爲があつたということは夢想だに出來ない所であります。そしてこの事は理性を有し正義を尚ぶ「アメリカ」の紳士なる法廷に於て充分立證されんことを確信するものであります

昭和二十三年七月二十八日

於東京

大久保武雄 [seal]

Attestation to the Character of Seisaku Wakabayashi,
Ex-Vice Admiral of the Defunct Imperial Japanese Navy.

I, Kyugoro Shimamoto, was a Rear-Admiral of the defunct Imperial Japanese Navy. In 1920 while Lieutenant, J.G., I entered the Naval Submarine School to be educated for the specialty of submarines. At that time Mr. Seisaku Wakabayashi was one of our Instructors with the rank of full Lieutenant. Since then, during some 30 years of my service in the Navy, I shared the official life with him in various quarters, looking him up as a senior in the branch of submarine. And in private life also I associated closely with him. Under these circumstances I came to know him thoroughly well. Moreover, from 1941 through 1942 I was Chief of 1st Section, Personnel Bureau of Navy Ministry, and was in charge of personnel affairs of officers. I made, in particular, special investigation and study going over the file of each individual officer concerned with submarines, whose total number was not large. Thus I came to be well versed in the character, proclivity, service record, and the like, of Mr. Wakabayashi.
In the light of such knowledge coupled with my observation of him in daily life, I should conclude that he is gentle and mild in character, -- to sum up, "a man with deep sympathy and compassion". Being courteous gentleman by nature, he was free from affectation and exaggeration in expressing his views. Such characteristics are, by their very nature, hardly noticeable at first glance. But people who have come to know him well will invariably be impressed with him as "a well-rounded, kind-hearted man of character". It is by reason of this lofty character that he was later vested with the Presidency of Shimizu Higher Mercantile Marine School

enjoying wide popularity and confidence. It is also a firm belief of mine according to my conscience that, while he was Commandant of a unit at the front in the Truk Islands, he should have executed his duty with his usual lofty conviction and noble character unchanged.

Signed in Tokyo, on this 11th day of August, 1948.

Kyugoro Shimamoto,
2-728, Den-enchofu, Ota-ku,
Tokyo-to.

元海軍中將若林清作に對する人格證明書

東京都大田區田園調布二ノ七二八

島本久五郎

私、島本久五郎は日本海軍の元海軍少將であります。一九二〇年私が海軍中尉の時潛水艦關係の專門教育を受ける爲海軍潛水學校に入校した當時、若林清作氏は海軍大尉として私等の敎官でありました。爾後私の約三十年に亘る海軍在職中若林氏とは潛水艦の先輩として部內各處で公的勤務を共にし又私的にも格別の交友を續けその人となりについては充分に承知して居ります。尙に又一九四〇年及四一年度に私は海軍省人事局第一課長として勤務するに亘り士官人事を擔當し時に數の少い潛水艦關係士官については一人々々について徹底した調査、研究等を行つた關係上若林氏の性行、人格、勤務情況等は格別に熟知する機になりました。私のこの立場並に平素の觀察より若林清作氏を見るに、同氏は眞に溫厚素直な性格の持主であり、その特徴としては「同情心深い情深い人」と云う一語に盡きるのであります。元來非常に溫厚な紳士であり何も人に

てもらうことや許可して意見を発表するという性質ではなく、為に新機な性行は一見顕著には表はれませんが同氏に接し或は之を識る者の凡ての人々が抱く印象は「円満且情深い人格者」ということでありませう。後若林氏が日本の高等商船学校の校長として典範を垂つて迎へられたのもこの人格の表れであり又第一線たる「トラック」島に司令官として在職した場合も彼の立派な信念と敬慕すべき等性格に何等の変りもなく自己の職務に當られたことを良心に誓つて確信する次第であります。

昭和二十三年八月十一日

於東京

島本久五郎

44

FF12/A17-19
02-JDM-fok

9 DEC 1948

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

Subject: Review of the Record of trial by a Military Commission of former Vice Admiral NAKABAYASHI, Seisaku, IJN.

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

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

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

2. TRIAL:

a. Offense.

CHARGE - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that NAKABAYASHI, Seisaku, then a vice admiral, IJN, Commandant of the Fourth Base Force, Imperial Japanese Navy, and while so serving as the Commandant of the said Fourth Base Force, did, at Dublon Island, Truk Atoll, Caroline Islands, during the period from July 26, 1943 to February 22, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commandant of the said Fourth Base Force, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

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(a) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Ricketts, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Denny), Baglien (first name to the relator unknown), Paine (first name to the relator unknown), and others whose names are to the relator unknown, during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by crowding them for excessive periods of time into small unsanitary cells, about thirteen to a cell, denying them proper medical care, and repeatedly beating them with fists and clubs, by personnel of the Forty-first Naval Guard Unit, members of the armed forces of Japan, names to the relator unknown.

(b) The unlawful killing of seven (7) American prisoners of war, names to the relator unknown, on or about February 17, 1944, at Dublon Island, Truk Atoll, Caroline Islands, with swords and a loaded firearm, by TANAKA, Masaharu, then a captain, IJN, Commanding Officer of the Forty-first Naval Guard Unit, Truk Atoll, DANZAKI, Tomeroku, then a lieutenant, IJN, attached to said Forty-first Naval Guard Unit, YOSHINUMA, Yoshiharu, then an ensign, IJN, attached to said Forty-first Naval Guard Unit, and other persons names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, Caroline Islands.

Specification 2

In that WAKABAYASHI, Seisaku, then a vice admiral, IJN, Commandant of the Fourth Base Force, Imperial Japanese Navy, and while so serving as the Commandant of the said Fourth Base Force, did, at Dublon Island, Truk Atoll, Caroline Islands, during the period from July 26, 1943 to February 22, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commandant of the said Fourth Base Force, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

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Subject: Review of the Record of Trial by a Military Commission of former Vice Admiral WAKABAYASHI, Seisaku, IJN.

(a) The unlawful torture, abuse and inhumane treatment during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by naval members of the armed forces of Japan, names to the relator unknown, of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Ricketts, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Denny), Baglien (first name to the relator unknown), Paine (first name to the relator unknown), and others whose names are to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by crowding them for excessive periods of time into small unsanitary cells, about thirteen to a cell, denying them proper medical care, and repeatedly beating them with fists and clubs.

(b) The unlawful killing on or about January 30, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital, Dublon Island, OKUYAMA, Tokikasu, then a surgeon commander, IJN, attached to said Fourth Naval Hospital, NABETANI, Reijiro, then a surgeon lieutenant, IJN, attached to said Fourth Naval Hospital, and other persons, names to the relator unknown, of six (6) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by experimenting with injections of virulent bacteria, with exposures to shock, and with other methods, the exact nature and character of which are to the relator unknown.

(c) The unlawful killing on or about February 1, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by OKUYAMA, Tokikasu, then a surgeon commander, IJN, attached to the Fourth Naval Hospital, Dublon Island, Truk Atoll, Caroline Islands, SAKAGAMI, Shinji, then a corpsman warrant officer, IJN, attached to said Fourth Naval Hospital, and other persons, names to the relator unknown, of two (2) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by explosions of dynamite and strangulation.

(d) The unlawful killing on or about February 17, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by TANAKA, Masaharu, then a captain, IJN, Commanding Officer of the Forty-first Naval Guard Unit, Truk Atoll, DANZAKI, Tomeroku, then a lieutenant, IJN, attached to said Forty-first

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Naval Guard Unit, YOSHINUMA, Yoshiharu, then an ensign, IJN, attached to said Forty-first Naval Guard Unit, and other persons names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, Caroline Islands, of seven (7) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, with swords and a loaded firearm.

b. **Pleas:**

To the Charge	- Not guilty	(R.p. 10)
To Specification 1	- Not guilty	(R.p. 9)
To Specification 2	- Not guilty	(R.p. 9)

c. **Findings:**

On the Charge	- Guilty	(R.p. 244)
On Specification 1	- Proved	(R.p. 244)
On Specification 2	- Proved	(R.p. 244)

d. **Sentence:**

Fifteen (15) years confinement (R.p. 249)

e. **Maximum Sentence:**

Death.

f. **Convening Authority:**

Rear Admiral C. A. Pownall,
United States Navy,
The Commander Marianas Area.

g. **Place of Trial:**

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

h. **Date of Trial:**

29 July 1948 to 7 September 1948.
Arraignment: 29 July 1948 (R.p. 9).
Sentence: 7 September 1948 (R.p. 249).

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3. FORMAL MATTERS:

a. Authority for the commission to act.

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

b. All members of the commission were present throughout the trial with the exception of Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U.S. Army. By letter dated August 10, 1948 (Prefix "AG"), the convening authority appointed Lieutenant Colonel Newton L. Chamberlain, Signal Corps, U.S. Army, a member of the commission vice Lieutenant Colonel Garbarino who was thereby relieved. On the eleventh day of the trial, Lieutenant Colonel Chamberlain took his seat as a member of the commission, was sworn, and heard read all previous testimony (R.p. 122, 123, 124) in the presence of the respective witnesses.

c. All members of the commission, judge advocates, reporters, interpreters and witnesses were sworn (R.p. 1, 4, 14, 76, 86, 98, 109, 125, 137, 146, 155, 163, 168, 180, 192, 199, 201, 208, 210, 211, 233, 249, 247).

d. The charge and specifications were shown to have been served on the accused on July 8, 1948 (R.p. 4).

e. The accused was represented by counsel of his own choice (R.p. 1).

f. The accused challenged three members of the commission, Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U.S. Army, and Rear Admiral Arthur G. Robinson, U.S. Navy, on the grounds that they had sat on the court that tried former Vice Admiral KOBAYASHI, Masashi, IJN, on charges based on the same incidents concerning which the accused is now on trial and also they sat on the court that tried IWANAMI, Hiroshi, former captain, IJN, for the incident set out in Specification 2 (c).

Each of the challenged members replied and acknowledged that while the statements of defense counsel were substantially correct that they had not formed a definite opinion and could try the present case without prejudice or partiality (R.p. 2, 3, 4).

The commission properly denied the challenges (R.p. 2, 3, 4; Sec. 388, N.C. & B., 1937; and JAG Desp. 101635 July 1946).

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g. The accused objected to the charge and specifications (R.p. 8, 9; Prefix "K", "M") in effect upon the following grounds:

Objection 1: Specification 2 is duplicative of Specification 1.

Objection 2: The mere allegation "this in violation of the law and customs of war" does not fully inform the accused of the nature and cause of the accusation against him.

Comment: The above two objections are respectively similar to Objections 4 and 1 made to the charges and specifications in the case of former Captain Hiroe KOICHI, IJA, et al, and are commented on in my memorandum on that case dated March 20, 1948.

Objection 3: The specifications are vague and indefinite.

Comment: Section 12, Naval Courts and Boards, 1937, provides that "..... a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended." In my opinion, the specifications in the instant case comply with Section 12. The United States Supreme Court in discussing the sufficiency of similar pleading in the trial of General Tomoyuke YAMASHITA stated:

> "Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. Collins v. McDonald, supra. 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. Dealy v. United States, 152 U.S. 539; Williamson v. United States, 207 U.S. 425, 447; Glasser v. United States, 315 U.S. 60, 66, and cases cited."

Objection 4: The specifications do not allege a crime.

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Comment: The incidents set out in the specifications allege the mistreatment and murder of various American prisoners of war by members of the Japanese armed forces then under the command of the accused. The accused is charged with neglect of duty in having permitted these incidents to occur. The mistreatment and murder of unarmed prisoners of war is a war crime, being a violation of the Geneva Prisoners of War Convention of July 27, 1929. Neglect of duty in violation of the law and customs of war is a war crime within the jurisdiction of a military commission appointed to try war crimes (Yamashita v. Styer, 327 U.S. 1; Decision of International Military Tribunal, Far East in the trial of TOJO, Hideki, et al, Stars and Stripes, November 7, 1948).

Objection 5: The order for trial (charge and specifications) antedate the precept.

Comment: At the time the charge and specifications were signed and served, July 8, 1943, there was a military commission in existence created by the precept dated November 8, 1947. Paragraph 3 of the precept dated July 27, 1948 specifically authorised and directed the military commission created by the precept of July 27, 1948 to take up such cases as may be pending before the military commission appointed by the precept of November 8, 1947. This instant case was a pending case before the prior commission as the charge and specifications had been served.

h. The charge and specifications were found in due form and technically correct (R.p. 9).

i. The accused was properly arraigned (R.p. 9, 10).

4. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 7; Appendix "C", "D") in effect upon the following grounds:

(1) The commission lacks jurisdiction as the international law of today does not recognize neglect of duty of a superior in the armed forces to control and supervise his subordinates as a war crime.

(2) The commission lacks jurisdiction for a trial here is less convenient to the accused than a trial in Japan.

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(3) The commission lacks jurisdiction as the accused is not legally before it since he was not properly extradited.

(4) The commission lacks jurisdiction for the islands where the crimes presumably occurred were not under the command of the convening authority at the time when the offenses were committed.

The plea to the jurisdiction was denied (R.p. 8). The action of the commission in denying the plea was, in my opinion, proper for the reasons stated in paragraph 6 a. below.

b. The accused made a plea in bar of trial (R.p. 8, Appendix "G") on the ground that the alleged offenses had taken place more than two years before the charge and specifications were drawn and were, therefore, barred by the statute of limitations.

Comment: In war crimes there is no statute of limitations. "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or immediately prior to the Mukden Incident of 18 December 1931" (Regulations Governing the Trials of Accused War Criminals, dated 5 Dec. 1945, issued by SCAP file AG 000.5 (5 Dec. 1945); Nazi Conspiracy and Aggression, Vol. 1, p. 5; and Potsdam Declaration, para. 10).

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

c. The accused made a plea in abatement (R.p. 8, Appendix "I") on the grounds that Article 60, Geneva (Prisoners of War) Convention of 27 July 1929 had not been complied with in that the protecting power had not been advised of the judicial proceedings against the accused.

Comment: The accused is not a prisoner of war having been arrested subsequent to the surrender of Japan. He was arrested as a suspected war criminal and is charged in the instant case for crimes committed during the war. The Supreme Court of the United States ruled on this precise question in the Yamashita case. "Petitioner relies on the failure to give the prescribed notice to the protecting power to establish want of authority in the commission to proceed with the trial. For reasons already stated we conclude that Article 60 of the Geneva Convention which appears in Part 3, Chapter 3, Section V, Title III of the Geneva Convention, applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war" (In re Yamashita, 327 U.S. 1, 16).

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

d. The accused made a motion for a bill of particulars (R.p. 9, Prefix "O").

Comment: There is no provision in Naval Courts and Boards for such a motion (N.C. & B., Sec. 404). It is a motion 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, the charges and specifications are the indictment and the accused by timely objections to the charges and specifications may accomplish the same end sought in a request for a bill of particulars. The accused had already objected to the charge and specifications on the same grounds raised in his motion for a bill of particulars (R.p. 8, 9; Prefix "K", "M").

The motion was, in my opinion, properly denied (R.p. 9).

e. At the close of the prosecution's case and before the defense began, the accused made a motion for a directed acquittal on the grounds that the prosecution had not proved the accused guilty of the charges and that Commander Naval Forces, Marianas had no authority to convene this commission as either Commander Marianas Area or Commander Naval Forces, Marianas (R.p. 162). When the rebuttal had ended, the accused made another motion for a directed acquittal (R.p. 240).

Comment: By the precept of 27 July 1948 which convened the commission, it was provided in paragraph 6 that "The proceedings of the military commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial and may use such rules of evidence and procedure issued and promulgated by the Supreme Commander for the Allied Powers (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 AG 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals," and modifications thereof), as are necessary to obtain justice." In Naval Courts and Boards there is no provision for a motion for a directed acquittal (N.C. & B., Sec. 404). Paragraph 5 e. (5) of "Regulations Governing the Trials of Accused War Criminals" provides "....At the close of the case for the prosecution, the

commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused...." Thus even under the relaxed rules there is provision for only one motion for a directed acquittal and it must be made at a particular and designated time, namely, at the close of the case for the prosecution. However, as a reading of paragraph 6 of the precept will indicate, the commission need not relax the rules for naval courts unless it deems it necessary and therefore it need not consider any motion not based on the provisions of Naval Courts and Boards. The second motion was untimely and not provided for; the first motion was denied as there was sufficient evidence before the court to warrant the denial (see paragraph 5 below). The charge and specifications in this case and the precept were signed by C. A. Pownall as The Commander Marianas Area. The Commander Marianas Area had the power to convene this military commission due to his inherent authority as a military commander (Naval Courts and Boards, 1937, Appendix D-18). By PacFlt ltr 2L-47 Third Revision to., effective 1 August 1948, the title "Commander Marianas Area" was changed to "Commander Naval Forces, Marianas." By letter dated 1 August 1948 CinCPac File A17-10 serial 2955, CinCPacFlt File A17-10 serial 3490 (Prefix "UU"), the Commander in Chief Pacific and U.S. Pacific Fleet provided "....Commander Naval Forces, Marianas is vested with authority to act as convening authority relative to military commissions convened by the Commander Marianas Area, including required action on cases now pending and, in event of revision, on cases already tried."

The action of the commission in denying both motions (R.p. 162, 240) was, in my opinion, proper.

f. The accused pleaded "Not guilty" to the charge and specifications (R.p. 9, 10).

g. The defense objected (R.p. 12, Appendix "T", "U") to the prosecution's request that the commission take judicial notice: (1) that the Caroline Islands are part of the Commander Marianas Area; (2) the Geneva Prisoners of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control.....; (3) the Potsdam Declaration of 26 July 1945, particularly paragraph 10.....

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Comment: The commission announced it would take judicial notice of all items requested by the judge advocate (R.p. 12). The action of the commission was, in my opinion, legal for Section 309, Naval Courts and Boards, 1937, provides: "Courts shall take judicial notice of: (a).....(c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties...."

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

a. For the prosecution.

WAKABAYASHI, Seisaku, former vice admiral, IJN, assumed command as Commandant of the Fourth Base Force, Dublon Island, Truk Atoll, Caroline Islands, on or about 26 July 1943 and remained in command until 23 February 1944 (Exhibits 1, 2, 10; R.p. 126). The headquarters of the Fourth Base Force was located on the island of Dublon all during this period (R.p. 126, Exhibit 11). The Forty-first Naval Guard Unit was a subordinate command located on Dublon Island, Truk Atoll, (Exhibits 1, 10; R.p. 77). The Fourth Base Force was a subordinate command of the Fourth Fleet (R.p. 125, Exhibit 1). All prisoners of war were confined at the Forty-first Naval Guard Unit (Exhibits 10(2), 11). The Fourth Naval Hospital was not under the Fourth Base Force (R.p. 18).

MINEMATSU, Yasuo, former captain, IJN, was the commanding officer of the Forty-first Naval Guard Unit from late September 1943 until late December 1943 (Exhibits 1(2), 11(3)). TANAKA, Masaharu, former captain, IJN, relieved MINEMATSU and continued in command of the Guard Unit until February 21, 1944 (Exhibits 1, 7, 8, 9; R.p. 86).

The incident alleged in paragraph (a) of Specifications 1 and 2 involved the torture, abuse and mistreatment of about forty-two (42) American prisoners of war during the period from November 20, 1943 to November 28, 1943. Forty-two (42) survivors from the crew of the U.S. submarine SCULPIN were taken prisoners of war by a Japanese destroyer on November 19, 1943 (R.p. 98, 99, 109, 110). They arrived on Truk on the morning of November 20, 1943 (R.p. 99, 110). The Fourth Base Force was notified of their arrival and ordered their confinement at the Forty-first Naval Guard Unit (R.p. 78, 155). The forty-two (42) prisoners were crowded into three solitary cells, about five (5) feet by five (5) feet, in

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the brig of the Forty-first Naval Guard Unit from November 20, 1943 to November 30, 1943 (R.p. 92, 100, 111; Exhibits 5, 6, 21, 37). The Forty-first Naval Guard Unit was notified by telephone by the Fourth Base Force that personnel from a submarine unit would be despatched to question the prisoners of war (R.p. 156). The prisoners were questioned at the Guard Unit by Japanese officers from the Sixth Fleet (R.p. 78, 156; Exhibit 37). Commander HIGUCHI, Senior Staff Officer of the Fourth Base Force, was present on occasions when these prisoners were interrogated by officers of the Sixth Fleet (R.p. 78, Exhibit 37) and received a report concerning their confinement from Captain MINEMATSU, then commanding officer of the Guard Unit (Exhibit 37). During their interrogation they were beaten by their Japanese guards with fists and clubs (Exhibits 5, 6; R.p. 99, 113). During their confinement the prisoners were beaten with fists and clubs by their Japanese guards (Exhibits 5, 6, 21; R.p. 99, 102, 103, 113, 114). Requests for medical treatment were not heeded (Exhibit 6, R.p. 112). The cells were greatly overcrowded and unsanitary (R.p. 100, 104, 111; Exhibits 5, 20). The prisoners received no medical treatment for the first four or five days of their confinement even though there were many badly wounded among them (R.p. 101, 111, 112; Exhibit 21). When medical treatment was furnished the prisoners were beaten en route to the hospital (R.p. 101). On November 29, 1943 the prisoners left Truk for Japan aboard two aircraft carriers (R.p. 103, 108, 114, 120; Exhibit 5).

The prosecution established the occurrence of the incident alleged in paragraph (b) of Specification 1 and paragraph (d) of Specification 2 by the introduction of certified excerpts from the record of the war crimes trial of TANAKA, Masaharu, et al (Exhibit 8). This incident occurred at the Forty-first Naval Guard Unit and involved the killing of seven (7) American prisoners of war, with swords and a loaded firearm, on or about February 17, 1944. During the course of an American air raid on that date, Captain Masaharu TANAKA, IJN, Commanding Officer of the Forty-first Naval Guard Unit, ordered Lieutenant ISHII, his subordinate, to telephone the Fourth Base Force Headquarters and inquire if prisoners of war were to be executed (R.p. 147). ISHII called the Fourth Base Force Headquarters over the command telephone and was given approval for the execution (R.p. 147). Captain TANAKA was so informed by ISHII (R.p. 148). Captain TANAKA then ordered Lieutenant DANZAKI, a subordinate, to execute the prisoners and they were executed (R.p. 148). TANAKA, DANZAKI, and YOSHIMURA were convicted of these murders (Exhibit 8(3)).

On the night of February 17, 1944, following the American air raid, the Fourth Base Force called a conference of the Fourth Fleet and Fourth Base Force and the commanding officers of various units on Dublon Island (Exhibits 9, 17; R.p. 79, 126). The conference was called by the Commandant of the Fourth

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Base Force, the accused WAKABAYASHI (R.p. 79, 126, 127). The accused was present at this conference, which was presided over by Commander HIGUCHI, IJN, his senior staff officer (R.p. 79, 127, 128). Captain TANAKA, Commanding Officer of the Forty-first Naval Guard Unit, reported that the execution of the prisoners of war had been carried out at the Guard Unit (Exhibit 9, R.p. 127). This report was made in the presence of the accused (Exhibit 9). Captain INOUE arrived late at this conference and received a resume of what had transpired prior to his arrival from Staff Officer KAWAMURA of the Fourth Fleet (R.p. 127, 135). Staff Officer KAWAMURA informed INOUE from his written notes that a report had been made concerning the execution of prisoners of war at the Guard Unit (R.p. 127, 135).

The prosecution established the occurrence of the incidents alleged in paragraphs (b) and (c) of Specification 2 by the introduction of certified excerpts from the record of the war crimes trial of IWANAMI, Hiroshi, et al (Exhibit 7) and the introduction of the testimony from the record of NAKAMURA, Shigeyoshi, former surgeon lieutenant, IJN (R.pp. 37-43). These incidents involved the killing of eight (8) American prisoners of war, held captive by the Forty-first Naval Guard Unit, by medical personnel of the Fourth Naval Hospital. Surgeon Captain Hiroshi IWANAMI, IJN, was the commanding officer of the Fourth Naval Hospital at the time (R.p. 137). Surgeon Captain Shisue IINO, IJN, was Chief Surgeon of the Fourth Base Force and Forty-first Naval Guard Unit (R.p. 137). About January 13, 1944, IWANAMI phoned IINO, stating that he would like to perform physical experiments on the prisoners of war at the Guard Unit (R.p. 138) and requesting that IINO arrange this with the Fourth Base Force Staff (R.p. 138). IINO refused and the following morning reported the phone conversation to the accused (R.p. 138, 139). At this time the accused was ill and was being treated by IWANAMI daily (R.p. 139). IINO was present during these visits and at no time did he hear the accused mention the matter to IWANAMI (R.p. 139). About January 30, 1944, at Dublon Island, six (6) American prisoners of war were killed by experimenting with injections of virulent bacteria, exposure to shock, and other methods (Exhibit 7, R.pp. 39-42). IWANAMI was convicted of killing these prisoners together with Surgeon Commander OKUYAMA and Surgeon Lieutenant NABETANI (Exhibit 7). About February 1, 1944, at Dublon Island, two (2) American prisoners of war were killed by explosions of dynamite and strangulation (Exhibit 7, R.p. 42). SAKAGAMI, Shinji, then a corpsman warrant officer at the Fourth Naval Hospital, was convicted of killing these prisoners together with OKUYAMA (Exhibit 7).

The accused was aware that all prisoners of war were to be confined at the Forty-first Naval Guard Unit (Exhibit 11). He was familiar with his duty under international law to protect prisoners of war and to control the

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acts of his subordinates (Exhibit 13). During his tour of duty as Commandant of the Fourth Base Force he issued no instructions concerning the handling or treatment of prisoners of war (Exhibit 11, R.p. 89). During his tour of duty no system of accounting for prisoners of war was established (Exhibit 11).

b. For the defense.

The defense introduced the testimony of TANAKA, Masaharu, from the record of the TANAKA, et al trial (R.p. 170). TANAKA outlined the details of the execution of the seven (7) prisoners of war at Dublon on February 17, 1944 (R.p. 171) on the orders of Fourth Base Force Headquarters (R.p. 173, 174). TANAKA also testified that he reported the execution to Fourth Base Headquarters that evening (R.p. 174).

The defense introduced in evidence the testimony (deposition) of KAWAMURA, Torao from the record in the war crimes case of KOBAYASHI, Masashi, (R.p. 176). KAWAMURA stated he did not know whether Captain TANAKA reported, at the conference on the evening of February 17th, that prisoners of war had been executed at the Forty-first Naval Guard Unit that day (R.p. 178). He did not tell anyone that he had heard Captain TANAKA say that he had disposed of prisoners of war at the Guard Unit on February 17, 1944 (R.p. 179).

The defense introduced in evidence the deposition of SAKAGAMI, Shinji (R.p. 179, Exhibit 31). SAKAGAMI stated that he had not killed two (2) American prisoners of war on Dublon Island on February 1, 1944.

A prosecution witness, IINO, Shizuo, was called by the defense and testified that an amputation was performed at the Fourth Naval Hospital on one of the submarine prisoners of war (R.p. 181), and he later saw this prisoner and other prisoners of war at the Forty-first Naval Guard Unit dispensary (R.p. 182). IINO testified that the accused was suffering from a stomach ailment about the time of the February 17, 1944 American task force raid on Truk (R.p. 183) and had been on a starvation diet from about January 8th to January 13th (R.p. 183). The Fourth Naval Hospital was under the command of the Fourth Fleet and not subordinate to the Fourth Base Force (R.p. 187).

A prosecution witness, NAKASE, Shohichi, was called as a defense witness (R.p. 192). NAKASE stated that, since the Guard Unit brig was not large enough to take care of the forty-two (42) American prisoners of war, he had ten (10) of them removed to the guardhouse (R.p. 193). He received a report from Surgeon Lieutenant KUNO that the submarine prisoners of war received medical treatment (R.p. 194).

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YOSHINUMA, Yoshiharu, former lieutenant (jg), IJN, testified that he received an order to execute prisoners of war on Truk but did not carry it out (R.p. 200).

DANZAKI, Tomeroku, former lieutenant, IJN, testified that during the raid of February 17th, he received orders from Lieutenant ISHII to execute prisoners of war (R.p. 202). He and YOSHINUMA carried out the execution (R.pp. 202, 203).

IWANAMI, Hiroshi was called as a witness by the defense (R.p. 203). IWANAMI was head medical officer of the Fourth Base Hospital, Truk from November 8, 1943 until the Japanese surrender (R.p. 203). The Fourth Naval Hospital was subordinate to the Fourth Fleet and had no command relation to the Fourth Base Force (R.p. 203). In the latter part of November 1943 two (2) American prisoners of war were brought from the Forty-first Naval Guard Unit to the Fourth Naval Hospital (R.p. 204, 205). He observed their wounds (R.p. 207, 204) and was surprised later when he learned that both prisoners had amputations performed (R.p. 207). He had never requested permission from anyone to experiment on prisoners of war (R.p. 206). IWANAMI admitted he was convicted of the murder of six (6) American prisoners of war on Truk on or about January 30, 1944 and the murder of two (2) American prisoners of war on Truk on or about July 20, 1944 (R.p. 208). He denied that he had murdered the six (6) prisoners of war on or about January 30, 1944 (R.p. 209).

The defense introduced in evidence the deposition of MINEMATSU, Hasuo (R.p. 242), the commanding officer of the Forty-first Naval Guard Unit from September 1943 to December 1943 (Exhibit 32(3)). MINEMATSU stated the prisoners of war from the American submarine SCULPIN were confined at the Guard Unit about the middle of November 1943 (Exhibit 32(3)). The prisoners were questioned by Staff Officers of the Eighth Submarine Fleet and Senior Staff Officer HIGUCHI of the Fourth Base Force was sometimes present (Exhibit 32(4)).

The accused took the stand as a witness in his own behalf (R.p. 213). He testified that Captain MINEMATSU reported to him that because of the smallness of the brig some of the SCULPIN prisoners of war were removed to the barracks (R.p. 215). He instructed MINEMATSU to treat these prisoners of war with special consideration (R.p. 215). He did not talk with anyone concerning prisoners of war on February 17, 1944 (R.p. 218). No report concerning prisoners of war was made at the conference on the night of February 17, 1944 (R.p. 219, 228). IINO did not report to him that Captain IWANAMI had requested the use of some prisoners of war at the Guard Unit for physical experiments (R.p. 220, 227).

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6. DISCUSSION:

a. As to jurisdiction.

Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander in Chief, United States Pacific Fleet, in his confidential serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a military commander (Appendix D, N.C. & B., 1937; in re Yamashita, 327 U.S. 1). By Commander in Chief Pacific and U.S. Pacific Fleet letter serial 2682, dated 11 June 1948, Subject: Pacific Fleet Letter 2L-47; Third Revision to., the Commander in Chief Pacific and U.S. Pacific Fleet changed the title "Commander Marianas Area" to "Commander Naval Forces Marianas" effective 1 August 1948. By letter dated 1 August 1948, CinCPac File A17-10 serial 2955 and CinCPacFlt File A17-10 serial 3490, the Commander in Chief Pacific and U.S. Pacific Fleet vests in the Commander Naval Forces, Marianas all authority in connection with war crimes heretofore vested in the Commander Marianas Area, by virtue of his authority as Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief, Pacific and U.S. Pacific Fleet. The letter further provided that Commander Naval Forces, Marianas is vested with authority to act as convening authority relative to military commissions convened by the Commander Marianas Area, including required action on cases now pending and, in the event of revision, on cases already tried.

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

The accused made a plea to the jurisdiction on the grounds set forth in paragraph 4 a. above. The first ground for this plea was based on the contention that the offense charged was not a crime under the law and customs of war. This objection is not sound. Neglect of duty arising from command responsibility and involving the failure to control subordinates and to protect prisoners of war has been recognized as an offense and applied in war crimes trials before United States military courts (Yamashita v. Styer, 327 U.S. 1; Trial of ASANO, Shimpei, former rear admiral, IJN, et al); before British military courts (trials at Wuppertal, Germany of Karl Rauer, Wilhelm Scharfschmidt, et al on February 18, 1946; the trial of General Victor Seeger on July 10, 1946); and the International Military Tribunal, Far East (Decision of International Military Tribunal in the trial of TOJO, Hideki, et al, Stars and Stripes, 7 November 1948).

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It has long been recognised that the law of war places an affirmative duty upon responsible officers to protect prisoners of war. "The law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates" (Yamashita v. Styer, 327 U.S. 1). The press report of the above cited decision of the International Military Tribunal Far East is here below quoted for ready reference because of its apparent applicability to cases similar to the instant one:

"The International Military Tribunal in effect has placed the blame on top-ranking Japanese for wartime atrocities against prisoners of war and civilian internees.

"Stripped of legal phrases, the tribunal's judgement read in court Thursday, said cabinet ministers and other top officials were responsible for 'prevention of mistreatment' as well as maintenance of all prisoners.

"The judgement said a plea of ignorance of atrocities by individuals was not in itself sufficient to remove blame from them. A cabinet minister not directly involved with the treatment of war prisoners but who continued in office after mistreatment became known to his government also was held responsible.

"This responsibility was emphasised strongly in the judgement as one of the main remaining counts held against the 25 defendants after dismissal of 38 others of the prosecution's original indictment.

"During the trial, the defense has made little effort to counteract testimony detailing atrocities throughout Asia. It attempted to disclaim responsibility of the Tokyo Government for 'local atrocities' In case of former Gen. Iwane Matsui, the defense plea was that he was ignorant of the 'rape of Nanking.'

"'Responsibility for the care of prisoners of war and of civilian internees (all of whom we will refer to as prisoners) rests therefore with the government having them in possession,' said the tribunal judgement. 'This responsibility is not limited to the duty of mere maintenance, but extends to the prevention of mistreatment....The duty to prisoners is not a meaningless obligation based upon a political abstraction.'"

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"It said this responsibility begins with members of the government and extends down to the officials having direct control over the prisoners." (Underscoring supplied).

"These officials, said the judgement, were responsible if they knew such crimes were being committed and failed to take steps within their power to prevent future crimes or if they 'failed to acquire such knowledge.' Otherwise they do not share responsibility."

The grounds of objection to jurisdiction set forth in subparagraphs 4 a. (2) and 4 a. (4) above are not sound. Jurisdiction in war crimes cases does not depend upon territorial control at the time the offenses occurred. The territorial principles of jurisdiction, familiar to domestic courts and ordinary crimes, is not applicable to war crimes cases. War crimes are one of a number of exceptions to this territorial concept of jurisdiction (See Glueck, War Criminals and Their Punishment, p. 81 and fns. 14, 15 on p. 215). The international nature of the crimes, and the realistic necessity of their punishment by the injured State, are cogent reasons for departure from the ordinary concept of territorial jurisdiction (See Glueck, op. cit. p. 81). For these reasons jurisdiction in war crimes cases is primarily based upon custody of the accused at the time of trial. The precept of the military commission in the instant case provides in paragraph 4 that, "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts.....It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals...."

The contention of the accused that he is not legally before the commission as he was not properly extradited (paragraph 4 a. (3) above) cannot be maintained for the laws of the respective nations relative to the extradition of criminals generally are not applicable in the cases of war criminals. This is covered in a report of State-War-Navy Coordinating Subcommittee for the Far East dated 12 September 1945 and subsequently issued instructions by the Joint Chiefs of Staff to SCAP. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provides that any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request: (a) the name and address of suspected war criminals; (b) the name of command making the request; (c) information which constitutes basis for request; and (d) place where suspected war

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criminal is to be tried (see also Potsdam Declaration dated 26 July 1945). Paragraph 4 of the precept in this case gave the commission jurisdiction over the accused.

b. As to procedure.

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

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

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

(4) The sentence is legal.

c. As to evidence.

Referring to the charge and specifications thereunder, there is sufficient competent evidence to support the commission's findings of guilty relative to the accused WAKABAYASHI.

That the accused as a military commander (Commandant of the Fourth Base Force) had the duty to control his subordinates is well established in international law (In re Yamashita, 327 U.S. 1; Rules of Land Warfare (FM 27-10); Annex to the Hague Convention; Geneva Red Cross Convention). The accused was personally aware of his responsibility under military law as shown in his statement, Exhibit 13(1), namely, "I know that in military law, Japanese as well as all other military law, a superior officer is responsible for the control of the acts of his subordinates, and that he has the duty to guide, instruct and control them." In the same exhibit on page 2 the accused stated, "I studied International Law at the Japanese Naval College, and later when I was a member of the Bureau of Military Affairs of the Naval Ministry. I also attended lectures on International Law at war college. Because of this training, I am familiar with the responsibilities and duties under International Law to protect POW's and to treat them humanely."

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Whether the accused actually neglected his duty was a factual question which was decided by the findings of the commission. The evidence supports the conclusion that the accused did neglect his duty. In his statement, Exhibit 11(1), the accused states that when he became Commandant of the Fourth Base Force that there were no existing instructions concerning the handling, treatment or protection of POW's and that during his tour of duty he did not issue any standing orders with regard to the handling, treatment or protection of POW's. There was testimony that the execution in February had been directly ordered by the Headquarters of the Fourth Base Force. Commander ITNO testified that he had brought IWANAMI's strange request directly to the attention of the accused and subsequently in the same month six (6) American prisoners of war were killed by experiments by IWANAMI who was the physician in attendance upon the accused.

Assuming that the accused did not personally order or know of any incident prior to its occurrence, the commission could, nevertheless, properly find the accused guilty of a criminal neglect of duty as charged. It is well established that command responsibility carries with it certain fundamental duties and that failure to perform these duties may constitute a criminal offense regardless of actual knowledge of the occurrence of incidents relative to such an offense. This is supported by the U.S. Supreme Court in the Yamashita case (327 U.S. 1) in applying the law and customs of war relative to war crimes, and in the recent decision of the International Military Tribunal for the Far East in the trial of TOJO, Hideki, et al (Stars and Stripes, November 7, 1948). It is further supported by U.S. military courts in applying military law to U.S. military personnel as shown in the Colonel James A. Kilian, U.S.A., case, approved by the Judge Advocate General, U.S. Army, 22 July 1947 (JAG F CM 318513).

There were, as was to be expected, numerous conflicts in the evidence throughout the record. It was the duty of the members of the commission in their capacity as jurors to weigh the evidence (Sec. 304, M.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Sec. 304 and following, M.C. & B., 1937), or exceeded his allowed discretion in the matter.

d. As to sentence.

The accused was sentenced to confinement for a period of fifteen (15) years. The sentence is legal.

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In the absence of an established policy by higher authority as to the appropriate schedule of punishments, the commission must rely upon its own judgement in determining what is a just punishment in a particular case. The accused was convicted of neglect of duty on the basis of incidents which resulted in the death of fifteen (15) American prisoners of war, and the torture, abuse and mistreatment of about forty-two (42) American prisoners of war. The incidents occurred at subordinate commands of the accused who was the Commandant of the Fourth Base Force. In view of all the circumstances surrounding the offenses, particularly the prevailing war time conditions at Truk and the health of the accused at the time, it cannot be said that the sentence is improper.

The accused was placed in confinement at Sugamo Prison, Tokyo, Japan, on May 15, 1946, as a war criminal suspect. He has been continuously held in close custody and confinement under investigation and awaiting trial from that date to the date of trial which commenced on July 29, 1948. While this fact was presented to the commission in the plea for mitigation made by counsel for the accused (R.p. 248, Appendix "FFF"), the sentence of the commission does not affirmatively evidence that consideration was given to this fact in determination of sentence. It is my thought that the period of confinement of more than two (2) years while under investigation and awaiting trial, justifies reduction of the sentence by the convening authority, and that the action of the convening authority should affirmatively evidence that such reduction is based upon the period of confinement of the accused while awaiting trial.

e. Generally.

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

While the incidents enumerated in paragraphs (a) and (b) of Specification 1 are identical with the incidents enumerated in paragraphs (a) and (d) of Specification 2, the specifications are not duplicative for the offense

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charged in Specification 1 is separate and distinct from the offense charged in Specification 2. The incidents enumerated in paragraphs (b) and (c) of Specification 2 could not be charged against the accused in Specification 1, since that specification alleged a failure to control subordinates and the Japanese personnel involved in the incidents of paragraphs (b) and (c) were not subordinates of the accused as they were personnel of the Fourth Naval Hospital which hospital did not come under the Fourth Base Force. Specification 1 arises out of violation of the duty to control subordinates. Specification 2 arises out of violation of the duty to protect prisoners of war. The duty, under the law and customs of war, to control one's subordinates is recognized in Article 1 of the Annex to the Fourth Hague Convention, wherein it is laid down as a condition which an armed force must fulfill in order to be accorded the rights of a lawful belligerent that it "must be commanded by a person responsible for his subordinates" (36 Stat. 2295). The nature and existence of this duty is discussed by the United States Supreme Court in the Yamashita case (327 U.S. 1). The duty to protect prisoners of war may be considered a separate and distinct duty. The existence of this duty under the law and customs of war is explicitly recognized in Article 4 of the Annex to the Fourth Hague Convention which provides that prisoners of war "must be humanely treated." Title 1, Article 2 of the Geneva Prisoners of War Convention of 27 July 1929, provides that, "Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited."

In accordance with the Judge Advocate General's action (OO-Tachibana, Yoshio, et al/A17-20 I(3-19-47 HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld A17-20/00 (6-25-47)154578) and the Judge Advocate General's action (OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:HBM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem OO-INOUE, Fumio/A17-10 OQ(2-20-48) 159116), the findings on either Specification 1 or the first two paragraphs of Specification 2 could be set aside. It is my opinion that any action with a view to setting aside the findings should be taken by the final reviewing authority if such action is considered warranted by that authority, and not the Commander Naval Forces, Marianas or the Commander in Chief, Pacific and U.S. Pacific Fleet.

7. OPINION: It is the opinion of the undersigned that:

a. The military commission was legally constituted.

b. The commission had jurisdiction of the person and offenses.

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c. The evidence supports the findings of "proved" and "guilty."

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

e. The sentence is legal.

8. RECOMMENDATIONS:

It is recommended: (1) that the proceedings, findings and sentence be approved by the convening and reviewing authorities; (2) that in view of the fact that the accused has been confined under investigation and awaiting trial since 15 May 1946, the convening authority accordingly reduce the sentence of the accused a period equal to the time already served in confinement; (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

9. ACTION:

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

10. Submission of the original record in this case has been delayed pending decision as to the possible necessity for using it in the trial of former Vice Admiral Chuichi HARA, IJN, currently being tried.

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

cc: JAG, USN

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, by precept dated July 27, 1948, was ordered convened July 28, 1948, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U.S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt Serial 0558 of 6 March 1946; ComMarianas Despatch 292336Z Sept. 1947; CinCPacFlt Despatch 020103Z Oct. 1947; SecNav Despatch 061946Z Oct. 1947; CinCPacFlt Despatch 092353Z Oct. 1947). The commission was authorized to try this case as indicated in the precept. The order for trial (charge and specifications) was issued July 8, 1948 and served on the accused on the same day. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

By letter dated 1 August 1948, CinCPac File A17-10 Serial 2955 and CinCPacFlt File A17-10 Serial 3490, the Commander in Chief, Pacific and U.S. Pacific Fleet, vested authority in Commander Naval Forces, Marianas to act as convening authority relative to military commissions convened by the Commander Marianas Area including required action on cases now pending and, in event of revision, on cases already tried.

The proceedings, findings, and sentence in the foregoing case of WAKABAYASHI, Seisaku, former vice admiral, IJN, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since May 15, 1946, the period of confinement is reduced to twelve (12) years and six (6) months.

WAKABAYASHI, Seisaku, former vice admiral, IJN, will be transferred to the custody of the Commanding General of the 8th U.S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

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

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

CinCPacFlt File

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

Serial:

The proceedings, findings, and sentence as mitigated in the foregoing case of WAKABAYASHI, Seisaku, former vice admiral, IJN, 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 011P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

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

(9) [illegible]

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02-JDH-hm

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 17431

9 DEC 1948

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

Subject: Charge and Specifications in the case of:

TOKUNAGA, Akira
TAKAHASHI, Yoshio
KOYAMA, Shigeo

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

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

17431

Specification 1

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

Specification 2

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

Specification 3

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

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Specification 4

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving as the commanding officer of the said First Battalion, at Rota Island, Marianas Islands, did, on or about 8 July 1944, in the Taruga area of Rota Island, Marianas Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Island, name to the relator unknown, this in violation of the law and customs of war.

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

cc: JAG, USN

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

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 17405

9 DEC 1948

MILITARY COMMISSION ORDER NO. 46

(In the case of former Vice Admiral WAKABAYASHI, Seisaku, IJN.)

1. During period 29 July 1948 to 7 September 1948, WAKABAYASHI, Seisaku, former vice admiral, Imperial Japanese Navy, was tried by a United States Military Commission, convened by order of the Commander Marianas Area, dated 27 July 1948, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charge and specifications:

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

Spec.	Nature of Offense	Place and Date of Offenses	Name of Accused
1.	Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill American prisoners of war then held captive by the armed forces of Japan as follows:		WAKABAYASHI
(a)	Torture, abuse and inhumane treatment of about forty-two American prisoners of war.	Dublon Island, Truk Atoll, Caroline Islands, 20 November to 28 November 1943.	
(b)	Kill seven American prisoners of war by swords and a loaded firearm.	Dublon Island, Truk Atoll, Caroline Islands, 17 February 1944.	
2	Failure to protect American prisoners of war held captive by the armed forces of Japan under his command and subject to his control and supervision by permitting the following:		WAKABAYASHI
(a)	Torture, abuse and inhumane treatment of about forty-two American prisoners of war.	Dublon Island, Truk Atoll, Caroline Islands, 20 November to 28 November 1943.	
(b)	Kill six American prisoners of war, by experiments and exposure to shock.	Dublon Island, Truk Atoll, Caroline Islands, 30 January 1944.	
(c)	Kill two American prisoners of war by strangulation and explosions of dynamite.	Dublon Island, Truk Atoll, Caroline Islands, 1 February 1944.	

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

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 17405 9 DEC 1948

MILITARY COMMISSION ORDER NO. 46

(In the case of former Vice Admiral WAKABAYASHI, Seisaku, IJN.)

- -

(d)	Kill seven American prisoners of war with swords and a loaded firearm.	Dublon Island, Truk Atoll, Caroline Islands, 17 February 1948.

FINDINGS: The Commission on 4 September 1948 made the following findings:

"The first specification of the charge proved.

"The second specification of the charge proved.

"And that the accused, Wakabayashi, Seisaku, is of the charge guilty."

SENTENCE: The Commission on 7 September 1948 sentenced the accused as follows:

"The commission, therefore, sentences him, Wakabayashi, Seisaku, to be confined for a period of fifteen (15) years."

2. On 9 December 1948 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings, and sentence in the foregoing case of WAKABAYASHI, Seisaku, former vice admiral, IJN, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since May 15, 1946, the period of confinement is reduced to twelve (12) years and six (6) months.

"WAKABAYASHI, Seisaku, former vice admiral, IJN, will be transferred to the custody of the Commanding General of the 8th U.S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

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

cc: CinCPacFlt (3)
JAG, USN (3)
SCAP (3)
ComGen U.S. 8th Army, Japan (3)
National War Crimes Officer, Wash. D.C. (3)
CO, Marine Barracks (3)
ComMarianas Liaison Officer, Tokyo, Japan (3)

AUTHENTICATED:

H. D. VANSTON,
Flag Secretary.

CASE

OF

WAKABAYASHI, SEISAKU

Volume I

Original Copy

Original to JAG after review by

COMMANDER-IN-CHIEF PACIFIC FLEET

WAKABAYASHI, Seisaku

Trial by military commission at the
Headquarters, Commander Naval Forces, Marianas
July 29, 1948

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02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 12703

27 JUL 1948

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

Subject: Precept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. Pac. Flt. serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47), a military commission is hereby ordered to convene at the Headquarters Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m., on Wednesday, July 28, 1948, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

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

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps, United States Army.
Lieutenant Colonel Kenneth E. BALLIET, Cavalry, United States Army.
Lieutenant Commander Bradner W. LEE, junior, U. S. Naval Reserve.

Lieutenant Commander Wallace J. OTTOMEYER, U. S. Navy.
Captain Albert L. JENSON, U. S. Marine Corps, and of Lieutenant Commander Joseph A. REGAN, U. S. Navy, Lieutenant James P. KENNY, U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, any of whom is authorized to act as such.

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

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

3. This military commission is hereby authorized and directed to take up such cases, if any, as may be now pending before the military commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is president, appointed by my precept of November 8, 1947, except such cases

"A (1)"

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 12703

27 JUL 1948

Subject: Precept for a military commission.

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the trial of which may have been commenced.

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

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

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

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

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

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

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

A true copy. Attest:
J. P. Kenny Lt. USN

"A (2)"

FF12/A17-13(2)
02-DB-ga

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 12616

23 JUL 1948

From: The Commander Marianas Area.
To : Lieutenant David Bolton, U. S. Navy and/or
Lieutenant James P. Kenny, U. S. Navy,
Judge Advocates, Military Commission, Commander Marianas.

Subject: Authorizing correction in specifications.

1. You are hereby authorized and directed to change the charge and specifications preferred by me against WAKABAYASHI, Seisaku in the following particulars:

In the third line of paragraph (a) of the first specification of the charge insert before the word "and" the words "Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Ricketts, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Denny), Baglien (first name to the relator unknown), Paine (first name to the relator unknown),";

In the sixth and subsequent lines of paragraph (a) of the first specification of the charge change the words "constantly beating them with clubs, denying them medical care, confining thirteen (13) of them for about a week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of about forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six foot two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head," to "crowding them for excessive periods of time into small unsanitary cells, about thirteen to a cell, denying them proper medical care, and repeatedly beating them with fists and clubs,";

In the sixth line of paragraph (a) of the second specification of the charge insert before the word "and" the words "Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Ricketts, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Denny), Baglien (first name to the relator unknown), Paine (first name to the relator unknown),";

In the eighth and subsequent lines of paragraph (a) of the second specification of the charge change the words "constantly beating them with clubs, denying them medical care, confining thirteen (13) of them for about a week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of about forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six foot two inch by two inch clubs while he was being interrogated, and

"B(1)"

23 JUL 1948

FF12/A17-13(2)
02-DB-ga
Serial: 12816

Subject: Authorizing correction in specifications.

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beating said Brown with a rifle butt upon his bare feet and head" to "crowding them for excessive periods of time into small unsanitary cells, about thirteen to a cell, denying them proper medical care, and repeatedly beating them with fists and clubs.".

2. You will cause the copy for the accused to be corrected accordingly.

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

C

(1)

裁判管轄権の抗辯

辯護人 高柳俊二郎

被告人若林海作は本軍法裁判会が彼を裁判する管轄権を有しないと云う故に裁判管轄権の抗辯を申立てる。

(一) 本件起訴状に依れば被告人若林は昭和十八年七月廿六日より同十九年二月廿二日に亘る間日本海軍第四根拠地隊司令官としての職務を不法に無視しこれを執行しなかったとの理由で起訴せられてゐる。即ち(a)罪状項目表の一に於ては彼の指揮監督下にあった人々の行動を統御監督することが彼の職務であったるを拘らずこれを怠り(b)罪状項目表の二に於ては彼の指揮監督下に在った日本軍隊に抑留せられてゐたアメリカ俘虜を保護する為当時の状況下適切なる彼の権限内の措置を講ずべきに之を怠りまして戦争の法規並に慣習法に違反したと云ふ訴因になってゐるのであります。

本軍法裁判会に対するプリーセプトを見ますれば本軍法裁判会は特別軍事裁判所 EXCEPTIONAL MILITARY COURTS の管轄権内の一切の犯罪を裁判する権限を有すとありまして茲に言ふ犯罪とは戦争犯罪の裁判管轄権であることは疑がない。而して今日の国際法では軍隊に於ける上官の部下統御及監督上の職務怠慢として戦争犯罪とは認めてゐない。然るに本件は上述せる如く被告人若林に戦争の法規並に慣習法の違反即ち日本海軍第四根拠地隊司令官としての部下統御監督上の職務怠慢として起訴せられてゐる。よって故に本件は本軍法裁判会の裁判管轄外である。

"C(1)"

(二). 本件は特定の国又は州の法律を適用した犯罪
ではないのであって戦争の法規並に慣習法が適用と
なるのであるから特定した土地の裁判管轄はない。

尚民事事件の裁判に於ても刑事事件の裁判に於
ても或る事件の裁判管轄権を決定するに當っては裁判
所、被告人の利益を考慮に入れ裁判するに被告
人に最も便宜な土地の管轄権を有する裁判所が其の
事件の管轄権を有するとするのが現行文明国に於ける訴訟
手續法上の原則である。即ち裁判を受くるに付被告人
に利益であり且最も便宜多い土地と云へば原則として
其の被告人の住所地又は居所地である。であるから
例外的な事由のない限り被告人の住所地又は居所
地の裁判管轄権を有する裁判所が其の事件の裁判
管轄権を有すべきである。右も被告人の住所地と犯
行地とが異なる管轄権事に關する場合に於ては土地
に對する管轄権は犯行地の裁判所も亦認めら
れる。蓋し通常犯行地に於ては証拠の蒐集が容
易で物調査及裁判も便宜が多いからである。

本件の被告人若林は昭和十九年二月末トラックより
日本に帰り昭和廿年終戦後は民間人として東京に居
住していたのである。即ち現在に於ては検察官も後に犯
行地と主張せざるトラックは本件に於ては証拠の蒐
集上何等の便宜をも有せざるものである。加之本
件の調査は斯る程度東京に於て行はれた。斯かる時
期に於ては東京は本件の裁判を行うのに被告人にとって
最も便宜な土地である。又斯くすることが刑事訴訟
法上の原則とも一致するのである。然るに本件をグア
ム島に於て裁判することは土地に関する裁判管轄権
の観念は全く無視せられんとする被告人の利益を

(3)

為國に入小許法手續上の便宜上圖る土地管轄権の觀念を認める訴訟促進は刑事訴訟法上の原則を第南に附せざること、なり、以上の理由に因り本件裁判を當地に於て行ふことは被告人にとり不公平となることを主張する。

(三)、千九百七年十月十八日の海牙條約第四の附屬書第一條第一項第一號には「部下の為に責任を負ふ者が頭に在ること」と規定されるけれども此の責任を負ふ者という語に疑が生ずる。此の責任は誰に對して負ふのであるか國際法學者の間でも其の解釋は一定して居ない。或る學者は其の上長の權能者に對し責任を負ふべきであると說明して居る。國際條約の遵守義務者は國家又は之に準ずる組織團體であるという建前から言へば本件被告人は日本の斯かる事件に對し一定の裁判管轄権を有する裁判機關の裁判に附せらるべきである。因て本件は本軍法會議に於て裁判すべき事件でないことを主張する。

以上の次第なるに因り本件は本軍法會議の審理すべき限りでないとの陳述をなす旨を述べて居るのである。

謹言

萬野發二郎

"C(3)"

Plea to the Jurisdiction of the Military Commission to try WAKABAYASHI, Seisaku, Ex-Vice Admiral, Imperial Japanese Navy, Delivered by Mr. TAKANO, Junjiro, Counsel for the Accused.

May it please the Commission,

The accused, WAKABAYASHI, Seisaku objects to the jurisdiction of this military commission and hereby enters his plea to the jurisdiction.

1. According to the charge and specifications in the instant case, the accused Wakabayashi is charged with unlawfully disregarding and failing to discharge his duty as commandant of the 4th Base Force, Imperial Japanese Navy during the period from July 26, 1943 to February 22, 1944. It is alleged (a) in Specification 1 that he unlawfully disregarded and failed to discharge his duty to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, and (b) in Specification 2 that he unlawfully disregarded and failed to discharge his duty to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in violation of the law and customs of war.

Judging from the precept to this military commission, this military commission is "competent to try all offenses within the jurisdiction of exceptional military courts." There is no doubt that this court is the one to try war crimes. The international law of today does not recognize neglect of duty of a superior in the armed forces to control and supervise his subordinates as a war crime.

In the instant case, however, the accused Wakabayashi is charged with violation of the law and customs of war in that he neglected his duty as the commandant of the 4th Base Force to control his subordinates. Therefore, this case is not cognizable by this military commission.

2. Since the offense which is being dealt with in the instant case is not an offense which is in violation of laws of a specific country or a specific state but is an offense in violation of the law and customs of war, there can be no specific territorial jurisdiction over the alleged offense.

It is a principle in the law of procedure of modern civilized countries that, whether in a civil or criminal case, the jurisdiction of courts to try a particular case should be determined out of a consideration that will enable the accused person to be tried in the territory most convenient to him. The territory which is most convenient to the accused to have a trial is his domicile or place of residence. Therefore, the court which exercises jurisdiction over the accused's domicile or place of residence should have jurisdiction over the case, unless there are exceptional reasons. In cases when the domicile of the accused and the locality of the crimes come under different jurisdiction, jurisdiction over territory is also recognized in a court exercising jurisdiction over the place of crimes, because it is generally convenient for investigations and trial, as the gathering of evidence is ordinarily easiest at the place of the crime.

In the instant case the accused Wakabayashi returned to Japan from Truk in February 1944. After October 1945 he resided in Tokyo as a civilian. At present Truk Atoll affords us no facilities whatsoever as regards the gathering of evidence as to the alleged crime in the instant case. As a matter of fact, investigations of this case were carried on in Tokyo. Under such circumstances Tokyo is the most convenient and easiest place to gather the evidence of the case. It is in accord with the law of procedure which I have mentioned, to try this accused in Tokyo.

To try the accused in the instant case here on Guam, however, disregards not only the concept of territorial jurisdiction but the principle of procedure, especially criminal procedure, which recognizes territorial jurisdiction for the sake of convenience and benefit of accused persons in their trial.

On the foregoing grounds we maintain that it is prejudicial to the accused to hold this trial here.

3. The Annex to Hague Convention No. IV of 18 October 1907 provides in its Article 1 paragraph 1, "To be commanded by a person responsible for his subordinates." There are questions about the words, "a person responsible". To whom does he owe this responsibility? The interpretation of these words differs among the scholars of the international law. Some scholars explain that the person responsible should owe the responsibility to some higher authority. From the point of view that the one who has the duty to observe international conventions and treaties is a country or an organized body similar to a country, the accused in this case should be subject to the trial of a Japanese judicial organ which has a specific jurisdiction over such incidents. We maintain therefore that the instant case is not cognizable by this military commission.

On the grounds I have stated above, the accused pleads with the commission to rule that this case should not be tried by this military commission.

Respectfully,

/s/ TAKANO, Junjiro.

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

Eugene E. Kerrick, junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

D (2)

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY
WAKABAYASHI, Seisaku, former Vice Admiral, I.J.N.

Delivered by

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

The accused Vice Admiral WAKABAYASHI, Seisaku objects to being tried by this Military Commission and hereby enters this plea to the jurisdiction.

This plea to the jurisdiction is made on the grounds that he, WAKABAYASHI, Seisaku, is not subject to the court's jurisdiction and that the offense is not one cognizable by this Military Commission.

The accused WAKABAYASHI, Seisaku was regularly demobilized.

The precept for this Military Commission reads that this commission is ordered to convene "for trial of such persons as may be legally brought before it." We maintain that WAKABAYASHI, Seisaku the accused is not legally brought here for trial.

Vice Admiral WAKABAYASHI, Seisaku, Imperial Japanese Navy (Retired) was living at 4862 Taishido-cho, Setagaya-ku, Tokyo, as a demobilized naval officer. He had been put on the inactive list as of September 15, 1945. On April 25, 1946 he was told by the Japanese Second Demobilization Department Bureau and a police inspector to go to Sugamo Prison, Tokyo, so he went out there in a car furnished by this demobilization bureau. Without any charges being preferred against him, he was confined at Sugamo Prison, Tokyo, on May 16, 1946. On May 28, 1946 he was sent to Guam. On arriving at Guam, May 29, 1946, he was immediately placed in solitary confinement. He was denied the benefit of counsel until after he was served with the original charge and specifications on July 8, 1948 corrected on July 23, 1948.

Not until July 8, 1948, more than two years after he was first confined, was he told why he was being held under arrest and in solitary confinement. On July 8, 1948 he was for the first time served with the charge and specifications dated that same date. Then for the first time he was told that he would be given the benefit of counsel.

The charge and specifications are for neglect of duty as Commandant of the 4th Base Force, Imperial Japanese Navy, during the period from July 26, 1943 to February 22, 1944, in connection with incidents occuring almost five years ago.

Martial law is not retrospective. This means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's "Military Law and Precedents," page 837, wherein he cites footnote 95 Finlason, Coms. on Mar. Law., Clode, M.L. 189, Thring, Crim. Law of Navy, 42-3, Wells on Jurisdiction

577; 12 Opins. At. Gen., 200; G.O. 26 of 1866; Do. 12 Dept. of the South 1868; Do. 9 first Mil. Dist. 1870 Digest 507. "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt 216. And see Jone 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." G.O. 125, Second Mil. Dist. 1867.

The jurisdiction of this Military Commission is limited by the period and territorial extent of the Military Occupation of Dublon Island, Truk Atoll by the American Forces. (See Winthrop, page 837, Ibid, and footnote 95). Japan was still in possession on February 17, 1944 of Dublon Island, Truk Atoll. So the offenses charged were committed long before the United States Navy occupied these islands and atoll or declared martial law or military law on these islands.

Winthrop, "Military Law and Precedents," page 836, sets forth the rule as to jurisdiction of a Military Commission:

> "A Military Commission, (except where otherwise authorized by statute) can legally assume jurisdiction only of offenses committed within the field of the command of the convening commander. Thus a commission ordered by a commander exercising military government by virtue of his occupation, by his army of territory of the enemy, cannot take cognizance of an offense committed without such territory." Footnote (88) citing Finalson, Repression of Riot and Rebellion, 106; Franklyn, Outlines of Mar. Law; Pratt, 216; G.O. 125 Second Mil. Dist., 1867; G.O. 20, 1847 (Gen Scott).
>
> The place must be the theatre of war or a place where military government or martial law may be legally exercised,. otherwise a military commission (unless specifically empowered by statute) will have no jurisdiction of offenses committed there. Footnote (89) citing Clode, M.L. 189."

Thus the United States of America had no jurisdiction of or on Dublon Island, Truk, November 20, 1943 to November 28, 1943, January 30, 1944, February 1, 1944, and on February 17, 1944.

Truk was not within the field of command of the convening authority of this Military Commission at any time during those dates.

We call the commission's attention to paragraph 273 of the Rules of Land Warfare of the War Department of the United States, which provides:

> "Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity for maintaining law and order, indispensable to both the inhabitants and to the occupying force." (Basic Field Manual FM 27-10, 1940, 73-74).

So in the case of Dublon Island, Truk Atoll, the military occupation of these islands by the United States conferred only the right to

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

The necessity for maintaining law and order by the United States in these islands only commences on the date of occupation of these islands by the United States. It does not go back to November 20, 1943, or to February 17, 1944. Between these dates, Japan exercised sovereignty in these islands. There was no relinquishment or transfer of power until after August 14, 1945, and until the date when United States Forces occupied these islands when Admiral Hara officially surrendered Truk to the United States Naval Forces under Vice Admiral Murray on September 2, 1945.

The Government of the United States should recognize the principle that occupation by the United States of Truk carries with it the responsibility for any occurrence which may fairly be regarded as being contrary to international law even as to trial by Military Commission of Japanese nationals for war crimes.

There can be no jurisdiction by this Military Commission over a Japanese national long ago demobilized, relieved of active duty and now a civilian citizen of Japan, for offenses said to have been committed at Truk from November 20, 1943 to February 17, 1944. (See Digest of International Law by Hackworth, Vol. VI, "Military Occupation" Sec. 587, Pages 385-414).

Even the exercise of a state's jurisdiction over its citizens is strictly limited to territorial boundaries. Fenwick in his book, "International Law," states the rule particularly as regards crimes, on page 188:

> "In respect to the acts of citizens outside national boundaries the most frequent assertion of personal jurisdiction by the state is over the commission of crimes. The constitutional law of different states varies in the matters, some states asserting a right to punish their citizens for crimes wherever committed, other states such as Great Britain and the United States, choosing to restrict their ordinary criminal jurisdiction to acts committed within their territorial boundaries. In the case of American Banana Co. v. United Fruit Co., decided in 1909, the Supreme Court of the United States refused to enforce the Sherman Anti-Trust Act against two persons alleged to have violated the law in Panama and Costa Rica. 213 U.S. 347 (1909) Hudson, Cases, p. 60."

Fenwick continues and we quote:

> "We have seen that a state may exercise personal jurisdiction over its nationals for acts committed abroad and may make its jurisdiction effective when such nationals return again within

the jurisdiction of the state. Can a similar jurisdiction be exercised with regard to an alien for an act committed abroad when such alien happens to come subsequently within the territorial jurisdiction of the State? The question has given rise to much controversy. Acts of the alien not directly injurious to the state or to its citizens may be excluded from consideration."

The acts of the accused, an alien and a Japanese national was not directly injurious to the United States, for the offense of neglect of duty committed against any of the victims named in the specifications is not alleged to have been the proximate cause of the injury complained of nor is it alleged the negligence was wilfull. There can be no jurisdiction therefore to punish the accused for the alleged offense of neglect of duty against the victims.

There is no jurisdiction in this commission to try the accused, TAKABAYASHI, Seisaku for the alleged crime of neglect of duty and failure to protect the victims because we in the United States follow the traditions of the common law which holds that crimes must be tried at the place where committed and since the offenses were committed outside the territorial boundaries of the United States, they cannot be tried by this commission. We again cite Fenwick, Ibid, p. 240:

".....Great Britain and the United States, following the traditions of common law, hold that crimes must be tried at the place where they are committed and that their criminal courts have no jurisdiction over offenses committed outside the territorial boundaries of the state."

Article 42, Section III, Military Authority over the territory of the Hostile States, Annex to the Hague Convention No. IV of 18 October 1907 provides:

"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

Therefore, even the Hague Convention of October 1907 lays down the principle that there is no jurisdiction until occupation and since there was no occupation until after August 14, 1945, yes not until September 2, 1945, there was no jurisdiction from November 20, 1943, to February 17, 1944, and there cannot, therefore, be any jurisdiction now.

If this Commission is to take judicial notice of the Hague Convention and are to be bound by one article they should be bound by all articles in this Hague Convention and in this case by Article 42 quoted above.

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

On the other hand, subjugation or conquest implies a transfer of sovereignty. Ordinarily, however, such transfer is effected by a

treaty of peace. When sovereignty passes, military occupation as such must of course cease; although the territory may, and usually does for a period at least continue to be governed through military agencies which have such powers as the President or Congress may prescribe."

Eugene Borel, the Arbitrator in the Ottoman Debt. Arbitration (Hackworth, Vol. VI, Ibid, page 387) held: "that mere military occupation did not operate as a transfer of sovereignty."

The case of Alexandre Kemeny, C'Etat Serve-croate-slovene held that an armistice agreement did not have the effect of transferring sovereignty. (VIII recueil des decisions des Tribunaux Arbitraux Mixtes 588; Annual Digest, 1927-28, Case No. 374). (See Hackworth Ibid, Vol. VI, page 387).

In the case of Naoum et autres c. Min. Public et Colonie de l'Afrique occidentale francaise the French court of Causation, Criminal Chambers in 1919 held: "That Territory under military occupation cannot be held to be part of the National Territory." Annual Digest, 1910-22, Case No. 312; Gazette du Palais, 1920, 162. (See Hackworth, Ibid. Vol. VI, page 388).

In a case decided November 17, 1924, the German Reichsgerricht held valid a marriage contracted by a German subject, a member of the army of occupation in Russian Poland in 1917. "The German subject had petitioned for a declaration that the marriage was null, since it had not been concluded in accordance with German law. The court stated that the occupied territory was to be regarded as foreign territory where German marriage law did not apply." (See Hackworth, Ibid, Vol. VI, page 388).

This military commission has no jurisdiction over WAKABAYASHI, Seisaku, for neglect of duty from November 20, 1943, to February 17, 1944.

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

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

Commander Marianas cannot legally therefore assume jurisdiction because these islands were not within the field of command of the convening authority at the time the offenses were committed. The precept, serial 12703, dated 27 July 1948, states: "Pursuant to the authority vested in my by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander in Chief Pacific

and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. Pac. Flt. serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z of Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47)." The specifications of the charge allege the neglect of duty was committed during the period from July 26, 1943 to February 22, 1944. During this period Commander Marianas did not have jurisdiction of these islands either as the Commander Marianas Area or by special authority.

The precept further states: "....by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. Pac. Flt. serial 0558 of 8 Mar. '46...)" But the confidential serial 0558 is dated 8 March 1946 and the offenses were committed from July 26, 1943 to February 22, 1944. Thus neither by virtue of his office or by authority of the confidential serial 0558 dated 8 March 1946 did the Commander Marianas Area have authority legally to assume jurisdiction of these islands during the period from July 26, 1943 to February 22, 1944. Neither did Commander in Chief Pacific and United States Pacific Fleet legally have jurisdiction of these islands during this period. Neither did the Secretary of the United States Navy have jurisdiction during this period.

The Commander Marianas Area is no longer the civil administrator of these islands and therefore has no authority as the civil administrator of these islands. The enforcement of law and order on Truk Atoll is the responsibility of the civil administrator and not Commander Marianas Area.

The right of this Military Commission to try WAKABAYASHI, Seisaku is without any merit because he was illegally brought within the jurisdiction of the Commander Marianas Area from Japan. How WAKABAYASHI, Seisaku came into the custody of the United States Navy Department and the Commander Marianas Area is important because it was highly irregular how he came to Guam and has been in solitary confinement here on Guam for more than two years without charges being preferred against him.

His arrest without warrant, confinement for several years without charges being preferred against him and his extradition from Japan to Guam without proper extradition papers are all highly irregular,

Not until after he was served with the charge and specifications on July 8, 1948 was he allowed the benefit of counsel.

So we see that at the time WAKABAYASHI was arrested and placed in confinement at Sugamo Prison, Tokyo, on May 17, 1946, he was never charged with any crime, and even during the long period of time when in solitary confinement here on Guam, from May 29, 1946 until July 8, 1948, he was not charged with a crime until when he was first served with the charge as set forth in Commander Marianas Serial 12002 dated 8 July 1948. He had then been in solitary confinement for more than two years.

What is the law in regard to this matter? I quote from 36 American Jurisprudence, "Military" section 98, page 252, which reads as follows:

"It is provided by statute that at the time of arrest the person

accused must be furnished with a true copy of the charges, with the specification.(9)"

Citing United States v. Smith, 197 U.S. 386, 49 L. ed 801, 25 Sup. Ct. 489, Bishop v. United States, 197, U.S. 334, 49 L. ed. 780, 25 S. Ct. 440; Johnson v. Sayre, 158 U.S. 109, 39 L. ed. 914, 15 S. Ct. 773; Dynes v. Hoover, 20 How (U.S.) 65, 15 L. ed. 838.

In 14 American Jurisprudence "Criminal Law" Section 217, page 919, the rule is that there are some cases which deny the right of a court to try one who has been illegally brought within the jurisdiction from another state or country.

Annotation: 18 A.L.R. 512; 15 A.L.R. 177.

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

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

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

Because WAKABAYASHI, Seisaku is not a citizen of the United States does not put him outside the protection of the Constitution of the United States of America, when we take him into custody to try him in our courts. Article IV, the Fourth Amendment to the Constitution of the United States reads:

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

WAKABAYASHI, Seisaku, a retired vice admiral of the Imperial Japanese Navy, was told to report to Sugamo Prison. No warrant was ever served upon him. By what authority was Vice Admiral WAKABAYASHI confined at Sugamo Prison without preferring any charges against him or without warrant of arrest? But he stayed in Sugamo Prison from May 15, 1946 until May 28, 1946, when he was put on a navy plane and sent to Guam. Arriving at Guam on May 29, 1946 he was immediately put into solitary confinement. By what law was this high ranking retired Japanese navy admiral thus imprisoned? There was no proper extradition.

International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one, paragraph 1, on page 243, of Vol. 22, American Jurisprudence, "Extradition," we read:

> "Since the United States cannot as a matter of comity, surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See infra, para. 4. See Moore, International Law Digest, p. 246 P. 580."

We hold that it is necessary for this commission in deciding whether they have jurisdiction to try WAKABAYASHI that they decide the validity of the extradition proceedings by which WAKABAYASHI was removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of WAKABAYASHI. The extradition papers should be made available to defense counsel in order that we may point out to the commission our grounds for objection. Not to produce the extradition papers at this time is most prejudicial to the substantive rights of WAKABAYASHI. It is an admission that there are no extradition papers or that such papers as there are, are not in good order.

From Vol. 22, American Jurisprudence, page 243, we quote:

> "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision, citing Valentine v. United States, 299 U.S. 5, 81 L ed. 5, 57 S.Ct. 100; Factor v. Laubenheimer, 290 U.S. 276, 78 L. ed. 315, 54 S. Ct. 101; Terlunden v. Amos, 184, U.S. 270, 46 L, ed. 534, 22 S. Ct. 484; United States v. Raushnor, 119, U.S. 407, 30 L. ed. 425, 7 S.Ct. 234."

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

In footnote 9, page 249 of Volume 12 of American Jurisprudence:

> "Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected. Courts are without the power or authority to construe such act liberally, but will be compelled to follow the rule laid down by the Federal Court and require that all of the provisions of

the Federal law relating to requisitions must be strictly observed and respected. Ex parte Owen, 10 Okla. Crim. Rep. 284; 136 P. 197, Am. Cas. 1916 A. 682; See also Courts vol. iv, p. 337, par. 117."

It is well that we consider who may be extradited. On page 235 of Vol. 12 of American Jurisprudence we read:

"The persons against whom extradition proceedings are directed must, of course, be fugitives from justice."

Citing Jones v. Tobin, 240 U.S. 127, 60 L. ed. 562, 368 S. Ct. 290; Tenn. v. Jackson (D.C.) 36 Fed. 258, 1 LRA 370; Jones v. Leonard, 50 Iowa, 106, 32 Am. Rep. 116; Keller v. Butter, 246 N.Y. 240, 158 N.E. 510, 55 A.L.R. 394; State ex rel Lea v. Brown, 156 Tenn. 669, 645 W. (2d) 941, 91 A.F.R. 1246, write of certiorari denied in 292 U.S. 638, 78 L. ed. 1491, 54 S. Ct. 717; Ex parte McDaniel, 76, Tex. Crim. Rep. 184, 173 S. W. 1918, Am. Cas. 1917 B, 335.

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

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

Vice Admiral WAKABAYASHI, Seisaku was ordered released from active duty in the Japanese navy and demobilized and placed on inactive duty. Clearly, therefore, he was not a fugitive from justice nor did he flee from the custody of the United States or was he personally present at the time the crimes were committed within the demanding state, the United States.

We continue to quote from 22 American Jurisprudence "Extradition," Section 17, page 255:

"The language of the Frederal Statutes seems to contemplate that the crime shall have been committed by one, who at the time, was personally present within the demanding state. Thus, it refers to a demand by the Executive of a state for the surrender of a person as a fugitive from justice to the executive of a state 'to which such person fled,' and it requires the production of a copy of the indictment found, or the affidavit made, before a magistrate, containing the necessary charges and properly certified by the executive of the state or territory 'from which the person so charged has fled,'..."

WAKABAYASHI, Seisaku was not personally present within the United States or the territories over which the United States claimed jurisdiction at the time the crimes were committed, from November 20, 1943 to February 17, 1944. This seems to be one of the requirements of the Federal Statute. Therefore WAKABAYASHI cannot be legally extradited.

It is a universal rule that a person to be extradited must be charged with a crime against the law of the state from whose justice he is alleged to have fled. WAKABAYASHI did not flee; he was ordered to inactive duty and put on the inactive list by orders from the Japanese Navy Department. Even now he is not charged with crimes against the

United States but is charged with violations of the law and customs of war in that he neglected his duty as the Commandant of the Fourth Base Force, Imperial Japanese Navy.

From Page 265, Volume 22, American Jurisprudence, "Extradition" section 26 we quote:

> "It is the universal rule that it must appear to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand. It is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged." (10) citing many cases such as Marbles v. Creecy, 215 U.S. 63, 54 L. ed. 92, 30 S. Ct. 32; Compton v. Alabama, 214 U.S. 1, 53 L. ed. 885, 29 S. Ct. 605, 16 Ann. Cas. 1098; Pierce v. Creecy, 210 U.S. 387, 52 L. ed. 1113, 28 S. Ct. 714 (rule recognized); Illinois ex rel McNicholas v. Pease, 207 U.S. 100, 52 L. ed. 121, 28 S. Ct. 58 (dictum); Appleyard v. Mass., 203 U. S. 222, 51 L. ed. 161, 27 S. Ct. 122, 7 Ann. Cas. 1073; Munsey V. Clough 196, U.S. 364, 49 L. ed. 515, 25 S. Ct. 282; Hyatt v. N.Y. 188 U.S. 691, 47 L. ed. 657, 23 S. Ct. 456; Roberts v. Reilly, 116 U.S. 80, 29 L. ed. 544 6 Ct. 291; Lee Gim Bor v. Ferrari (C.C.A. 1st) 55 F. (2d) 86, 84 A.L.R. 329; Ex parte Spears, 88 Cal. 640, 26 P. 608, 22 Am. St. Rep. 341; Ross v. Crofutt, 84 Conn. 370, 80 A. 90. Ann. Cas. 1912 C. 1295; Chase v. State, 93 Fla. 963, 113 So. 103, 54 A.L.R. 271; People ex rel. Mark v. Toman, 362 Ill. 232, 199 N.E. 124, 102 A.L.R. 379; People ex rel. Carr v. Murray, 357 Ill. 326, 192 N.E. 198, 94 A.L.R. 1487; Dennison v. Christian, 72 Neb. 703 101 N.W. 1045, 117 Am. St. Rep. 817 affirmed in 196 U.S. 637, 49 L. ed. 630, 25 S. Ct. 795; Re Waterman, 29 Nev. 288, 89 P. 291, 11 L.R.A. (N.S.) 424, 13 Ann. Cas. 926; Re Hubbard, 201 N.C. 472, 160 S.E. 569, 81 A.L.R. 547; State v. Adams, 192 N.C. 787, 136 S.E. 116 citing R.C.L.; State ex rel. Davey v. Owen, 133 Ohio St. 96, 12 N.E. (2d) 144, 114 A.L.R. 686; Fork V. Corrington, 34 Ohio St. 64, 32 Am. Rep. 345; Exparte Owen, 10 Okla. Crime Rep. 284, 136 P. 197, Ann. Cas. 1916 A, 522; Com. ex rel. Flower v. Superintendent of Phil. County Prison, 220 Pa. 401, 69 A. 916, 21 L.R.A. (N.S.) 939; Ex parte Murray, 112 S.C. 342, 99 S.E. 798, 5 A.L.R. 1152; State ex rel Grass v. White, 40 Wash. 560, 82 P. 907, 2 L.R.A. (N.S.) 563. Annotation: 81 A.L.R. 551; 1 L.R.A. 371; 28 L.R.A. 801; 11 L.R.A. (N.S.) 426.

Persons cannot be extradited for political crimes and most treaties expressly so provide. All crimes associated with actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited.

The specification alleged "that TAKABAYASHI, Seisaku, then a vice admiral, IJN, Commandant of the Fourth Base Force, Imperial Japanese Navy, and while so serving as the Commandant of the said Fourth Base Force, did at Dublon Island, Truk Atoll, ---during the period from July 26, 1943 to February 22, 1944, at a time when a state of war existed between the United States of America its allies and dependencies and the Imperial Japanese Empire...."

This neglect of duty as Commandant of the Japanese Fourth Base Force is of a political nature. His neglect of duty is a political

crime and WAKABAYASHI should not be extradited in order to stand trial for the crime alleged, criminal neglect of duty.

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

"EXTRADITION. 31. Political Crimes. - The development of extradition has evolved the principle that there shall be no international extradition for political crimes and offenses. (20) (cite: "Annotation: 112 Am St. Rep. 127 Sec. 1 Moore Extradition, p. 303, 205; 4 Moore International Law Digest, p. 332, 604.

"In keeping with this tenet of International Law, most extradition treaties with foreign governments expressly provide that they do not apply to charges of political crimes (1) (Cite: "Annotation: 41 L. ed. 1047. See 1 Moore Extradition, p. 206-207.") Many of the treaties, however, between the United States and foreign countries expressly provide for extradition of persons charged as assassins or murderers of the heads of the various governments where, although such murder may be classed as on in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. (2) (Cite: "See 1 Moore Extradition, p. 310, 208; 4 Moore, International Law Digest p. 332, 604.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. (3) (Cite: "Annotation: 12 Am. St. Rep. 126.") Accordingly during the progress of a revolution crimes of an atrocious and inhuman character may be committed by the contending forces, and still the perpetrators of such crimes may escape punishment as fugitives beyond the reach of extradition. It does not devolve on the courts in extradition proceedings to determine what acts are, or are not, within the rules of civilized warfare; and, while men in heat blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradicted, (4)(Cite: "Annotation: 112 Am. St. Rep. 126.") An extradition magistrate has the jurisdiction and it is his duty to decide with competent legal evidence before him, whether an offense charged is a political crime. (5) (Cite: "Ornealas v. Ruiz 161 U.S. 502, 40 L. ed. 787, 16 S. Ct. 689.") And a decision by a commissioner in favor of the extradition of persons charged with murder and other crimes during a raid into an adjoining country, even though there is some evidence that their purpose was to fight against the foreign government, cannot be reviewed on the weight of the evidence and is final for the purpose of the preliminary examination unless palpably erroneous in law. (6) (Cite: Ibid.)"

Since the accused WAKABAYASHI, Seisaku is charged with a political crime and extradition is expressly forbidden of persons charged with political crimes, his extradition is illegal and therefore this commission has no jurisdiction of the accused.

The judge advocates have alleged in the specifications that the accused, while serving as the Commandant of the Fourth Base Force, did from November 20, 1943 to November 28, 1943 and on February 17, 1944, and on January 30, 1944, and on February 1, 1944 neglect his duty at Dublon Island, Truk Atoll. On these dates the Japanese government still held control of and occupied Dublon Island, Truk Atoll. The accused was not within the United States when the alleged crimes took place and the accused should be released forthwith. I again cite for you the ruling in Vol. 22 in American Jurisprudence, on page 294:

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

Until we see the extradition papers, if there are any, we cannot know for what offense WAKABAYASHI was extradited. The rule is now well settled that a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in the treaty and for the offense with which he is charged in the proceedings for his extradition until a reasonable time and opportunity have been given him after his release or trial on such charge to return to the country from which he was taken for the purpose alone of trial for the offense specified in the demand for his surrender. Both English and Canadian cases are in accord with the modern American view, the rule being that they limit the prosecution to the crime for which the fugitive was extradited. Citing Buck v. Rex, 55 Can. S.C. 133, 38 D.L.R. 548, Ann. Cas. 1918, D. 1023. See page 299 of Vol. 22 American Jurisprudence, "Extradition," Sec. 60.

The commission can have no jurisdiction of WAKABAYASHI, Seisaku, former vice admiral, IJN, for the crimes of negligence committed on these islands during the period from July 26, 1943 to February 22, 1944.

According to C.M.O. 15-1917, p. 9, "The authority to convene the above mentioned exceptional military courts vests only in the military commander or military governor of an occupied territory, and all such courts may be ordered only in the name of such commander or Governor... Insofar as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority."

If we follow C.M.O. orders for the law on military commissions convened by the Navy, rather than to ex post facto rules promulgated by S.C.A.P. on December 5, 1945, addressed to Commander-in-Chief, United States Army Forces Pacific, Commanding General Sixth Army, Commanding General Eighth Army, and Commanding General XXIV Corps, this commission has no jurisdiction to try the accused WAKABAYASHI, Seisaku.

The charged, dated 8 July 1948 and amended, under which Vice Admiral WAKABAYASHI is being tried does not allege that he either committed or directed the commission of the acts, that he had knowledge of the acts, and consequently no violation is charged against him. The gist of the charge against Admiral WAKABAYASHI is an unlawful breach of duty, a criminal neglect of duty, as the Commandant of the Fourth Base Force, IJN, but neither wilful neglect is charged nor is knowledge alleged.

We hold that this military commission has no authority to try the accused, Vice Admiral WAKABAYASHI, the Commandant of the Fourth Base Force, Imperial Japanese Navy, for criminal neglect of duty.

We also maintain that the offense of neglect of duty alleged in the charge is one not cognizable by this commission.

Since there are no common law offenses against the United States, the crime of neglect of duty must be statutory crime. In 14 American Jurisprudence, "Criminal Law," Section 15, p. 766, the rule is clear and uncontradicted: "...it is now well settled that except as to treason which is defined by the Federal Constitution, there are no common-law offenses against the United States (13). "(citing Donnelly v. United States, 276 U.S. 505, 72 L. ed. 676, 48 S. Ct. 400; United States v. Gradwell, 243 U.S. 476, 61 L. ed. 857, 37 S. Ct. 407. Annotation: Ann. Cas. 1918 A 991.

"In order that an act be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist." (Citing 144 U.S. 677, 36 L. ed. 581, 13 S. Ct. 764; United States v. Brewster, 139 U.S. 240, 35 L. ed. 190, 11 S. Ct. 538).

"The courts of the United States in determining what constitutes an offense against the United States must resort to the statutes of the United States enacted in pursuance of the Constitution." Re Kollock, 165 U.S. 526, 41 L. ed. 813, 17 S. Ct. 444.

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

If it is a statutory offense, that former Vice Admiral WAKABAYASHI is charged with having violated, what is the statute and does the statute define it as a misdemeanor or a felony? What punishment does the statute provide and what courts have cognizance of the offense?

We hold that the neglect of duty charged is no crime because knowledge is not charged neither is it charged the accused wilfully and knowingly neglected his duty.

In 14 American Jurisprudence, "Criminal Law," Section 14, page 764 we find the rule that "In some states no act is to be regarded as a crime unless it is so declared by statute." Citing Bradley v. State, 79 Fla. 651; Soper v. State, 169 Ind. 177; Steward v. Jessup, 51 Ind. 413; State v. Campbell 217 Iowa 848; State v. Koontz, 124 Kansas 216; State v. Shaw, 79 Kan. 296; Kennan v. State, 86 Neb. 234; People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001, write of certiorari denied in 289 U.S. 709, 77 L. ed. 1464, 53 S. Ct. 786; People v. Knapp 226 N.Y. 373, 99 N.E. 841 Ann. Cas. 1914 B. 243; Toledo Disposal Co. v. State, 89 Ohio St. 59; State v. Ayers 49 Ohio 61; Ex parte Lingenfelter, 64 Tex. Crim. Rep. 30, 142, S.W. 55, Ann. Cas. 1914 C. 765; Annogation: Ann. Cas. 1913 E. 1252; Ann. Cas. 1918 A. 998.

In this same footnote we find the rule:

"What is known as the higher law has no place in the jurisprudence of Oklahoma." Lickfield v. State, 8 Okla, Crim. Rep. 164, 126 P. 707, 45 LRA (N.S.) 153.

And what does the state of New York say about this question of neglect of duty? "This same footnote (2) sets forth the New York rule of law:

> "Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so prescribes, as there is no common law crimes in the state. People v. Knapp, 206 N.Y. 373, 99 N.E. 841, Ann. Cas. 1914 B. 243."

What does the international law have to say about neglect of duty?

The gist of the charge in the YAMASHITA case was an unlawful breach of duty by YAMASHITA as an army commander. Mr. Justice Stone in the majority opinion said:

> "The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result."

In his dissenting opinion Mr. Justice Rutledge said:

> "And in that state of things petitioner has been convicted of a crime in which knowledge is an essential element."

We see how different is the YAMASHITA case. That case was the case of an army commander who had taken hostile territory and was the military governor of the Philippines. "Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one hundred and twenty-three in number, committed by members of the forces under petitioner's command, during the period mentioned. The first item specifies the execution of 'a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.' Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments." Application of Yamashita, 66 S. Ct. 340 at 347.

The specifications in this WAKABAYASHI case are altogether different from those in the YAMASHITA case.

The Japanese Navy Department had ordered responsible navy officers to command the navy guard units. They were responsible for their acts.

Vice Admiral WAKABAYASHI, however, is not responsible for the acts of these guard unit commanders because they were derelict in their duty.

This YAMASHITA case, when brought to the Supreme Court of the United States, was not upheld by all the Supreme Court justices.

Mr. Justice Rutledge dissented and said of the YAMASHITA case:

> "Much less have we condemned one for failing to take action. I have not been able to find precedent for the proceedings in the system of any nation founded on the basic principles of our Constitutional democracy, in the law of war or in other internationally binding authority or usage."

Mr. Justice Murphy of the United States Supreme Court in his dissenting opinion said:

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

The accused WAKABAYASHI, Seisaku prays of judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

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

REPLY TO PLEA TO JURISDICTION

Delivered by Lt. David Bolton, USN, Judge Advocate.

The plea of the accused as presented by Mr. Takano and Commander Carlson, USNR, raises several objections to the jurisdiction of this military commission over the offenses charged against the accused Wakabayashi. These objections to jurisdiction are so patently without merit that they justify only the briefest reply.

1. Mr. Takano and Commander Carlson argue that the charge and specifications against the accused do not allege a war crime properly cognizable before this commission. In essence they contend that no statute created the crime of neglect of duty in violation of the law and customs of war, that neglect of duty is not a war crime, and that the Yamashita case is not applicable because the fact circumstances are different, (and they imply that even if the Yamashita case were applicable it would constitute an ex-post facto application of law.)

It is not necessary that any specific statute or treaty set forth the offense with which the accused is here charged. The offense of neglect of duty as here set forth, and its penal punishment is well established in international law and arises from the "law and customs of war" rather than from any specific penal statute. The neglect of duty charged against the accused consists of his unlawful disregard and failure to control his subordinates and protect prisoners of war as required by the law and customs of war. Numerous decisions of international tribunals, and of military commissions have recognized this duty and have applied criminal responsibility for failure to perform this duty under the law and customs of war. In the Yamashita case (327 U.S. 1) cited by defense counsel, the United States Supreme Court recognized this duty and confirmed the legality of the application of criminal punishment for violation of this duty.

> The Supreme Court of the United States, in this case stated: "It is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of petitioner to perform the duty imposed on him by the law of war and to pass upon its sufficiency to establish guilt." And fn. 4 thereof reads: "...the charge sufficiently states a violation against the law of war, and that the commission, upon the facts found, could properly find petitioner guilty of such a violation."

The argument by defense counsel that there is a distinction between the facts alleged against Yamashita and the facts alleged against the accused Wakabayashi, has no relevance to the issue of jurisdiction. The offenses charged against Yamashita, and against Wakabayashi are similar, and are similarly based upon the law and customs of war. It would be absurd to require identity of facts and evidence in order to cite the Yamashita case as precedent for existence and punishment of the offense charged in violation of law and customs of war.

Similarity of the offense charged is apparent when we examine the charge against Yamashita which was that during the period between October 9, 1944 and September 2, 1945, in the Philippine Islands "while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he ...thereby violated the laws of war."

The offenses charged against the accused do not constitute an ex-post facto application of criminal law. The Yamashita case applied, and the Supreme Court of the United States reexamined and recognized the legality of the application of, already existing and long established law and customs of war with regard to the offense charged. The duty to control subordinates and to protect prisoners of war has been recognized for literally hundreds of years. In more recent years, in the Fourth Hague Convention (1907) and the later Geneva Prisoner of War Convention (1929) the duty was affirmed and more specifically crystallized in treaty form. Similarly, criminal responsibility of an individual for violations of international law, or the law and customs of war, is of long recognized standing. As far back as 1784 it was recognized and applied in the United States in the famous case of Respublica v. De Longchamps 1 Dall. 110 (Pa. 1784).

The offenses charged constitute a violation of the law and customs of war, and as a recognized war crime, are properly triable before military commission.

2. Commander Carlson, counsel for the accused, points out the fact that Truk Atoll was not held by the American forces during the period when the alleged offenses occurred. He argues from cases and authority dealing with martial law, that the commission is therefore without jurisdiction to try offenses which occurred in these places prior to the time of occupation by the American forces. Counsel's argument contains two fundamental errors which destroy the entire content of this line of argument.

In the first place, the accused is not being charged for violation of any martial law or for violation of any domestic law. He is charged with violation of international law, that is to say the law and customs of war. The very nature and essence of these offenses, these war crimes, is such that the vast majority of such offenses occur at the time, and in the place where the forces committing the war crime are in control. Under the theory advanced by the accused, therefore, the war criminal would not be justiciable by the military commissions or tribunals of the power or forces which have been the victims of such war crimes. The ineffectiveness, and consequent absurdity of such a concept of international law is apparent. And it is clear therefore why jurisdiction over such international offenses, as war crimes, does not rest upon territorial control over the place, and at the time when, the offenses occurred. In this respect war crimes are like the crime of piracy, and the war criminal like the pirate, as expressed by Grotius (1583-1645) De Jure Belli ac Pacis, vol. 2 cap. 20, sec. 40, is "hostis humani generis," and as such he is justiciable by any state anywhere. Hackworth, International Law Vol. 2, p. 187.

F(2)

The second error of counsel rests in his interpretation of the law - for even if the offense charged had been in violation of the local law, we would then be concerned with the problem of the jurisdiction of courts of an occupying power to try offenses committed prior to such occupation, in violation of local law. In the Furuki and Inoue cases, in which I had the pleasure as judge advocate, to oppose defense counsel Commander Carlson, this issue was specifically raised, and it was held that a Military Commission did possess jurisdiction to try offenses against local law committed prior to the occupation of such local area. (See Advance CMO and 6, 1948).

The fact that the offenses charged against the accused occurred prior to the time that Truk came under the control of the American forces does not interfere with the jurisdiction by this commission over the offenses charged.

In this connection note that the jurisdiction over offenses charged in violation of the law and customs of war, is not even limited to offenses arising during the actual course of the war. The Regulations Governing the Trial of Accused War Criminals, SCAP AG 000.5 (5 Dec 1945)2.b(2) provides "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931."

3. Defense counsel Mr. Takano argues that this trial should be held in the place most convenient to the accused, that the doctrine of territorial jurisdiction has its roots in this concept, and that the accused considers that trial in Japan before Japanese courts would be most suitable and convenient. Defense counsel is in grevious error with regard to both the content and the rationale of the laws regarding jurisdiction. Counsel has confused certain doctrines relating to venue, which have arised largely in connection with civil actions, with the doctrines of territorial jurisdiction as applied in criminal law. The alleged doctrine of convenience to the accused has no application in determining the validity of jurisdiction in criminal proceedings. The doctrine of territorial jurisdiction is not based upon convenience to the accused.

The rationale of the laws regarding territorial jurisdiction of offenses is based upon the requirement of showing (a) criminality of the act under applicable law (the law applicable in the place where the acts or omissions alleged to constitute an offense occurred), and (b) the jurisdiction of the court to try the offense, as established through legal authority given to the court over the offense charged. (This latter authority is ordinarily limited to the territorial jurisdiction of the state or subdivision thereof creating the court - and the problem of territorial jurisdiction is the problem of showing that the offense occurred within the territory where the court has been given legal authority to exercise its jurisdiction. For offenses in violation of domestic law, the state or subdivision thereof is, with certain exceptions, limited to offenses in violation of its law which occurred within the area of that state or subdivision thereof. It is of course natural that the courts acting with regard to offenses which have such territorial limitations must themselves be limited both the territorial nature of such offenses, and by the more narrowly limited scope of the jurisdiction specifically prescribed for such courts under the applicable law. In considering such violations of national or domestic law it is frequently a fundamental problem to

establish in each case presented before the court, that the offense occurred within the territorial jurisdiction of the court. With regard to violations of international law, and more specifically with regard to violation of the law and customs of war the doctrine has no application, for as we have pointed out such crimes are justiciable anywhere.

The criminality of the offense charged against the accused is based upon international law, and wherever the acts or omissions occurred they constituted an offense. As I have pointed out, they are properly justiciable anywhere. The offense charged against the accused occurred at Truk Atoll, Caroline Islands. The Caroline Islands, including Truk Atoll, are within the military command of the Commander Marianas Islands. Even if it were necessary that the doctrine of territorial jurisdiction be applied in the instant case charging violation of the law and customs of war, the instant offense is properly triable before this Commission for the Commander Marianas area, not Japan, is the area within which the offense charged occurred. There are no courts on Truk Atoll which have authority to try the accused for the offense charged, and the instant military commission sitting within the Commander Marianas area, has been authorized by the military commander of this area to try offenses "within the jurisdiction of exceptional military courts," which includes the offense charged against the accused. In addition it should be pointed out that the Commission not only has authorized jurisdiction over the offense, but similarly has jurisdiction over the person of the offender. The precept specifically provides that "It shall have jurisdiction over all Japanese nationals ... in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals.... Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

4. The foregoing reply sufficiently establishes the jurisdiction of the Commission in the instant case, it is only necessary to briefly discuss the specious argument of defense counsel Commander Carlson that jurisdiction of the commission in the instant case is vitiated by the fact that arrest and extradition of the accused was illegal. The argument of counsel is in error. The accused was properly arrested and confined as a war crimes suspect. He was properly transferred to Guam and here confined pending further investigation and subsequent trial as a war criminal. It should be noted in passing that he was arrested and transferred to Guam not as a political criminal, but as a war crimes suspect. The laws of various nations cited by defense counsel Commander Carlson with regard to the question of extradition are clearly inapplicable in the instant case. The accused was not extradited for violation of the domestic laws of Guam or the Marianas, but as a war criminal for violation of the law and customs of war. It is unnecessary to discuss the matter in detail for the legality of the procedure is clearly covered by its conformance to the requirement of the report of State-War-Navy Coordinating Subcommittee for the Far East, dated 12 September 1945, and subsequent instructions issued by the Joint Chiefs of Staff to the Supreme Commander Allied Powers. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provides that ... any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request (a) the name and address of suspected war criminal; (b) the name of command making request; (c) information which constitutes basis for request and (d) place where suspected war criminal is to be tried. These provisions have been complied with by the Commander Marianas Area and the accused is

therefore legally before this commission.

It is respectfully submitted that the plea to jurisdiction should be overruled.

Respectfully,

David Bolton

David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

PLEA IN BAR OF TRIAL

OF

WAKABAYASHI, SEISAKU

Delivered by COMMANDER MARTIN E. CARLSON, U. S. NAVAL RESERVE, at Headquarters Command, Commander Marianas, Guam, Marianas Islands.

May it please the commission:

The accused, WAKABAYASHI, Seisaku makes this plea in bar of trial on the grounds of the statute of limitations.

The offense neglect of duty and failure to discharge his duty is alleged to have been committed during the period from 26 July 1943 to 22 February 1944. The charge and specifications are dated 8 July 1948, and were changed by Commander Marianas serial 12616 dated 23 July 1948, more than four years after the offenses were committed.

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

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

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

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

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

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

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

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

Section 582 of the Criminal Code of the United States sets a three year limitation on criminal offenses.

Title 18 Criminal Code United States Code Annotated. Criminal Code and Criminal Procedure. Section 582. "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in Section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed:" (R.S. pp 1044; April 13, 1876, c. 56, 19 Stat. 32; Nov. 17, 1921, c. 124, pp 1, 42 Stat. 220).

Even under this section the offenses which Admiral WAKABAYASHI is being tried for are barred by this Federal Statute of Limitations.

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

The criminal charge in this case was not made until the formal written accusation was made on July 8, 1948 of charges and specifications dated July 8, 1948 and corrected July 23, 1948.

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

This statute of limitations is regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense"(citing Wheeler v. Castor 11 N.D. 347, 92 N.W. 381, 61 L. R. A. 620.) and is one to which, in proper circumstances, all men are entitled as a right. (Citing Anaconda Min. Co. v. Sailo, 16 Mont. 8, 39, P. 909, 50 Am. St. Rep. 472; Carter v. Collins, 174, Okla., 4, 50 P. (2ed) 203, 34 Am. Jur. Limitation of Actions Section 12, page 23 also states:

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

In 15 Am. Jr. Criminal Law Section 342, page 32 it is stated:

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

A judgement for the defendant on a plea of the statute is necessarily an acquittal of the charge, and not a mere abatement of the action. Therefore, it has been universally classed as a plea in bar and not in abatement (citing U. S. v. Oppenheimer 242, U. S. 85, 61 L. Ed. 161, 37 S. Ct. 68, 3 A.L.R. 516; U. S. v. Barber, 219 U. S. 72, 55 L. Ed. 99, 31 St. Ct. 209. 15 Am. Jur. Criminal Law, pp 343 p. 32.

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

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

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

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

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

But let us hear what Wharton says: In Wharton's Criminal Procedure, Volume I, Section 367, is headed: "Statute of Limitations Construction to be Liberal to Defendant."

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

"But it is otherwise when a statute of limitation is granted by the state. Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocense, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocense, has assigned it and positive periods in which it destroys proofs of guilty." (2)"Footnote (2): "This is well exhibited in a famous metaphor by Lord Flunkett of which it is said by Lord Broughman (Works, etc., Edinb. ed. of 1872, IV 341) that "It can not be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced." "Time" so runs this celebrated passage "with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he metes out the periods of that possession that shall supply the place of the muniments his scythe has destroyed."

In other words, the defense of the statute of limitations is one not merely of technical process, to be grudgingly applied, but of right and wise reason, and, therefore, to be generously dispensed. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p. 952.

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

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

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

Vice Admiral WAKABAYASHI, Seisaki was informed on or about 25 April 1946 by a member of the Second Demobilization Bureau that he was wanted for arrest and that it was desired he report at Sugamo Prison.

He was incarcerated in Sugamo Prison, Tokyo, on 16 May 1946 still without warrant of arrest or charges being preferred against him.

Then on 29 May 1946, he was sent to Guam without extradition papers where he was put in solitary confinement. He has been in solitary confinement at the War Criminal Stockade since 29 May 1946. For more than two years the prosecution have held Vice Admiral WAKBAYASHI in solitary confinement and without benefit of counsel. Now the prosecution come before this court and ask that you deny the accused Vice Admiral WAKABAYASHI the benefit of the statute of limitations because they have delayed instituting this trial. They who ask that you enforce the law against the accused ask however that they be outside the law.

Long delay in instituting trial is not only productive of expense to United States Government but it is a peril to public justice in the attenuation and distortion by natural lapse of memory of testimony. Do not approve their action in keeping Admiral WAKABAYASHI, Seisaki in solitary confinement here on Guam for twenty-six months without preferring charges against him or giving him the benefit of counsel when, "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" from 14 American Jurisprudence Gum. Supp. Criminal Law Section 167, p. 74 add new par. p. 884.

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

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

The Federal case of U. S. v. Watkins (CC. Dist. Col. 1829) Fed. Cas. No. 16649 held: "The time of finding the indictment will appear by the caption, and where it appears therefrom that the offense was committed beyond the time limited, judgement will be rendered for defendant."

The accused WAKABAYASHI, Seisaku pleads the statutes of limitations as a bar to his trial for the alleged offenses committed during the period from July 26, 1943 to February 22, 1944 and charged under date of July 8, 1948, and corrected July 23, 1948.

The accused WAKABAYASHI, Seisaku, prays of judgement of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

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

REPLY TO PLEA IN BAR

Delivered by

Lieutenant DAVID BOLTON, U. S. N.

The accused's plea in bar rests upon two cited statutes of limitation. The first statute cited by the accused is Article 61, of the Articles for the Government of the Navy. This article is completely inapplicable to the instant case. Article 61, AGN, reads in part: "No person shall be tried by court martial...for any offense...committed more than two years before the issuing of the order for such trial...." By its specific terms therefore this statutory limitation relates only to trials by court martial, and is not applicable to offenses triable before exceptional military courts such as the instant military commission. The distinction between a naval court martial and an exceptional military court such as the instant military commission is specifically noted in N.C.& B. Appendix D-12. Article 61, since it relates to trial by court martial, is limited therefore to persons and offenses triable by court martial. In general the persons so triable are members of the naval forces, personnel accompanying the Navy, and spies, as set forth in N.C. & B., Sec. 333. The accused does not fall within any of these catagories, and is therefor not entitled to the benefits of Article 61 or other Articles for the Government of the Navy. The similar question of the applicability of Articles of War to accused war criminals was specifically considered by the United States Supreme Court in the Yamashita case (In re Yamashita, 327 U.S.1). The court there said, p. 13: "By thus recognizing military commissions in order to preserve their traditional jurisdiction over enemy combatants unimpaired by the Articles, Congress gave sanction, as we held in Ex parte Quirin, to any use of the military commission contemplated by the common law of war. But it did not thereby make subject to the Articles of War persons other than those defined by Article 2 as being subject to the Articles, nor did it confer the benefits of the Articles upon such persons."

The limitations set forth in Article 61 of the Articles for the Government of the Navy apply solely to court martial proceedings against naval and related personnel, and therefore have no application to the military commission proceedings against war criminals.

The second statute argued by defense counsel as pertinent, is equally inapplicable. Counsel cites 18 U.S.C. 582. This provision is clearly limited to noncapital cases. It does not apply to cases where the death penalty is authorized. Section 582 reads in part: "No person shall be prosecuted, tried, or punished for any offense, not capital.... unless...indictment is found...within three years..."

Since Military Commissions in the trial of war crimes cases are authorized to impose the capital sentence for the crime this accused is charged with (see N.C.& B.App. D-15), 18 U.S.C. 582 is inapplicable.

18 U.S.C. 581a specifically provides that "An indictment for any offense punishable by death may be found at any time without regard to any statute of limitations."

With regard to the field of war crimes, there is no applicable statute of limitations. The consistent undeviating line of precedent in decisions of military commissions in this and other military areas, denying the plea of statute of limitations in bar of trial, is adequate confirmation of the law in regard to this question. Similarly, note the "Regulations Governing the Trials of Accused War Criminals," SCAP AG 000.5 (5 Dec. 1945) 2. b(2), which reads: "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931."

The judge advocate respectfully requests that the defense plea in bar be overruled.

DAVID BOLTON,
Lieutenant, U.S. Navy,
Judge Advocate.

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PLEA IN ABATEMENT

Delivered by:

MARTIN E. CARLSON,
Commander, U. S. N. R.
Counsel for the Accused.

The accused WAKABAYASHI, Seisaku interposes this plea in abatement on the grounds that there has not been any notice to the protecting power of the opening of this judicial proceeding against this accused, a Japanese national.

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

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

Respectfully,

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

REPLY TO PLEA IN ABATEMENT

Delivered by

DAVID BOLTON
Lieutenant, USN.

Judge Advocate

The accused WAKABAYASHI, Seisaku is not a prisoner of war. He was arrested subsequent to the surrender of Japan. He was arrested and confined not as a prisoner of war, but as a suspected war criminal. Article 60 of the Geneva Prisoner of War Convention is therefore wholly inapplicable.

Even if the accused had been arrested or confined as a prisoner of war, the defense plea in abatement is wholly without merit. This precise question was raised in the YAMASHITA case and the United States Supreme Court succinctly disposed of the argument as follows: "Petitioner relies on the failure to give the prescribed notice to the protecting power to establish want of authority in the commission to proceed with the trial. For reasons already stated we conclude that Article 60 of the Geneva Convention, which appears in part 3, Chapter 3, Section V, Title III of the Geneva Convention, applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war." In Re YAMASHITA 327 U.S. 1, 16.

The offenses with which the accused is charged are offenses committed by him during the course of the war while Commandant of the Fourth Base Force, and do not include any offenses committed after the confinement of the accused as a war crimes suspect. In accordance with the Yamashita case, as cited supra, Article 60 of the Geneva Convention is inapplicable and no notice to any protecting power is required.

It is respectfully submitted that the plea in abatement should be overruled.

David Bolton

David Bolton
Lieutenant, U.S. Navy,
Judge Advocate.

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被告人若林清作の為にする起訴
及罪状、項目に対する異議の申立.

弁護人 高野純二郎

被告人若林清作は以下述べる理由に因り本件起訴及罪状、項目に対し異議を申立てるものである.

第一. 罪状、項目其の一に於ては被告人若林が其の部下に対する第四根拠地隊司令官としての部下統御監督上の責任を論き、之に付て被告人の職務怠慢の責を問い、罪状、項目其の二に於ては被告人が俘虜に対する保護義務を懈怠したことに付て被告人の職務怠慢の責を問擬しているのである. 而して是等二箇の罪状、項目中其の一の(イ)及(ロ)と其の二の(イ)及(ハ)とは夫れ其の基礎となる基本的主張事実は全く同一である. 即ち被告人の部下たる日本海軍の人又は第四十一警備隊の人が其等の俘虜を苛責、酷使、虐待、殺害等したと云う主張である. 換言すれば罪状、項目中是等二箇の如きは全く同一の主張事実を一は被告人と犯罪の主体との関係より、他は被告人と犯罪の客体との関係より之を観て被告人の責任を問うているのであって之は明かに二重起訴である.

然るに第四根拠地隊司令官としての被告人若林の職務は常に一箇であり且つ唯一であって二箇若はそれ以上のものではない. 然れば故罪状、項目其の一の(イ)と其の二の(イ)、其の一の(ロ)と其の二の(ハ)とは当然各一箇に統一せらるべきものである. 随て其の結果本件の罪状、項目は一となさるべきである. 若し被告人の実体的権利の

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侵害であるから茲に異議を申立つる所以である。

第二、訴訟状項目の末尾に「…右記の如く戦争の法規並に慣習法に違反した」と記述しているのであるが被告人若林が違反せりと云はゝ、戦争の法規並に慣習法とは如何なるものを指すのであるか其の具体的明記はない。

被告人が第四掲地陸司令官として死したと検察官に於て主張せらるゝ、本件訴訟は一つの戦争法規慣並に慣習法の違反であるかを明確に知ることが出来ないでは被告人は適当且充分なる防禦を準備することを得ないが被告人が違反したと主張せらるゝ、戦争の法規並に慣習法を明記されたい、本件訴訟状は海牙律の規定に反するものであつて又被告人の実体的権利の侵害でもある。

第三、(1) 訴状項目其の一の(イ)は「…長期に亘る間一つの独房に十三名の割合で小さな不健康な独房に詰込み…」とある　然るに同項中に「昭和十八年十一月二十日から昭和十八年十一月二十八日に至る間…」と明記してあるに拘らず之を長期に亘る間と言ふ言ひ表はし方は人を誤解に導くものである。(2)「…小さな不健康なる独房に詰込み…」と漠然と記載し出でゝ其の如き記載は俘虜達が感覚したと言ふ、独房の明瞭的確な表示ではない、而も此の項の(イ)は不法なる待遇、虐待、酷使虐待をしたと主張せらるゝのであるから俘虜達が詰込まれた独房の大きさ虐待が否かを判断するに緊要なる関係を有つ事項である。

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是等の罪状項目上の記載は本件の主張せる、戦争法規並に慣習法の違反の主要なる要素たる加之を簡明正確簡潔の記載すべきことを要求されたる海軍律の規定（自27）に違反するところである。依て被告人の実体的権利を侵害するものである。

第四、罪状項目其の二に於ては被告人の俘虜に対する保護義務の怠慢が問責せられてゐるのであるが其の「保護」とは如何なる内容の保護であるか明かにされてゐない。俘虜の保護の内容は種々ある。例へば俘虜の福祉を図ること、俘虜に衣食住並に医療の手当を給與すること、危害に対し俘虜を護ること等である。被告人が第四根拠地隊司令官として負担した責任と言ふも、保護は如何なる内容のものであったかを明瞭的確に記載しなければ此の罪状項目は海軍律の規定に反するものである。仍て被告人の実体的権利を侵害するものである。

第五、罪状項目其の一の(イ)と其の二の(イ)とは其の各々の記載に依れば被害者は全く同一人であり日時も場所も同じく且其の国際違反行為も全然同一である。別個に記載せられてはゐるが同一事件である。然るに前者に於ては不法なる労役、酷使、虐待の犯行者は「第四十一警備隊員たる日本軍人」であると記載し後者に於ては其等の犯行者は「日本海軍人」であると記載してゐる。斯かる記載は明瞭的確を缺き海軍律第二九条の規定に反する。是亦被告人の実体的権利を侵害するものである。

叙上の理由に因り被告人笘林清作は本件の

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起訴の罪状・項目に対し異議を申立ての次第です。

謹　言

高野孫一郎

OBJECTION TO THE CHARGE AND SPECIFICATIONS IN THE CASE OF WAKABAYASHI, SEISAKU, DELIVERED BY MR. JUNJIRO TAKANO, COUNSEL FOR THE ACCUSED.

The accused, WAKABAYASHI, Seisaku objects to the charge and specifications in this case for the following reasons:

1. In Specification 1 of the charge the accused WAKABAYASHI is charged with neglect of duty in that he failed to control his subordinates as Commandant of the Fourth Base Force, while in specification 2 he is charged with neglect of duty in that he failed to protect prisoners of war. The fundamental facts alleged in specification 1(a) and (b) and specification 2 (a) and (d) are identical. Namely, it alleges that Japanese Naval personnel, subordinates of the accused, or personnel of the Forty-first Guard Unit tortured, abused, inhumanely treated and killed these prisoners of war. In other words, in these specifications, these 2 allegations which are derived from one fundamental fac t are viewed from two different phases -- one from the relation between the facts and the doers of the crime, and the other from the relation between the facts and the victims of the crime, and thus, it is clearly a duplication of accusations.

But the duty of the accused WAKABAYASHI as Commandant of the Fourth Base Force was and actually had been, always and consistently, an integral whole which in essense was never divisible. Therefore, specification 1(a) and specification 2(a), and specification 1 (b) and specification 2 (d) should respectively be consolidated into one. In other words, as the result the specifications of this case should be consolidated. This is most prejudicial to the substantive rights of the accused, so we hereby object to it.

2. At the end of each specification, it is alleged, "....in violation of the law and customs of war, as follows", but it is not specifically shown what law and customs the accused WAKABAYASHI violated. Unless the prosecution shows what law and customs were violated by the accused, in neglecting his duty by failing to control and supervise his subordinates as commandant of the Fourth Base Force and in neglecting his duty by failing to protect prisoners of war as alleged by the prosecution, the accused cannot prepare a proper and adequate defense. Therefore, the charge and specifications in the instant case which do not clearly state the law and customs of war which it is alleged the accused has violated, is in violation of the provisions of Naval Courts and Boards and is prejudicial to the substantive rights of the accused.

3. (1) In specification 1 (a) it is stated "crowding them for excessive periods of time into small unsanitary cells, about thirteen to a cell," but despite the fact that it is clearly stated in the same page, "a period from November 20, 1943 to November 28, 1943," to express this in terms of "excessive period," is liable to lead to misunderstanding.

(2) Although ambiguously mentioned as "crowding them into small unsanitary cells," such a description cannot be a clear and accurate indication of the cell in which the prisoners were said to have been confined. Moreover, this specification (a) alleges the unlawful torture, abuse and mistreatment, therefore the size of the cell, in which the prisoners were crowded, becomes a factor of vital concern in judging whether it was mistreatment or not.

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These phrases in the specification are the essential factors in regard to the alleged violation of the law and customs of war in this case. Therefore, the specifications violate the provisions of Naval Courts and Boards' (Section 27), which demands a concise, accurate and brief specification; hence it prejudices the substantive rights of the accused.

4. In specification 2, the accused is charged with neglect of duty to protect prisoners, but it does not clearly specify as to the nature of this protection. There are many aspects to this nature of protection of prisoners, for instance, to seek the welfare of prisoners; to offer food, clothing, shelter, and medical treatment to prisoners; to protect prisoners from danger and harm. The specification does not clearly and accurately define the nature of the protection, which the accused was supposed to be answerable to, as Commandant of the Fourth Base Force. This is in violation of the provisions of Naval Courts and Boards and therefore prejudicial to the substantive rights of the accused.

5. Let us compare paragraph (a) of specification 1 with the same paragraph of specification 2. Both of these paragraphs allege the same victims, same date and place, and same violation of the law and customs of war. These allegations are entirely identical. Although these specifications are written separately, both refer to the same incident. However, in the former it is alleged that the alleged unlawful torture, abuse, and inhumane treatment was made by "personnel of the Forty-first Naval Guard Unit, members of thearmed forces of Japan", while in the latter it is alleged merely "members of the armed forces of Japan." Such allegation is vague and indefinite, and violates the provision of section 27, Naval Courts and Boards. This is prejudicial to the substantive rights of the accused.

On the foregoing grounds, the accused WAKABAYASHI, Seisaku objects to the charge and specifications of the instant case.

Respectfully,

/s/ TAKANO, Junjiro.

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

Eugene E. Kerrick, junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

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OBJECTION TO THE CHARGE AND SPECIFICATIONS IN THE CASE OF WAKABAYASHI, SEISAKU, DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR.

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The accused objects to the charge and specifications on the ground that they are vague and indefinite.

The phrase, "in violation of the law and customs of war," does not fully apprise the accused of the law or the custom of war he is charged with having violated.

The charge does not set forth an offense either at common law or by statute. We know of no international law which imposes upon one officer a duty to personally protect prisoners of war held by navy units commanded by responsible officers.

We know of no international law which defines the duty of a Base Force Commander under battle conditions.

Mr. Justice Murphy in his dissenting opinion, Application of Yamashita, Yamashita v. Styer, cited as 66 S Ct. 340 et 347 held:

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command."

That was the nature and studies opinion by one of the justices of the Supreme Court of the United States.

In this present case, WAKABAYASHI, Seisaku, who was a vice admiral, Fourth Base Force commander, is charged with neglect of duty and the prosecution now seeks to extend the majority opinion ruling in the Yamashita case to Vice Admiral WAKABAYASHI. The time, if there ever was a time, is long past when prejudice can decide a case against the Japanese. Neither international law nor local law defines the duties of a admiral like WAKABAYASHI, and the Commission should decide that the prosecution has not brought a legal charge against WAKABAYASHI.

Even Mr. Justice Stone in the majority opinion in the Yamashita case at page 348 quoted General Orders 264, Headquarters Division of Philippines, September 9, 1901 that an officer could not be found guilty for failure to prevent a murder unless it appeared that the accused had "the power to prevent it." Nowhere in the specifications is it alleged that Admiral WAKABAYASHI could have prevented the murders or the mistreatments.

The gist of the charge is an unlawful breach of duty by the accused as Commandant of Fourth Base Force to control the operations of persons subject to his control and supervision by permitting them to torture, abuse, inhumanely treat and kill American prisoners of war. The question then is whether the law of war imposes upon a Base Force Commander a duty to take such appropriate measures as are within his power to control persons subject to his control namely personnel of the Forty-first Naval Guard Unit, the commanding officer of the Forty-first Naval Guard Unit, other officers of the said Guard Unit, naval members of armed forces of Japan, names to the relator unknown, the commanding officer of the Fourth Naval Hospital, and other officers attached to said hospital. It must be shown

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that these above enumerated persons and others specified or alleged as unknown in the specifications were in fact subject to the control of the accused. It must be proved that international law and the customs of war did impose upon the accused a duty to act and it must be shown that there is a criminal responsibility for his failure to act and that the failure of the accused to act was the proximate cause of the injury complained of.

We hold that it must further be shown that the accused wilfully and knowingly neglected his duty.

In his dissenting opinion, Mr. Justice Rutledge held in the Yamashita case (Application of Yamashita 66 S. Ct. 340 at 365 Footnote 17, See note 15) "The only word implying knowledge was 'permitting'. If 'wilfully' is essential to constitute a crime or charge of one, otherwise subject to the objection of 'vagueness', cf. Screws v. United States, 325 U.S. 91, 65 S. Ct. 1031, it would seem that permitting alone would hardly be sufficient to charge 'wilful and intentional' action or omission; and, if taken to be sufficient to charge knowledge, it would follow necessarily that the charge itself was not drawn to state and was insufficient to support a finding of mere failure to detect or discover the criminal conduct of others.

At the most 'permitting' could charge knowledge only by inference or implication. And reasonably the word could be taken in the context of the charge to mean 'allowing' or 'not preventing' a meaning consistent with absence of knowledge and mere failure to discover. In capital cases such ambiguity is wholly out of place. The proof was equally ambiguous in the same respect, so far as we have been informed, and so, to repeat were the findings. The use of 'wilfully' even qualified by a 'must have' one time only in the findings hardly can supply the absence of that or an equivalent word or language in the charge or in the proof to support that essential element in the crime."

Mr. Justice Rutledge said: "And in that state of things petitioner has been convicted of a crime in which knowledge is an essential element."

Since the specifications do not charge the accused with knowledge and knowledge is an essential element of the crime alleged, no crimes has been alleged. We object to such a charge.

Furthermore, quoting from 45 Corpus Juris "Negligence" Section 666, "The declaration or complaint is insufficient to state a cause of action as against a demurrer, where it fails to show that the negligence charged was the cause of the injury complained of or where it appears from the facts alleged that the injury was not proximately caused by the negligence charged but by an independent intervening agency."

We hold the charge does not state a cause of action.

The specifications are also objectional because they are misleading. Paragraphs (b) and (c) of specification 2 vary considerably from the specifications of the original trials.

We further object to the specifications because the second specification is but a duplicate of the first specification as to paragraph (a) and (d). The rule that only one offense can be charged in one count of an indictment is a rule that should be known to every pleader. From page 45, U.S. Code Annotated, Title 18, Pocket Part, the case of U. S. v. Runion: D.C. Ky 1942, 47 F. Supp. 994 is cited to support the rule that "Where the same transaction constitutes a violation of two distinct statutory provisions the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." We hold that the second specification is but a duplication of the first specification and should therefore be struck from the charge.

Section 19 of Naval courts and Boards states, "The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence." We fail to find anywhere a rule which permits a duplication of the same offense under a second specification to the same charge. If this were permitted an accused could be charged with the same offense ad finitium and could be found guilty of the same offense many times.

The makers of our Constitution provided for this by the Fifth Amendment, which reads in part: "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Not even the ex post facto SCAP rules allow trial twice for the same offense.

The prosecution cannot blow hot and cold at the same time and therefore if these are separate offenses then it must be charged in a separate count.

In 27 Am. Jur. "Indictments and Informations," Section 124, pp 683-684, the rule is: "Duplication in crimina l pleading is the joinder of two or more distinct and separate offenses in the same count of an indictment or information. (8) As sometimes stated, the rule is that offenses created by differenct statutes, (9) or those to which different punishments are annexed, cannot be included in the same count. (10) Citing the case of Hamilton v. State 129 Florida 21°, 176 So. 89, 112 A.L.R. 1013, citing RCL and the cases of Crain v. U.S., 162 U.S. 625, 50 L. ed. 1097, 16 S. Ct. 952; Hotchkiss v. District of Columbia, 44 App. DC 73, LRA 1917 C 922, Ann. Cas. 1918 D. 683; Joslyn v. State, 128 Ind. 160, 27 N.E. 492, 25 Am. St. Rep. 425; State v. Green, 104 Kan. 16, 177 P 519, citing RCL State v. Warren, 7 Md. 121, 26 A 500, 39 Am. St. Rep. 410; Scales v. State, 46 Tex. Crim. Rep. 1014.

One offense only can be charged in one count. We know of no navy rule of law or Federal rule which permits such pleading as is found in the present charge and specifications. Therefore the second specification must either be struck from the charge altogether or it must be made a separate charge.

We further object to the charges and specifications because the precept Commander Marianas Area Serial 12703 is dated 27 July 1°48 and the charge and specifications are originally dated 8 July 1948 and were amended by The Commander Marianas Area Serial 12616 dated 23 July 1°48. According to rule in Section 345 Naval Courts and Boards "The precept must be drawn before the order for trial and the reference of the charges and specifications to the judge advocate, as otherwise the latter is issued to an officer nonexistent." This rule is upheld in CMO 114-1°18 (Page 260-261 Compilation of Court Martial Orders, 1916-1°37) "Precept Shows Jurisdiction: Should antedate order directing trial.

"The record in a recent case disclosed that the order to the judge advocate directing the trial of an accused was dated June 4, 1°18, whereas the precept convening the court before which the case was tried and appointing the judge advocate thereof was dated June 18, 1918. The jurisdiction for the trial of a person is acquired by reason of the convening authority referring the case to a specific court convened by him. It is usually accomplished by said authority referring to the judge advocate thereof the original of the charges and specifications, informing him of the jurisdiction conferred, and directing him to notify the president of the court and to inform the accused of the date set for his trial and empowering him to summon the necessary witnesses. Such action presupposes that the precept convening the court has been issued, otherwise there would be no court or judge advocate. The precept is the order of appointment of the members and the judge advocate of a general court martial and is the only authority for them to act as such during the trial."

The specifications are founded upon the same incidents, and the charge as set forth in the specifications are not the basis for a war crime or any crime since knowledge is not alleged.

For the above reasons the accused does object to the charge and specifications.

Respectfully,

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

M (4)

REPLY TO THE OBJECTIONS OF THE ACCUSED, WAKABAYASHI, SEISAKU
TO THE CHARGE AND SPECIFICATION
Delivered by
LT. James P. Kenny, USN, Judge Advocate

The accused contends that the charge and specifications are vague and indefinite because they do not set forth the law or customs of war which it is alleged were violated by the accused. Naval Courts and Boards (1937) Section 27, states that: "It is not essential to state in a specification that an offense was committed in breach of any Federal statute...law of the state....in which the court is sitting...as the court takes judicial notice of such...statute...State law...under which the charge is laid..." Here the law alleged to have been violated is the international law; it is the law of all civilized states. Hence this military commission can properly take judicial notice of it, and therefore, it was not necessary to set it forth in the specifications. The accused contends that it is prejudicial to his substantive rights not to set forth the law and the customs of war which we allege to be violated. As Mr. Justice Jackson said in his opening statement in the Nuremberg Case, International Law "is an outgrowth of treaties and agreements between nations and of accepted customs." He pointed out that International Law "grows, as did the Common Law, through decisions reached from time to time, in adapting settled principles to new situations." We are not attempting, as the accused claims, to apply ex post facto law to this case. The law that fits this case had been established at the time these acts took place. It was then a "settled principle" that a commander of troops in time of war was responsible for the control of the operations of his subordinates and the protection ofprisoners of war from brutality. The Supreme Court did not establish this principle in the Yamashita Case; it only recognized and applied an already established principle of the International Law. The fact that one of the Supreme Court judges who reviewed the Yamashita Case dissented from the opinion of the court has no bearing upon the sufficiency of the charge and specifications of this case. A specification is in due form if "it clearly shows jurisdiction in the court over the accused and over the offenses with which he is charged, and the latter is sufficiently described to advise the accused of the time and place and circumstances under which it is claimed he committed the crime, to enable him to make any defense he may have." (Naval Courts and Boards, 1937, Section 27).

The accused further objects on the ground that Specification 1 and 2 are duplicitous. He cites as an authority for this contention a portion of Section 124 of 27 American Jurisprudence, Indictments and Informations, which states that "duplicity in criminal pleading is the joinder of two or more distinct and separate offenses in the same count of an indictment or information." This is a correct statement of the law. The accused errs in assuming that the count of criminal pleading is analogous to our charge, whereas its counterpart in our form of pleading is the specification. Section 124 (quoted by the accused) goes on to say "As sometimes stated, the rule is that offenses created by different statutes, or those to which different punishments are annexed, cannot be included in the same count; but while this statement is no doubt true, it is somewhat misleading, and the true reason seems to be that such joinder is improper, not because the offenses arise under different statutes, or are differently punished, but because they are, in reality, distinct offenses, and that where offenses apparently distinct, but arising under the same statute or out of the same transactions, and having the same punishments, are permitted to be embraced in the same count, it is because, in the circumstances of the case, they constitute, in effect, only one offense." Further on in the same section it is stated: "It is the general rule under the statutes that an indictment or information is not duplicitous for alleging several different means or methods of committing the offense, provided there is no material repugnancy or inconsistency in the means or methods used...." Naval Courts and Boards, 1937, Section 29, states: "A specification should not allege two or more offenses in the alternative or disjunctive. Even when a charge is predicated upon a statute, the words of which are in the alternative, then the alternative offenses thus provided for should, if it be desired to allege more than one offense, be set out in separate specifications."

The accused in his objections states that it must be shown that there existed, at the time of the alleged offenses, a law which imposed a duty upon him to take such measures as were appropriate in the circumstances to control persons under his command, and to protect prisoners of war; and that the accused neglected this duty when he permitted the alleged incidents to occur. The accused is merely pointing out that the prosecution must prove the charge and with this we are in agreement. However, such a statement of the obvious is hardly an objection to the form or technical correctness of the charge and specifications.

The accused states that the convening authority should have alleged that he "wilfully and knowingly neglected his duty." That the specifications might have or could have been worded in different language is not a valid objection to the form in which they are worded. The sole question is whether as worded the specifications allege an offense against the law and customs of war. This we contend they do and we point to similar cases tried before this and other military commissions as precedents. In the case of the late General Yamashita similar language was used and serves as a precedent. The fact that one of the dissenting judges was of an opinion contrary to the court in the Yamashita case is not relevant.

The accused further objects on the ground that the precept post dates the charge and specifications. He quotes from a court martial order which states among other things that "the jurisdiction for the trial of a person is acquired by reason of the convening authority referring the case to a specific court convened by him." The precept, dated 27 July 1948, under which this commission was convened does specifically that in paragraph 3 where the convening authority authorises and directs this commission to take up such cases that were pending before the military commission convened by the precept of 8 November 1947. The present case is one that falls in such classification. Furthermore, this is in accordance with the practice established in Section 542 n (13) of Naval Courts and Boards.

The accused further objects on the ground that the specifications do not contain definite measurements of the "small unsanitary cells" and to use of the word "excessive" in describing a particular period of time. The judge advocate points out that the charge and specifications set forth in simple and concise language facts sufficient to constitute the particular offense in such a manner as to apprise the accused to know what is intended, in accordance with the provisions of Naval Courts and Boards, Section 12.

Each specification of the charge must be proved and the fact that paragraph (a) of specification 2 varies in language from paragraph (a) of specification 1 is of no import. It is incumbent upon the judge advocate to prove the specifications as worded.

In view of the foregoing we feel that the objections of the accused are without merit and should not be sustained.

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

MOTION FOR A BILL OF PARTICULARS
Delivered by Commander Martin E. Carlson, USNR, Counsel for Accused.

The accused makes a 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. We refer the commission to Rule 12 (e) Federal Rules of Civil Procedure for the District Courts of the United States and the case of Herman w. Mutual L. Ins. Co. (CCA 3d) 108 F (2d) 678, 127 AIR 1458.

The accused prays that both specification 1 and 2 of the charge set out "the law and customs of war" which it is alleged the accused violated in failing to discharge his duty as Commandant of the Fourth Base Force to control members of his command and to take measures to protect American prisoners of war.

The object of this motion is to make more definite and certain the charge and the specifications thereunder. We refer the commission to the case of 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 what "customs of war" he is charged with having violated.

The accused knows of no international law or customs of war or anything in all naval history which justifies such a charge as is set forth against Wakabayashi, Seisaku.

The Yamashita case when brought to the Supreme Court of the United States on writ of habeas corpus (61 Miscellaneous) and writ of certiorari (672 October Term 1945) resulted in dissenting opinions by two of the Supreme Court justices, Mr. Justice Murphy and Mr. Justice Rutledge. Mr. Justice Murphy in the case of General Tomoyuki Yamashita, commanding general of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands cited as 66 S.Ct. 340 et 357 held: "International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command .... To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner."

The allegations "to control, as it was his duty to do," and "to protect as it was his duty to do," are not statements of law but mere conclusions of the pleader. We ask that the law setting out his duty to control and to protect be stated with particularity.

The accused cannot properly prepare a defense to a charge based upon vague and indefinite references in certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907. We call the commission's attention to the case of 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." The following cases are cited in support of this rule. May v. Ill. C.R. Co. 129 Tenn 521, 167 S.W. 477, LRA 1915 A 781, Ann.Cas. 1916 A 213.

"A bill of particulars should be granted in furtherance of justice." All these cases are cited: Tilton v. Beecher 59 N.Y. 176, 17 An.Rep. 337, Hawkins v. Lassell, 43 S.D. 191, 178 N.W. 731 citing RCL; May v. Ill. CRC, 129 Tenn 521, 167 S.W. 477, LRA 1915 A 781, Ann Cas. 1916 A 213; Richmond and D.R. Co. v. Payne, 86 Va. 481, 10 SE 749, LRA 849; Turner v. Great Northern R. Co. 15 Wash 213, 46 P 243, 55 Am.St.Rep. 883.

"A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused." These cases are cited: 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.

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 Wakabayashi, Seisaku, former Vice admiral charged with neglect of duty as commandant of the Fourth Base Force, Imperial Japanese Navy.

Respectfully,

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

REPLY TO MOTION BY ACCUSED FOR

A BILL OF PARTICULARS

Delivered by

Lieutenant James P. Kenny, U. S. Navy.

The right to make a demand for a Bill of Particulars is one that is familiar to civil courts but for which there is no provision in the procedure under which this military commission operates. 27 American Jurisprudence, Indictments and Informations, Section 112, states that "the office of a Bill of Particulars is to supply the accused and the court additional information concerning an accusation that the accused has committed an act or acts constituting a criminal offense." It is a remedy that is used in civil courts where the indictment does not inform the accused of the crime with which he is charged sufficiently to enable him to prepare his defense. In a naval court the charges and specifications are the indictment. The right to make a timely objection to the charges and specifications takes the place of the right to demand a Bill of Particulars. It will be noted by the commission that the accused has recognized this since in his objections to the charge and specifications he raises the same point on which this demand for a Bill of Particulars is founded, viz, that the specifications of the charge should set forth the law and customs of war which it is alleged were violated by the accused. Since the merit of this claim will be argued at the time the objections to the charge and specifications are made, the judge advocate will refrain from comment at this time.

The granting or refusing of a Bill of Particulars, in any event, would be a matter resting in the sound discretion of a court (27 American Jurisprudence, Indictments and Informations, Section 111). Because of this and the fact that the accused is provided with a substitute remedy in his right to object to the charge and specifications, the judge advocate requests that the motion for a Bill of Particulars be denied.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

P

FF12/A17-10
O2-JDM-sh

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 12002

8 JUL 1948

From: The Commander Marianas Area.
To: Lieutenant David BOLTON, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charge and Specifications in the case of WAKABAYASHI, Seisaku.

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

Q (1)

Received a true and correct copy, both in English and Japanese, of the Charge and Specifications thereunder on the 8 day of July, 1948.

Wakabayashi, Seisaku
WAKABAYASHI, Seisaku

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

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

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that WAKABAYASHI, Seisaku, then a vice admiral, IJN, Commandant of the Fourth Base Force, Imperial Japanese Navy, and while so serving as the Commandant of the said Fourth Base Force, did, at Dublon Island, Truk Atoll, Caroline Islands, during the period from July 26, 1943 to February 22, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commandant of the said Fourth Base Force, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by ~~constantly beating them with clubs, depriving them medical care, confining thirteen (13) or more men about a week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of about forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six foot two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head,~~ by personnel of the Forty-first Naval Guard Unit, members of the armed forces of Japan, names to the relator unknown.

(b) The unlawful killing of seven (7) American prisoners of war, names to the relator unknown, on or about February 17, 1944, at Dublon Island, Truk Atoll, Caroline Islands, with swords and a loaded firearm, by TANAKA, Masaharu, then a captain, IJN, Commanding Officer of the Forty-first Naval Guard Unit, Truk Atoll, DANZAKI, Tomeroku, then a lieutenant, IJN, attached to said Forty-first Naval Guard Unit, YOSHINUMA, Yoshiharu, then an ensign, IJN, attached to said Forty-first Naval Guard Unit, and other persons names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, Caroline Islands.

JK

JK

Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Rochette, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Denny), Baglien (first name to the relator unknown), Paine (first name to the relator unknown),

JK

Specification 2

In that WAKABAYASHI, Seisaku, then a vice admiral, IJN, Commandant of the Fourth Base Force, Imperial Japanese Navy, and while so serving as the Commandant of the said Fourth Base Force, did, at Dublon Island, Truk Atoll, Caroline Islands, during the period from July 26, 1943 to February 22, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commandant of the said Fourth Base Force, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful torture, abuse and inhumane treatment during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by naval members of the armed forces of Japan, names to the relator unknown, of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by ~~subjecting them with clubs, depriving them medical care, confining thirteen (13) of them for about a week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of about forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six foot two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head.~~

(b) The unlawful killing on or about January 30, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital, Dublon Island, OKUYAMA, Tokikazu, then a surgeon commander, IJN, attached to said Fourth Naval Hospital, NABETANI, Reijiro, then a surgeon lieutenant, IJN, attached to said Fourth Naval Hospital, and other persons, names to the relator unknown, of six (6) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by experimenting with injections of virulent bacteria, with exposures to shock, and with other methods, the exact nature and character of which are to the relator unknown.

(c) The unlawful killing on or about February 1, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by OKUYAMA, Tokikazu, then a surgeon commander, IJN, attached to the Fourth Naval Hospital, Dublon Island, Truk Atoll, Caroline Islands, SAKAGAMI, Shinji, then a corpsman warrant officer, IJN, attached to said Fourth Naval Hospital, and other persons, names to the relator unknown, of two (2) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, by explosions of dynamite and strangulation.

JK

JK

JK

Smith (first name to the relator unknown), Ensign, USNR, John Paul Rourke, Cecil Eugene Baker, Edward Ricketts, Duane White, Berry (first name to the relator unknown), Peterson (first name to the relator unknown), Wright (first name to the relator unknown), Moore (first name believed to be Dewey), Baglien (first name to the relator unknown), Paine (first name to the relator unknown),

(d) The unlawful killing on or about February 17, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by TANAKA, Masaharu, then a captain, IJN, Commanding Officer of the Forty-first Naval Guard Unit, Truk Atoll, DANZAKI, Tomeroku, then a lieutenant, IJN, attached to said Forty-first Naval Guard Unit, YOSHINUMA, Yoshiharu, then an ensign, IJN, attached to said Forty-first Naval Guard Unit, and other persons names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, Caroline Islands, of seven (7) American prisoners of war, names to the relator unknown, then and there held captive by the Forty-first Naval Guard Unit, with swords and a loaded firearm.

C. A. Pownall

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

0804

、アメリカ合衆国太平洋艦隊
マリアナ方面司令官

第一二〇〇二号
昭和二十三年七月八日

發　マリアナ方面司令官
宛　アメリカ合衆国海軍大尉　デビット ボルトン　及び又は
アメリカ合衆国海軍大尉　ジェームズ P ケニー　及び又は
マリアナ方面司令部軍法委員付檢事としての貴官
の後任者

記

若林清作の訴訟に於ける起訴及び非狀項目

一、前記の人は貴官が檢事たる軍法委員会に於て左記
の起訴及び非狀項目に付き裁判されるであろう。よつて
貴官は其の旨を軍法委員長へ通報し裁判の日時を
被告へ通知し檢事側及弁護側の全証人を召喚せ
よ。

起訴
戰爭法規並に慣習の違反

罪狀項目　一

日本帝國海軍第四根據地隊司令官海軍中將（當時）
若林清作は前記第四根據地隊司令官として勤務中アメ
リカ合衆國連合諸國及其の屬領が日本帝國と戰爭狀
態に在つた昭和十八年七月二十六日から昭和十九年二月二十二日
に至る間カロリン諸島トラック環礁夏島に於て彼の指揮
下の人々及び彼の如く警督下に在つた人々の行動を抑制
すべき前記第四根據地隊司令官としての職責をそれが
彼等の職責であつたにも拘らず違法的に無視し違行せず
彼等に日本軍隊に拘留されて居たアメリカ俘虜を虐待及殺害することを許容
並に慣習に違反した。

（昭和十八年十一月二十日から昭和十九年二月二十二日迄の間
カロリン諸島トラック環礁夏島に於て當時同地に在つた日本軍人が約四十二名
不詳の第四十一號通牒貴官たる日本軍人が約四十二名

（已）

のアメリカ俘虜即ちアメリカ合衆国海軍予備少佐ジョージ エスタブルック ブラウン ジュニヤ及び其他の当局には姓名不詳の人々を絶えず棍棒で殴打し医療を与へず、その内十三名を横六呎縦八呎の小さい独房に約二週間監禁し前記ブラウンは訊問と殴打の場合を除き約四十八時間不動の姿勢をとらしめ前記ブラウンを訊問中横縦二吋長さ六呎の棍棒で殴打し又前記ブラウンの足及び頭を銃の床尾で殴打することにより違法的に苛責酷使及虐待を行つたこと。

(ロ) 昭和十九年二月十七日頃カロリン諸島トラック環礁夏島に於てトラック環礁第四十一警備隊司令海軍大佐（当時）田中政治前記第四十一警備隊付海軍大尉（当時）檜崎留大前記第四十一警備隊付海軍少尉（当時）吉沼義治其他カロリン諸島トラック環礁夏島の日本帝国軍事施設に配属されてゐた当局には姓名不詳の人々が軍刀及弾丸を装填した大砲により当局には姓名不詳の七名のアメリカ俘虜を違法的に殺害したこと。

罪状項目二

日本帝国海軍第四根拠地隊司令官海軍中将（当時）若林清作は前記第四根拠地隊司令官として勤務中アメリカ合衆国連合諸国及び其の属領が日本帝国と戦争状態に在つた昭和十八年七月二十六日から昭和十九年二月二十二日に至る間カロリン諸島トラック環礁夏島に於て彼の指揮下に在つて彼の抑制及監督に従属してゐた日本軍隊に抑留されてゐたアメリカ俘虜を保護すべき彼の権限内にして且当時の状況下適切な手段を講ずることが彼の職責であつたにも拘らず之を行はず日本軍隊の人々に前記俘虜の違法的な苛責酷使虐待及殺害を許可し以て前記第四根拠地隊司令官としての職責を違法的に無視し遂行せず左記の如く戦争法規並に慣習に違反した。

(イ) 昭和十八年十一月二十日から昭和十八年十一月二十八日に至る間カロリン諸島トラック環礁夏島に於て当局には姓名不詳の日本海軍軍人が同時同処に於て第四十一警備隊に抑留されてゐた約四十二名のアメリカ俘虜即ちアメリカ合衆国海軍予備少佐ジョージ エスタブルック ブラウン

(一) 昭和十一年十一月十日ロンドン発(当地)同日着国民同盟本部宛

(二) 昭和十一年十一月十日ロンドン発(当地)同日着国民同盟本部宛

(三) 昭和十一年十一月十日ロンドン発(当地)同日着国民同盟本部宛

(四) 昭和十一年十一月十日ロンドン発(当地)同日着国民同盟本部宛

Case of

Wakabayashi, Seisaku

July 28, 1948

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

convened at

United States Pacific Fleet,

Commander Naval Forces, Marianas

Guam, Marianas Islands,

by order of

The Commander Naval Forces, Marianas

VOLUME 1

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, July 29, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottomeyer, U. S. Navy,
Captain Albert L. Jensen, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Sergeant John W. Goar, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Archie L. Haden, junior, yeoman first class, U. S. Navy, Elvin G. Gluba, yeoman first class, U. S. Navy, and Robert Oldham, yeoman third class, U. S. Navy, as reporters, and they were duly sworn.

The judge advocate introduced Lieutenant Eugene E. Kerrick, U. S. Naval Reserve, Mr. George Kumai, Mr. Kimio Tsuji, and Mr. Yoshie Akatani as interpreters, and they were duly sworn.

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

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

An interpreter read the precept in Japanese.

The accused objected to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, as follows:

The accused objects to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, on the ground that he sat as a member of the commission which tried Kobayashi, Masashi, former vice admiral, Imperial Japanese Navy, Commander in Chief of the Fourth Imperial Japanese Fleet on charges based on the same transactions or the same incidents concerning which the accused is now on trial. Lieutenant Commander Lee was also a member of the commission which tried Iwanami, Hiroshi for the incidents set out in specification 2 (b) whereby Iwanami, Hiroshi; Okuyama, Tokikazu; Nabetani, Reijiro and other persons, names to the relator unknown, were charged with killing six American prisoners of war, names to the relator unknown, on January 30, 1944. Iwanami,

Hiroshi was also charged with neglect of duty in failing to control Okuyama, Nabetani, and others unknown. Sakagami, Shinji and Iwanami, Hiroshi were tried for the incident set forth in specification 2 (c) whereby Okuyama, Tokikasu; Sakagami, Shinji; Iwanami, Hiroshi, and other persons, names to the relator unknown were charged with killing two American prisoners of war on February 1, 1944 and Iwanami, Hiroshi was tried for neglect of duty, failing to control Okuyama and Sakagami and other persons unknown and Iwanami was tried for failing to discharge his duty ~~as~~ take such appropriate measures to protect the two American prisoners of war. This is a valid challenge in accordance with section 388 (e) of Naval Courts and Boards. We further object on the grounds set forth in Section 346, Naval Courts and Boards, that if the exigencies of the service permit at least one-third of the officers of the court be senior in rank to the accused, who in this case is a former vice admiral, Imperial Japanese Navy, who was stripped of his rank in accordance with the policy of SCAP.

The judge advocate made the following statement:

The provisions referred to by defense counsel in Naval Courts and Boards are applicable to military courts martial and not to military commissions. It should be noted that cases referred to by defense counsel are not cases in which Wakabayashi was an accused. In accordance with precedent, a challenge to a member of the commission should not be sustained when and if the challenged member declares in open court that he can truly try, without prejudice or partiality, the case now depending, according to the rules of evidence prescribed for the trial, customs of war in like cases, and his own conscience. Challenges similar to this have been denied by military commissions in this area on Guam. Such cases have been reviewed and approved by the convening authority, reviewing authority, and Secretary of the Navy. These cases stand as sound precedent with regard to the instant challenge and so long as the challenged member has freedom from prejudice the challenge should not be sustained.

The challenged member replied as follows:

I, Bradner W. Lee, junior, lieutenant commander, U. S. Naval Reserve, state that it is true that I sat in the previous trials mentioned by defense counsel, but I wish to state that I have formed no opinion as to the guilt or innocence of this accused nor am I prejudiced against him. However, I wish to assure all parties to this trial of my belief that I can truly try, without prejudice or partiality, the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases and my own conscience.

The commission was cleared. The challenged member withdrawing.

The commission was opened. All parties to the trial entered; the commission announced that the objection of the accused was not sustained.

The accused objected to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, as follows:

The accused objects to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, on the ground that he sat as a member

of the commission which tried Kobayashi, Masashi, former vice admiral, Imperial Japanese Navy, Commander in Chief of the Fourth Imperial Japanese Fleet, on charges based on the same transactions or the same incidents concerning which the accused is now on trial. Lieutenant Colonel Garbarino was also a member of the commission which tried Iwanami, Hiroshi for the incidents set out in specification 2 (b) whereby Iwanami, Hiroshi; Okuyama, Tokikazu; Nabetani, Reijiro and other persons, names to the relator unknown, were charged with killing six American prisoners of war, names to the relator unknown, on January 30, 1944. Iwanami, Hiroshi was also charged with neglect of duty in failing to control Okuyama, Nabetani, and others unknown. Sakagami, Shinji and Iwanami, Hiroshi were tried for the incident set forth in specification 2 (c) whereby Okuyama, Tokikazu; Sakagami, Shinji; Iwanami, Hiroshi, and other persons, names to the relator unknown were charged with killing two American prisoners of war on February 1, 1944 and Iwanami, Hiroshi was tried for neglect of duty, failing to control Okuyama and Sakagami and other persons unknown and Iwanami was tried for failing to discharge his duty to take such appropriate measures to protect the two American prisoners of war. This is a valid challenge in accordance with section 388 (e) of Naval Courts and Boards. We further object on the grounds set forth in Section 346, Naval Courts and Boards, that if the exigencies of the service permit at least one-third of the officers of the court be senior in rank to the accused, who in this case is a former vice admiral, Imperial Japanese Navy, who was stripped of his rank in accordance with the policy of SCAP. JK

The challenged member replied as follows:

It is true that I, Lieutenant Colonel Victor J. Garbarino, sat on the cases mentioned by defense counsel, however I wish to assure all parties to this trial that I have formed no opinion and it is my belief that I can truly try, without prejudice or partiality, the case now depending, according to the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

The commission announced that the challenge of the accused was not sustained.

The accused objected to Rear Admiral Arthur G. Robinson, U. S. Navy, as follows:

The accused objects to Rear Admiral Arthur G. Robinson, U. S. Navy, on the ground that he sat as a member of the commission which tried Kobayashi, Masashi, former vice admiral, Imperial Japanese Navy, Commander in Chief of the Fourth Imperial Japanese Fleet on charges based on the same transactions or the same incidents concerning which the accused is now on trial. Rear Admiral Robinson was also a member of the commission which tried Iwanami, Hiroshi for the incidents set out in specification 2 (b) whereby Iwanami, Hiroshi; Okuyama, Tokikazu; Nabetani, Reijiro and other persons, names to the relator unknown, were charged with killing six American prisoners of war, names to the relator unknown, on January 30, 1944. Iwanami, Hiroshi was also charged with neglect of duty in failing to control Okuyama, Nabetani, and others unknown. Sakagami, Shinji and Iwanami, Hiroshi were tried for the incident set forth in specification 2 (c) whereby Okuyama, Tokikazu; Sakagami, Shinji; Iwanami, Hiroshi, and other persons, names to the relator unknown, were charged with killing two American prisoners of war on February 1, 1944 and Iwanami, Hiroshi was tried for neglect of duty, failing to control Okuyama and Sakagami and other persons unknown and Iwanami was tried for failing to discharge his duty to take such appropriate measures to

protect the two American prisoners of war. Rear Admiral Robinson also sat on the commission which tried Tanaka, Masaharu; Danzaki, Tomeroku; and Yoshinuma, Yoshiharu and other persons, names to the relator unknown, for the killing of seven American prisoners of war as set forth in specifications 1 (b) and 2 (d). In that case Tanaka, Masaharu was also charged with neglect of duty for failing to control Danzaki, Tomeroku and Yoshinuma, Yoshiharu and other persons, names unknown, and with failing to take appropriate steps to protect American prisoners of war, and was found guilty by the commission of which Admiral Robinson was president. This is a valid challenge in accordance with section 388 (e) of Naval Courts and Boards. We further object on the grounds set forth in Section 346, Naval Courts and Boards, that if the exigencies of the service permit, at least one-third of the officers of the court be senior in rank to the accused, who in this case is a former vice admiral, Imperial Japanese Navy, who was stripped of his rank in accordance with the policy of SCAP.

The challenged member replied as follows:

It is quite true that I sat as president of this military commission in all trials mentioned by defense counsel. However, I wish to solemnly assure all parties to this trial of my belief that I can truly try, without prejudice or partiality, the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission announced that the challenge of the accused was not sustained.

The accused did not object to any other member.

The judge advocate and each member were duly sworn.

The accused stated that he had received a copy of the charge and specifications preferred against him on July 8, 1948 and a corrected copy of the charge and specifications on July 24, 1948.

The judge advocate read a letter from the convening authority, prefixed marked "B", authorizing and directing him to make a change in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused.

An interpreter read an English translation of the letter from the convening authority authorizing and directing a change in the specifications.

The accused, at his own request, took the stand, was sworn on his voir dire, and was examined as follows:

Examined by the judge advocate:

1. Q. Will you state your name, please?
A. Wakabayashi, Seisaku.

2. Q. Are you the accused in the instant case?
A. Yes.

Examined by the accused:

3. Q. When were you relieved of active duty as an officer in the Imperial Japanese Navy?
A. On 15 September 1945.

4. Q. What, then, was your address and where were you living?
A. Until 3 November 1945 I lived at Shimizu in Shizuoka prefecture. After that I lived in Tokyo.

5. Q. What was your address in Tokyo?
A. 486 Taishido-cho, Settagaya-ku, Tokyo-to.

6. Q. Did you inform the authorities so that both the Japanese Navy Department and the police authorities knew what your address was in Tokyo?
A. Yes.

7. Q. When were you arrested and what were the circumstances at the time of your arrest?
A. I wasn't arrested. On 25 April 1946 a notice for my arrest was received at my home in Tokyo. At that time I was on a trip to Hokkaido and I received this notice from home by telegraph about two or three days later. On receiving this telegram I went back to Tokyo around 7 May. Then on 15 May, accompanied by an inspector from the municipal police and by one member from the Second Demobilization Bureau and in the car of the Second Demobilization Bureau, I went to Sugamo on my own initiative.

8. Q. Do you remember what was said in this telegram you received at Hokkaido and who sent the telegram?
A. Yes, I do.

9. Q. What was in it and who sent the telegram?
A. The telegram was from my wife and it read "Official business. Return as soon as possible."

10. Q. When you went to Sugamo Prison what happened there to you?
A. With the police inspector and the member of the Second Demobilization Bureau we first went to the Central Liaison Office. After that we went to Sugamo.

11. Q. Were you placed in confinement when you arrived at Sugamo?
A. First they examined my health, body, and my personal belongings in the office of the prison and I was put into solitary confinement.

12. Q. At the time you were put into solitary confinement were you charged with any particular or specific crime?
A. No.

13. Q. How long were you held at Sugamo?
A. About two weeks.

14. Q. During that two week period, were you interrogated by anyone and if so, by whom?
A. I do not remember exactly but it was on 17 or 18 May I was questioned by Commander Currie in the morning and in the afternoon.

15. Q. When did you come to Guam?
A. I arrived on Guam on the morning of 29 May.

16. Q. Did Commander Currie, at the time he questioned you, charge you with any crime?
A. I was not charged.

17. Q. When you came to Guam were you put in solitary confinement on Guam?
A. Yes.

18. Q. Were you at that time charged with a crime?
A. No.

19. Q. When were you first charged with a crime?
A. 8 July of this year.

20. Q. All during the time you have been on Guam have you been held in solitary confinement?
A. Yes.

Cross-examined by the judge advocate:

21. Q. When you were advised to report to Sugamo, did you know that you were reporting as a war criminal suspect?
A. I thought that so.

22. Q. When you went to the liaison office with the police inspector prior to reporting to Sugamo for confinement, did you at that time know you were a war criminal suspect?
A. I thought so.

23. Q. When you were questioned by Commander Currie did you know you were a war criminal suspect?
A. After the questioning was over I knew that I was a war criminal suspect.

24. Q. And when you were transferred to Guam did you know you were being transferred as a war criminal suspect?
A. Yes.

25. Q. And since your arrival on Guam you have known that you were a war criminal suspect and that you were confined awaiting the preferring of formal charges?
A. At that time I did not think that I would be charged.

26. Q. But you knew you were being held as a war criminal suspect?
A. I knew I was sent here as a suspect, but from what I learned from the interrogation of Commander Currie I did not know any facts of the incident. I was first told of them by Commander Currie and I did not think I would be charged because of these.

Reexamined by the accused:

27. Q. You answered the judge advocate that you thought that you were a suspect or knew that you were a suspect. Why did you suspect or know that you were a suspect?

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

The accused replied.

The commission announced that the objection was not sustained.

A. Commander Currie told me that there was a horrible incident at the Guard Unit during my tour of duty on Truk and as the Guard Unit was subordinate to me I thought that I was a suspect because of this incident.

28. Q. Was this the first time you knew about this incident - when Commander Currie told you about it?

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

The accused made no reply.

The commission announced that the objection was sustained.

Neither the accused nor the judge advocate desired further to examine this witness.

The commission did not desire to examine this witness.

The witness resumed his status as accused.

The commission then, at 10:25 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Junjiro Takano, a counsel for the accused, read a written plea to the jurisdiction, appended marked "C".

An interpreter read an English translation of the plea to the jurisdiction by Mr. Takano, appended marked "D".

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

The accused waived the reading of this plea in Japanese in open court as he had personally received a translation of this plea in Japanese.

The commission then, at 11:35 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, [illegible] counsel, and the interpreters.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate read a written reply to the plea to the jurisdiction, appended marked "F."

The accused waived the reading of this reply in Japanese in open court as he had personally received a translation of this reply in Japanese.

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

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

The accused waived the reading of this plea in bar of trial in Japanese in open court as he had personally received a translation of this plea in Japanese.

The judge advocate read a written reply to the plea in bar of trial, appended marked "H."

The accused waived the reading of this reply to the plea in bar of trial in Japanese in open court as he had personally received a translation of this reply in Japanese.

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

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

The accused waived the reading of this plea in abatement in Japanese in open court as he had personally received a translation of this plea in Japanese.

The judge advocate read a written reply to the plea in abatement, appended marked "J."

The accused waived the reading of this reply to the plea in abatement in Japanese in open court as he had personally received a translation of this reply in Japanese.

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

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

The accused replied in the affirmative.

Mr. Junjiro Takane, a counsel for the accused, read a written objection to the charge and specifications, in Japanese, prefixed marked "K."

An interpreter read an English translation of this objection, prefixed marked "L."

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

The accused waived the reading of this further objection to the charge and specifications in Japanese in open court as he had personally received a translation of this objection in Japanese.

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

The accused waived the reading of the judge advocate's reply to the objection to the charge and specifications in Japanese in open court as he had personally received a translation of this reply in Japanese.

The commission was cleared.

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

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

The commission announced that the objection of the accused was not sustained and that it found the charge and specifications in due form and technically correct.

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

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

The judge advocate read a written reply to the motion for a bill of particulars, prefixed marked "P."

The accused waived the reading of the judge advocate's reply in Japanese in open court.

The commission announced that the motion was denied.

The accused stated that he was ready for trial.

The judge advocate read the letter containing the charge and specifications, original prefixed marked "Q."

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

The judge advocate arraigned the accused as follows:

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

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

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

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Friday, July 30, 1948.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, July 30, 1948.

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottomeyer, U. S. Navy,
Captain Albert L. Jenson, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The prosecution began.

The judge advocate read a written opening statement, appended marked "S."

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

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

1. That during the years 1943 and 1944 a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies.

2. That the Caroline Islands are part of the Commander Marianas Area.

3. Hague Convention No. IV of 18 October 1907.

4. The Annex to Hague Convention No. IV of 18 October 1907, particularly the following portions thereof:

Article 1

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates."

Article 4

"Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated."

5. The Geneva Prisoners of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Title 1, Article 2 thereof, which reads as follows:

"Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them.

They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.

Measures of reprisal against them are prohibited."

6. The Potsdam Declaraction of 26 July 1945, particularly paragraph 10 which reads in part as follows:

"We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the request of the judge advocate on judicial notice, appended marked "T."

An interpreter read an English translation of this written objection to the request for judicial notice, appended marked "U."

The judge advocate read a written reply to the objection to the request for judicial notice, appended marked "V."

An interpreter read a Japanese translation of this reply.

The commission was cleared.

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

The commission made the following ruling:

The commission rules that the objections raised by the defense are not sustained and the commission will take judicial notice of items one through six as requested by the judge advocate.

Commander Martin E. Carlson, a counsel for the accused, requested an adjournment until Monday, August 2, 1948, as the judge advocate at 9 a.m. this morning had given the accused twenty-six documents he intended to offer in evidence and an adjournment was necessary in order that the accused might have time to inspect and prepare objections, if any, to these documents.

The judge advocate stated that he had no objection to this adjournment.

The commission announced that the adjournment was granted.

The commission then, at 10:55 a.m., adjourned until 9 a.m., Monday, August 2, 1948.

THIRD DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas, Islands.
Monday, August 2, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottomeyer, U. S. Navy,
Captain Albert L. Jenson, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a written motion to suppress the affidavit of Lieutenant Commander George Estabrook Brown, junior, USNR, appended marked "W."

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

The judge advocate replied.

The commission announced that the motion to suppress was not sustained.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present station, please?
A. Herbert L. Ogden, commander, United States Navy, attached to the office of the Director War Crimes, Pacific Fleet.

2. Q. If you recognize the accused, state as whom.
A. Former Vice Admiral Wakabayashi.

3. Q. Do you have in your possession certain official documents from the files of the Director War Crimes, Pacific Fleet?
A. I have.

4. Q. Do you have in your possession prosecution document number 5, a document dated 19 September 1947, from the Central Liaison Office in Tokyo, Japan, addressed to GHQ, SCAP?
A. I have.

5. Q. Do you have the original of that document in your possession?
A. I do.

At the request of the judge advocate, this original document was marked "Number 1" for identification.

6. Q. Have you prepared certified copies of certain portions of this original document?
A. I have prepared certified copies of the covering letter of the Annex Table No. 3 and Annex Table No. 4.

7. Q. Do these Annex Tables - No. 3 and 4 - include the organization of the Fourth Base Force?
A. They do.

8. Q. Do they pertain to the organization of the Fourth Base Force during certain periods including the period from July 26, 1943 to February 22, 1944?
A. Annex Table No. 3 covers the organization from 1 April 1943 to 1 January 1944. Annex Table No. 4 covers the period from 1 January 1944 to 4 March 1944.

The accused moved to strike out this answer on the ground that it was the opinion of the witness, and that the document in question was the best evidence.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

9. Q. Are these prepared certified copies, certified by you, of the original document which has previously been marked for identification - identification number 1?
A. They are.

A certified extract from the original document marked "Number 1" for identification was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 5:

10. Q. You testified that you had certain documents called "official documents" and this document was one of these so-called "official documents"; by what process or procedure did this document become an "official document"?
A. These documents are obtained by our office by requesting them from the Supreme Commander for the Allied Powers who in turn requests them from the Central Liaison Office of the Japanese Government. They are then forwarded to our office via the Central Liaison Office, via Supreme Commander for the Allied Powers.

11. Q. Was this document expressly requested for use in the trial of former Vice Admiral Wakabayashi, Seisaku?
A. It was requested for use in any case involving Japanese naval personnel from the Truk area.

12. Q. Did you say "many" or "any" cases?
A. Any case.

13. Q. Is the original document which is marked for identification purposes signed and duly authenticated according to Japanese custom?

The judge advocate objected to the term "according to Japanese custom" on the ground that it was irrelevant, immaterial, and called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

14. Q. This document marked for identification purposes, identification number 1, what else does it contain besides the covering letter and Annex Table No. 3 and Annex Table No. 4 which you have stated you excerpted portions from?
A. The letter contains as enclosures four blue prints, six tables, and two reports.

15. Q. Does the document contain an Annex Table No. 1?
A. It does.

16. Q. Is that Annex Table No. 1 a substantial and material part of the document?

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

The accused made no reply.

The commission announced that the objection was sustained.

17. Q. What does this Annex Table Report No. 1 contain?
A. Annex Table No. 1 purports to contain the organization from 8 December 1941 to 14 July 1942.

18. Q. What does Annex No. 1 contain?
A. Annex No. 1 purports to contain a report regarding transportation of prisoners of war.

19. Q. Is this a material part of the document?

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

The accused made no reply.

The commission announced that the objection was sustained.

20. Q. You testified that these Annex Tables No. 3 contained the organization of the Fourth Base Force from April 1, 1943 to January 1, 1944. Do you know then why the Annex Table No. 3 is marked April 1, 1943 and Annex Table No. 4 is marked January 1, 1944 if the report is the organization of the Fourth Base Force of the organization for the remainder of the calendar year?
A. The report contains certain notations which indicate the changes made during that period.

21. Q. How does it indicate it?
A. For example, on page one of Annex No. 3 is the notation "1 May, 32nd Aux. Sub-Chaser Division added," which date is subsequent to 1 April 1945.

The accused objected to the introduction of this document on the ground that the maker should be produced, and on the ground that the document itself was irrelevant and immaterial.

An interpreter read a Japanese translation of this objection.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 1."

The commission then, at 10:25 a.m., took a recess until 10:50 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocate concerning Exhibit 1:

22. Q. Will the witness read from Exhibit 1, annex table number three thereof, that portion which shows the organization of the Fourth Base Force indicating the higher echelons and also the subordinate units of the Fourth Base Force?

(The witness read from Exhibit 1 as requested.)

23. Q. Does the table of organization show what the next higher echelon above the Fourth Base Force was?
A. It shows the Fourth Base Force under the Fourth Fleet.

24. Q. Does the table give the name of the commanding officer of the Forty-first Naval Guards from the period of mid-December 1943?
A. Mid-December - Tanaka, Seiji.

25. Q. Will the witness turn to annex table number four and read the names of the major units under the Fourth Base Force beginning at January 1944 and including any changes which occurred through 22 February 1944?

(The witness read from Exhibit 1 as requested.)

26. Q. Does the table of organization show changes in the Forty-third Guard Unit, Palau and the Communication Corps during that period?
A. It does show the Forty-third Naval Guards, Palau, eliminated and the Communication Corps eliminated to be reorganized on 10 January 1944.

Cross-examined by the accused concerning Exhibit 1:

27. Q. Does annex table number three show that the next higher command over the Fourth Fleet was the Combined Fleet during the period from 26 July 1943 to 17 February 1944?
A. It shows the Combined Fleet as the next higher echelon above the Fourth Fleet.

28. Q. Does the table show that the Sixth Fleet was a part of the Combined Fleet or Fourth Fleet? Of what unit was the Sixth Fleet a component part?
A. The table does not show the organization of the Sixth Fleet.

29. Q. What does the table show as regards the commanding officer of the Forty-first Naval Guard Unit during the period from 20 November 1943 to 28 November 1943? Who was commanding officer of the Guard Unit during this period?
A. The table shows as commanding officer of Forty-first Naval Guards, Truk, Kimiie, Tanetsugu; early April Kobayashi, Matsushi; early July Naito, Atsushi; late September; mid-December Tanaka, Seiji.

30. Q. The question was, who was commanding officer of the Forty-first Naval Guards during the period from November 20 to November 28 according to this table?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I can only answer the question as to what the table actually shows which is what I read. The table does not state the name of the commanding officer from November 20 to November 28, 1943.

31. Q. Isn't it true that this annex table number three and table number four show that the Fourth Naval Hospital was not a part of the Fourth Base Force at any time during the period which these tables purport to cover?

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

The accused withdrew the question.

32. Q. Does annex table number three and number four show that the Fourth Naval Hospital, Truk, was a part of the Fourth Base Force during the period when the tables cover the organisation of the Fourth Base Force?
A. The tables do not show the Fourth Naval Hospital as under the Fourth Base Force.

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 1.

The commission did not desire to examine this witness concerning Exhibit 1.

Examined by the judge advocate concerning prosecution document number 8:

33. Q. Does the witness have in his possession a document from the office of Director War Crimes, Pacific Fleet, dated 16 September 1947 addressed from Central Liaison Office, Tokyo, to General Headquarters, Supreme Commander for the Allied Powers?
A. I have.

34. Q. Does the witness also have in his possession a similar letter dated 2 October 1947, both of which letters are included in what is known as prosecution document number 8?
A. I have.

35. Q. Do these documents deal with the period of duty of the Commander in Chief and other subordinate commanders of the Fourth Fleet?
A. They do.

36. Q. Do these documents deal with the tour of duty of the accused, Wakabayashi, Seisaku?
A. They do.

37. Q. Are both original documents signed by an official of the Central Liaison Office, Tokyo?
A. Both letters are signed by Chief of Liaison Section, Central Liaison Office.

At the request of the judge advocate, this original document was marked "Number 2" for identification.

38. Q. Has the witness prepared a certified copy of this original document?
A. I have prepared a certified copy of both letters.

39. Q. Have you certified them to be true copies of the original document which has been marked for identification number 2?
A. I have.

A certified copy of the document marked number 2 for identification was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 8:

40. Q. Were you present when either one of these documents was signed?
A. I was not.

41. Q. Do you know whether the signature of the maker of either one of these documents is the signature of the purported signer, Y. Katsuno?
A. I cannot personally identify the signature but I do know that the documents came to us through regular and official channels.

42. Q. On what date did they come to you?

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

The accused replied.

The commission announced that the objection was not sustained.

A. I do not know the date they were received but it was shortly after the date of the instrument.

43. Q. Were you present in the office of Director War Crimes when these documents were received?

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

The accused made no reply.

The commission announced that the objection was sustained.

44. Q. Does either one of these documents state with certainty the date on which Wakabayashi assumed command of the Fourth Base Force?

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

The accused replied.

The commission announced that the objection was sustained.

45. Q. Isn't it true that document dated 16 September 1947 actually states--

This question was objected to by the judge advocate on the ground that it seemed counsel was going to read certain portions of a document which had not been admitted into evidence.

The accused made no reply.

The commission announced that the objection was sustained.

46. Q. Does the document dated October 2, 1947 show what the actual date of assuming duty by Wakabayashi is still under investigation? JK
A. It does show the date he actually assumed duty was under investigation at that time.

47. Q. Does the document dated 2 October 1947 only contain a presumption of former Captain Yamada as to the date when Wakabayashi assumed command of Fourth Base Force? JK

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

The accused withdrew the question.

The accused objected to the introduction of this document in evidence on the ground that the maker is available and that the document was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 2."

Examined by the judge advocate concerning Exhibit 2:

48. Q. Will the witness read from Exhibit 2 the information pertinent to the accused Wakabayashi, Seisaku and his tour of duty and position as given in the record?

(The witness read from Exhibit 2 as requested.)

49. Q. On the second letter dated October 2, 1947, will the witness read the second paragraph which deals with the tour of duty of Wakabayashi, Seisaku?

(The witness read from Exhibit 2 as requested.)

The accused did not desire to cross-examine this witness concerning Exhibit 2.

The commission did not desire to examine this witness concerning Exhibit 2.

The witness was duly warned.

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

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocate concerning prosecution document number 9:

50. Q. Does the witness have in his possession from the files of the Director War Crimes, Pacific Fleet, a document dated March 5, 1948 from the Central Liaison Office and Coordination Office to General Headquarters, to Supreme Commander Allied Powers?
A. I have.

51. Q. Does this document transmit a roster of the staff officers of the Fourth Base Force?
A. It does.

52. Q. Is this the original of the roster of the Fourth Base Force with this file of yours known as prosecution document number 9 which you have produced here in court?
A. It is.

53. Q. Have you prepared a certified copy of the letter of transmittal dated 5 March 1948 and a certified copy of the roster of staff officers of the Fourth Naval Base Force?
A. I have.

At the request of the judge advocate, this original document was marked "Number 3" for identification.

The certified copies of the roster of staff officers and the letter of transmittal dated 5 March 1948 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 9:

54. Q. Do you know the signature of the maker of this document, K. Yoshida? JK
A. Only from the documents in our office.

55. Q. The document purports to be signed for the president, do you have in your possession any authorization for this K. Yoshida that authorizes him to sign for the president?
A. We do not.

56. Q. Were you present when K. Yoshida signed the document?
A. I was not.

The accused objected to the receipt of this document in evidence on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the document was so received and is appended marked "Exhibit 3."

Examined by the judge advocate concerning Exhibit 3:

57. Q. Will the witness read from Exhibit 3, the roster of the Fourth Base Force, the entry with regard to Wakabayashi, Seisaku omitting the portion referring to present address?

(The witness read from Exhibit 3 as requested.)

57a. Q. Will the witness read the entry with regard to Higuchi, Nobuo?

(The witness read from Exhibit 3 as requested.)

The accused did not desire to cross-examine this witness concerning Exhibit 3.

The commission did not desire to examine this witness concerning Exhibit 3.

Examined by the judge advocate concerning prosecution document number 7:

58. Q. Does the witness have in his possession from the files of the Director War Crimes, Pacific Fleet, an official document from the Central Liaison Office to General Headquarters, Supreme Commander for the Allied Powers, dated 15 September 1947 and C.L.O. number 7231? JK
A. I have.

59. Q. What does this original document consist of?
A. Japanese Naval Staff Regulations.

60. Q. Does the letter of transmittal include copies in Japanese and in English of certain Naval Staff Regulations?
A. It does.

At the request of the judge advocate, this original document was marked "Number 4" for identification.

61. Q. Does the witness have in his possession a certified copy of the letter of transmittal and a certified copy of the translation of the pertinent enclosures regarding the Naval Staff Regulations?
A. I have.

62. Q. I observe in this certified copy there are inserted in the English translation certain phrases namely "under orders of the Chief of Staff" inserted in certain articles, can you explain what these insertions are?
A. Those are corrections in the translation which were made at the time this document was presented to the military commission in other proceedings and authorized and directed by the commission.

63. Q. To the best of your knowledge were those insertions made in order to include a certain portion of the Japanese which apparently had been omitted in the prior English translation as received?
A. They were.

A certified copy of prosecution document number 7 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 7:

64. Q. Have you in your possession the references (a) and (b) in this covering letter?

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

The accused replied.

The commission announced that the objection was sustained.

65. Q. Are these regulations pertaining to staff officers all the regulations pertaining to staff officers in the Imperial Japanese Navy?

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

The accused replied.

The commission announced that the objection was not sustained.

A. It does not purport to be all of the Naval Staff Regulations.

66. Q. Did your office only request a certain limited set of regulations be forwarded here regarding the duties of staff officers?
A. We requested any and all staff regulations pertaining to responsibility for prisoners of war.

67. Q. Does this then set forth any and all regulations pertaining to prisoners of war?

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

The accused made no reply.

The commission announced that the objection was sustained.

68. Q. Do you know the signature of the signer, Y. Katsuno?
A. Only from the documents themselves.

69. Q. You were not present when he did sign the document?
A. I was not.

70. Q. Do you know if he has authority to sign for the President?
A. I do not know.

71. Q. The certified copy contains certain corrections which you have testified regarding; was the original document corrected?
A. It was.

72. Q. Then the original document is not the document which was originally forwarded to your office; is that right?
A. The original Japanese is unchanged; the correction was in the English translation.

73. Q. Who made the original translation, the English translation? JK
A. I do not know who made the translation for Central Liaison Office, Tokyo.

74. Q. Was this English translation which you stated has been changed and altered forwarded to Central Liaison Office, Tokyo, in order that the corrections might be verified? JK

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

The accused made no reply.

The commission announced that the objection was sustained.

75. Q. When were these Staff Regulations in effect?
A. I do not know the period of time they were in effect.

76. Q. Was the accused Wakabayashi, Seisaku bound according to these regulations which are here being offered in evidence?

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

The accused withdrew the question.

77. Q. Does the document which is being offered in evidence show that the accused Wakabayashi is bound by these Staff Regulations?
A. Not by name; it purports to bind all staff officers of the Japanese Navy.

78. Q. Does the document define what a staff officer is?

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

The accused made no reply.

The commission announced that the objection was sustained.

The accused objected to the receipt of this document in evidence on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the document was so received and is appended marked "Exhibit 4."

Examined by the judge advocate concerning Exhibit 4:

79. Q. Will the witness read from this exhibit, Exhibit 4, the first paragraph of the enclosure?

(The witness read from Exhibit 4 as requested.)

80. Q. Will the witness read the second paragraph?

(The witness read from Exhibit 4 as requested.)

81. Q. Will the witness read Articles 38 and then Articles 36 and 37?

(The witness read from Exhibit 4 as requested.)

Cross-examined by the accused concerning Exhibit 4:

82. Q. Will the witness read Article 3?

(The witness read from Exhibit 4 as requested.)

The accused moved to strike Exhibit 4 from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission was cleared.

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

The commission made the following ruling: It is directed that the following portions of paragraph two be stricken from the record, the portion which reads thus: "It follows therefore that in a headquarters there should always be a staff officer or an aide-de-camp assigned to the duty of handling POWs. The competence of such staff officer in carrying out his assigned duty is in any case the competence of a staff member of the commander-in-chief or the commandant..."

Examined by the judge advocate concerning prosecution document number 206:

83. Q. Does the witness have in his possession a deposition of one George Estabrook Brown, junior, lieutenant commander, U.S.N.R., subscribed and sworn to on the tenth day of July, 1946?
A. I do.

84. Q. Does the witness know whether George Estabrook Brown, junior, is currently on active duty with the United States Navy or not?
A. The files of our office indicate that he is not.

85. Q. Do the files of the office of the Director War Crimes, Pacific Fleet, indicate the current residence of George Estabrook Brown, junior?
A. The residence is 1172 Park Avenue, New York City, New York.

86. Q. Does this deposition contain a reference to the treatment of George Estabrook Brown, junior, on Truk Atoll during the period from November 20, 1943 to approximately November 28, 1943?
A. It does.

87. Q. This original document bears the word "confidential" printed across the top, do you know if this document has been declassified?
A. That document was declassified by SecNav dispatch 231425Z April 1948.

The accused moved that this answer be stricken out on the ground that the witness was testifying concerning a document not in evidence.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

88. Q. Will the witness state whose signature appears as the taker of the oath of Brown?
A. Elroy G. True, junior, lieutenant commander, U. S. Naval Reserve.

Prosecution document number 206 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 206:

89. Q. Paragraphs (a) of both specifications one and two of the original charge which was corrected on 23 July 1948 alleges the fact of mistreatment of Brown and other prisoners. Does this allegation have any relation with the contents of Brown's affidavit? Is this Brown's affidavit the basis for the allegations for the original charge?

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

The accused replied.

The commission announced that the objection was sustained.

90. Q. What information have you that indicates that George Estabrook Brown, junior, is not now on active duty?
A. The last information we have was three or four months back; we have nothing since that time.

91. Q. Can it be ascertained with certainty whether George Estabrook Brown, junior, is on active duty or not?
A. It could be ascertained through the Bureau; yes, sir.

92. Q. You testified that this was sworn to by George Estabrook Brown, junior, before Elroy G. True, junior, lieutenant commander, U.S.N.R.; do you know by what authority this lieutenant commander administered this oath?

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

The accused made no reply.

The commission announced that the objection was sustained.

93. Q. Do you know why this testimony of George Estabrook Brown, junior, was taken at this time - on the date that it was taken in perpetuation?
A. It was taken as part of the investigation of war crimes at Truk.

The commission then, at 3:20 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued concerning prosecution document number 206:)

94. Q. Does the document only relate to the treatment that George Estabrook Brown, junior, received during the period November 20 to November 28, 1943?
A. It also includes treatment that he received at other prison camps.

Commander Martin E. Carlson, a counsel for the accused, submitted interrogatories to the judge advocate and to the commission to be propounded to Minematsu, Yasuo, former captain, Imperial Japanese Navy, and to the Chief of the Central Liaison Office, Japanese Government, Tokyo, Japan.

The judge advocate stated that he had no cross-interrogatories to add at this time.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission announced that the interrogatories were approved.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt in evidence of prosecution document number 206, in Japanese, appended marked "X."

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

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt in evidence of prosecution document number 206, appended marked "Z."

The judge advocate read a written reply, appended marked "AA."

The commission announced that the objections were not sustained.

There being no further objection, the document was so received and is appended marked "Exhibit 5."

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, August 3, 1948.

FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces Marianas,
Guam, Marianas Islands.
Tuesday, August 3, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottomeyer, U. S. Navy,
Captain Albert L. Jenson, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocate concerning Exhibit 5:

95. Q. Does the witness have in his possession Exhibit 5?
A. I have.

96. Q. Will the witness read from Exhibit 5 such portions as deal with the capture of Lieutenant Commander Brown and others on or about November 20, 1943 to about November 28, 1943 while at Truk Atoll?

(The witness read from Exhibit 5 as requested.)

The accused moved to strike out this answer on the ground that it was irrelevant, immaterial, and hearsay.

The judge advocate replied.

The commission announced that the motion was denied.

The accused moved to strike out Exhibit 5 on the ground that the document contained irrelevant, immaterial, and hearsay matter.

The judge advocate replied.

The commission announced that it found only those portions of the exhibit dealing with the alleged mistreatment of George Estabrook Brown, junior, on Truk relevant to the issues being tried and directed that all other matters contained in Exhibit 5 be stricken.

Examined by the judge advocate concerning prosecution document number 207:

97. Q. Does the witness have in his possession from the files of the Director War Crimes, Pacific Fleet, an affidavit dated 30 June 1948 by one Joseph N. Baker, junior?
A. I have.

98. Q. Before whom was this affidavit sworn to?
A. Before Mildred Kane Cassidy a Notary Public at Great Barrington, Massachusetts.

99. Q. Does the witness know where Joseph N. Baker, junior, is currently residing?
A. The statement indicates that he is a resident of 193 Castle Street, Great Barrington, Massachusetts and a student at Dartmouth.

100. Q. Does the witness know from what source this affidavit was obtained?
A. This statement was obtained through the War Crimes Division, JAG.

101. Q. Was a request for a specific affidavit from Joseph N. Baker, junior made by the staff of Director War Crimes, Pacific Fleet, prior to the obtaining of this affidavit?
A. A blanket request was made by the Director War Crimes to JAG for statements of any of the survivors of the SCULPIN who could be located.

102. Q. Does this affidavit relate to treatment of prisoners of war from the period of approximately November 20 to November 28, 1943 or does it deal in any way with the SCULPIN survivors during their confinement at Truk?
A. It does.

Prosecution document number 207 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 207:

103. Q. When did you receive Baker's affidavit?
A. I do not recall the exact date but it was during the month of July 1948.

104. Q. Can you tell whether it was in the beginning, middle, or end of July 1948?
A. I can not tell without checking our mail records.

105. Q. Was the time when you received this affidavit before the charge and specifications were corrected or after the charge and specifications were corrected?

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

The accused replied.

The commission announced that the objection was not sustained.

A. As I recall, it was before.

106. Q. Isn't it customary for your office to stamp the documents on the date they are received?
A. The date is stamped on a routing sheet which is attached to the document.

107. Q. You testified that the statement indicated that Baker was residing at 193 Castle Street, Great Barrington, Massachusetts. Have you any information in your files to show that he is not on active duty as a member of the United States Naval Reserve?
A. None other than the affidavit itself.

108. Q. When was this blanket request made on JAG which you testified regarding?

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

The accused made no reply.

The commission announced that the objection was sustained.

109. Q. Was the blanket request made by a classified document?

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

The accused made no reply.

The commission announced that the objection was sustained.

110. Q. Is this affidavit signed on all three pages?
A. It is signed only on the third and last page.

111. Q. Does the affidavit at any place state that it consists of three pages?

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

The accused replied.

The commission announced that the objection was sustained.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the receipt in evidence of prosecution document number 207, appended marked "BB."

An interpreter read an English translation of this objection, appended marked "CC."

The commission then, at 10:10 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt in evidence of prosecution document number 207, appended marked "DD."

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

The judge advocate read a written reply, appended marked "EE."

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

The commission announced that the objection was not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 6."

Examined by the judge advocate concerning Exhibit 6:

112. Q. Will the witness read Exhibit 6 omitting the last paragraph which lists individual names and which is not necessary for review at this time?

(The witness read Exhibit 6 as requested.)

113. Q. Does the witness know whether the affidavit of Joseph N. Baker was received in the office of the Director War Crimes subsequent to the date of 23 July 1948?
A. I have examined the incoming mail records and have found that this evidence was received on 27 July 1948.

114. Q. Then on 23 July 1948, the time that Commander Marianas authorized corrections in the specifications, the information in this Baker affidavit was not known to Commander Marianas, Rear Admiral Pownall?

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

The judge advocate reframed the question.

115. Q. Then on 23 July 1948, the time that Commander Marianas authorized corrections in the specifications, this affidavit was not available to Commander Marianas, Rear Admiral Pownall?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. That is correct.

The accused did not desire to cross-examine this witness concerning Exhibit 6.

The commission did not desire to examine this witness concerning Exhibit 6.

The accused made a motion to strike Exhibit 6 from the record on the ground that it was irrelevant, immaterial, that it was opinion and conjecture of the affiant, and that it was hearsay as to the accused.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

The witness was duly warned.

The commission then, at 11:35 a.m., adjourned until 9 a.m., tomorrow, Wednesday, August 4, 1948.

FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, August 4, 1948.

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottomeyer, U. S. Navy,
Captain Albert L. Jenson, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate introduced Mr. Kan Akatani, as an interpreter, and he was duly sworn.

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

Examined by the judge advocate concerning prosecution document number 302:

116. Q. Does the witness have in his possession from the files of the Director War Crimes, Pacific Fleet, the official records of that office in connection with the trial of one Iwanami, Hiroshi?
A. I have.

117. Q. From the official records are you able to state in connection with the charges against Iwanami, Hiroshi, whether they deal with incidents occurring on Truk Atoll within the period from July 26, 1943 to the period February 22, 1944?
A. The record does include incidents within that period.

118. Q. Is this record of Iwanami, Hiroshi, a duly certified record?
A. It is.

At the request of the judge advocate, the duly certified copy of the record of proceedings in the case of Iwanami, Hiroshi, et al, was marked "number 5" for identification.

119. Q. Has the witness prepared certified excerpts from the record of Iwanami, Hireshi?
A. I have.

120. Q. Will you state what portions of the record were excerpted and what the subject matter related to is?
A. I have prepared excerpts from the charges and specifications, from the findings of the military commission, from the action of the convening authority, from the action of the reviewing authority, from the action of the Secretary of the Navy, so far as the same pertains to (a) the unlawful killing of six American prisoners of war about January 30, 1944 at Truk Atoll by Iwanami, Hireshi, Okuyama, Tokikazu, Nabetani, Reijiro, and others, and (b) so far as they pertain to the unlawful killing of two American prisoners of war about February 1, 1944 at Truk Atoll by Okuyama, Tokikazu, and Sakagami, Shinji and others.

121. Q. Has the witness certified these excerpts to be true excerpts taken from the official record in the case of Hireshi Iwanami?
A. I have.

The certified excerpts taken from the certified document marked "number 5" for identification were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 302:

122. Q. These excerpts which you state are true excerpts - they are only excerpts through and not the complete record of trial of Iwanami, Hireshi; is that true?
A. That is true.

123. Q. And therefore they can give only a partial picture of the record of Iwanami trial?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and called for the opinion of the witness.

The accused made no reply.

The commission announced that the objection was sustained.

124. Q. Do these excerpts in any way mention this accused, former Vice Admiral Wakabayashi, Seisaku?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. They do not.

The accused objected to the receipt in evidence of these excerpts on the ground that they were irrelevant and immaterial to the issues of this trial and hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 7."

Examined by the judge advocate concerning Exhibit 7:

125. Q. Will the witness read the excerpts omitting the preliminary page which deals with the preparations of the excerpts from the record?

(The witness read Exhibit 7.)

Cross-examined by the accused concerning Exhibit 7:

126. Q. You have excerpted specification one of charge one which charge shows that Okuyama and Nabetani were charged with this crime of murder. Does the record show that these two persons were ever tried?
A. The excerpt shows that they were deceased.

127. Q. Does the excerpt show that they were ever tried for this crime?
A. It does not show.

128. Q. Does the excerpt show that Iwanami, Hiroshi, was the only person tried for this crime under specification one of charge one?
A. That is correct.

129. Q. Does the excerpt show that Iwanami, Hiroshi was the only one found guilty for this crime under specification one of charge one?
A. That is correct.

130. Q. In specification two of charge one, was Iwanami, Hiroshi also tried on that charge?
A. He was.

131. Q. Was he found guilty?
A. He was not.

132. Q. Was Okuyama tried and found guilty of this crime?
A. He was not tried.

133. Q. Does the record show that Sakagami, Shinji was the only one tried and found guilty of this crime?
A. That is true.

134. Q. Does the record show that Iwanami, Hiroshi was found not guilty for the violation of the law and customs of war - neglect of duty in charge two, specifications one, four and five?
A. He was tried and found guilty of these specifications, but they were set aside by the convening authority.

The commission then, at 10:10 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Reexamined by the judge advocate concerning Exhibit 7:

135. Q. What is the date of the incident to which specifications four and five of charge two relate? Those are two of the three specifications that you testified to that the findings of guilty had been set aside by the convening authority.
A. They relate to an incident which occurred July 20, 1944.

136. Q. In the preparation of these exhibits did you have occasion to examine the entire content of the action of the convening authority?
A. I did.

137. Q. On what grounds did the convening authority set aside the finding of guilty on specification 1 of charge 2?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. For the reason that the accused, Iwanami, was convicted of two offenses growing out of one act.

138. Q. Did specification 1 of charge 2 relate to the same incident set forth in specification 1 of charge 1, of which specification the accused was found giilty and as to which the convening authority approved?
A. It did.

The accused moved to strike out this answer on the ground that it was not the best evidence.

The judge advocate replied.

The commission announced that the motion was denied.

139. Q. Will the witness state whether the document marked number five for identification contains the testimony of one Nakamura, Shigeyoshi, former surgeon lieutenant, Imperial Japanese Navy? OK
A. It does.

140. Q. Does the witness know whether former Surgeon Lieutenant Nakamura, Shigeyoshi is alive?
A. The record shows he is not alive.

The accused moved to strike out this answer on the ground that it was not the best evidence.

The judge advocate replied.

The commission announced that the motion was denied.

141. Q. Prior to his death did Nakamura, Shigeyoshi appear as a witness in the case of Iwanami?
A. He did.

142. Q. During the course of his appearance before the court in the Iwanami case did the witness testify on direct examination, cross-examination, and redirect examination?
A. He did.

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

The judge advocate replied.

The commission announced that the motion was denied.

143. Q. Does the testimony of Nakamura deal with prisoners of war confined at the Forty-first Naval Guard Unit during January and February 1944?
A. It does.

144. Q. Does the testimony of Nakamura deal with medical experiments, mistreatment, torture and killing of these prisoners of war at the Forty-first Naval Guard Unit?
A. It does.

That portion of the testimony of Nakamura, Shigeyoshi from the record of trial of Iwanami, et al, which deals with prisoners of war confined at the Forty-first Guard Unit during January and February of 1944, and which deals with medical experimentation, mistreatment, torture, or killing of prisoners of war, both at the Forty-first Naval Guard Unit and at the Fourth Naval Hospital, were submitted to the accused and to the commission and by the judge advocate offered in evidence.

The accused objected to the receipt of this testimony in evidence on the ground that it was immaterial, irrelevant, hearsay, and not competent since Nakamura, Shigeyoshi had committed suicide before the completion of his testimony in the Iwanami case.

The judge advocate replied.

The commission announced that the objection was not sustained and the testimony of Nakamura, Shigeyoshi was so received.

145. Q. Will the witness read questions 33, 36, 41, 48, 51, 52, 53, 54, 57, and the answers thereto from the testimony of Nakamura, Shigeyoshi?

"33. Q. And when you got to the Forty-first Naval Guard Unit, where did you go?
"A. I went to the dispensary."

"36. Q. When you entered the dispensary, what did you find there?
"A. I saw eight prisoners lying on the floor."

"41. Q. When you saw these eight prisoners, did they appear to you to be in good health?
"A. They were not very spirited; but they were not sick."

"48. Q. You have testified that you went to the dispensary with Doctors Iwanami and Okuyama. When did Doctor Nabetani arrive there?
"A. As I recall, he arrived shortly after we did."

The accused moved to strike out this answer on the ground that it was misleading and confusing.

The judge advocate made no reply.

The commission announced that the motion was denied.

"51. Q. After the tests had been completed what was done with the prisoners?
"A. After the tests were over, the eight prisoners were divided into two groups of four each by the order of Iwanami."

"52. Q. After the prisoners had been divided into two groups of four each, what happened then?
"A. Tourniquets were placed on the arms and legs of four prisoners and were kept on, some from two to three hours, some for seven to eight hours. After the tourniquets had been placed on for some two hours, this tourniquet was released. When it was released, the prisoner shook with pain and his face became pale. After a short period the pain left. About twenty minutes the tourniquets were again placed on the prisoners. Those who had the tourniquets kept on for seven to eight hours, when released shook greatly with pain, and, about ten minutes later, died."

"53. Q. Were tourniquets put on all eight of these prisoners?
"A. Tourniquets were placed on four prisoners."

"54. Q. Were all of these eight prisoners in the same room?
"A. Before the experiments began, four of them were taken by Nabetani into the next room."

"57. Q. Tell the commission exactly what was done in all the detail that you can remember.
"A. Of the four prisoners, some had tourniquets placed on their legs; some, on their arms; some had one tourniquet placed on them; some had two. There were none who had three tourniquets on him. Some tourniquets were kept on for short periods; some for long periods from seven to eight hours. When the tourniquets were released on some prisoners after two or three hours, they shook with pain and turned pale, but did not die. Twenty minutes later the tourniquets were again placed on the prisoners. The prisoners on whom the tourniquets were kept from seven to eight hours, when released, shook with pain, their faces turned green, and about ten minutes later, died."

The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Thursday, August 5, 1948.

SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands.
Thursday, August 5, 1948.

The commission met at 10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Wallace J. Ottemeyer, U. S. Navy,
Captain Albert L. Jenson, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Examined by the judge advocate concerning prosecution document marked "number 5" for identification:)

146. Q. Will the witness read questions 58, 59, 64, 72, 73, 77, 79, 80, 81, 89, 90, 95, 104, 106, 114, 115, and 332 and the answers thereto from the testimony of Nakamura, Shigeyoshi in the Iwanami trial?

"58. Q. When the tourniquets were first applied, who were present in that room?
"A. Commander Okuyama and myself."

The accused moved to strike out this answer on the ground that it was hearsay as to the accused.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"59. Q. What had become of Captain Iwanami?
"A. As I recall, he went into the next room.

"60. Q. How long did Doctor Iwanami, if you know, remain in the other room with Doctor Nabetani and the four American prisoners?
"A. As I recall, about two hours."

The accused moved to strike out this answer on the ground that it was opinion and conjecture on the part of the witness and that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"72. Q. Before the tourniquets were applied, was there a conversation between Doctor Okuyama and Doctor Iwanami?
"A. As I remember there was a conversation.

"73. Q. Can you give us the substance of that conversation?
"A. I remember them talking about experiments by shock and injection of bacteria, but I do not remember the details of that conversation."

The accused moved to strike out this answer on the ground that it was hearsay as to the accused.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"77. Q. Well, how long after Nabetani and the four American prisoners entered that other room did Iwanami follow them?
"A. I think it was immediately afterwards."

"79. Q. And when you entered that room, what did you find there?
"A. Through injections of bacteria, their faces were red and they were in pain."

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

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"80. Q. Whose faces were red and who were in pain?
"A. The four prisoners' faces were red and they were suffering.

"81. Q. How do you know that they were suffering through injections of bacteria?
"A. Because Doctor Nabetani told me that through injections of streptococcus bacteria into the blood stream they were in a fever."

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"89. Q. Do you know whether or not Doctor Okuyama made any report to Doctor Iwanami on the experiments he was conducting?
"A. As I remember, a report was made.

"90. Q. Do you remember what that report was?
"A. From what I recall, I think the report was that two prisoners had died the day before."

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

The judge advocate replied.

The commission announced that the motion to strike was sustained and directed that the last answer be stricken out.

"95. Q. And when you arrived on the hill, whom did you find there?
"A. On the hill was Commander Okuyama, Warrant Officer Sakagami, and the two prisoners, who had lived through the shock experiments at the guard unit, tied to a stake.

"96. Q. What happened then?
"A. Commander Okuyama and Warrant Officer Sakagami, together, retied the two prisoners to separate stakes, the prisoners sitting down with their legs spread out in front of them."

"104. Q. Did that dynamite explode?
"A. Yes. The dynamite exploded and some of the feet were torn, their bones shattered; some were connected only by the skin, and the prisoners were suffering greatly."

"106. Q. Do you know if these prisoners were alive after that explosion?
"A. I did."

"114. Q. Were they alive before he started to choke them?
"A. As I recall, they were alive.

"115. Q. Were they dead when he finished choking them?
"A. As I recollect, they died."

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

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

"332. Q. You testified yesterday that an injection of streptococcus bacteria into the blood stream brought about an occurrence of septicemia and that you did not use a microscope in examining the organs. You did not make any culture or stains. Could you state definitely that they had died of septicemia which resulted from injections of streptococcus bacteria?
"A. I can so state from the clinical findings which I heard from Nabetani, the injection of the streptococcus bacteria and from examination of the heart, liver, kidneys, and bladder. I can state this that they had died from septicemia caused by the injection of streptococcus bacteria."

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

Cross-examined by the accused concerning prosecution document marked "number 5" for identification:

147. Q. Will the witness read question 188 and the answer thereto?

"188. Q. That the head of the hospital made a good test, was this to show the other doctors an example?
"A. As I recall probably that is why it was done."

148. Q. Will the witness read question 189 and the answer thereto?

"189. Q. Was this all that the head of the hospital did there?
"A. As I recall, yes."

149. Q. Will the witness read question 203 and the answer thereto?

"203. Q. Your recollection of the head of the hospital going to the other room is based on his footsteps. Then, how do you know how long he stayed there?
"A. From what I recall, he was there for about two hours."

150. Q. Will the witness read question 204 and the proceedings as shown by the record and the answer thereto?

This question was objected to by the judge advocate on the ground that the witness should read only the question and answer and that any other matter would be irrelevant.

The accused replied.

The commission announced that it would rule on the objection after hearing the answer.

"204. Q. How do you know this?

"The witness hesitated in answering the question.

"The commission directed the witness to answer the question.

"The witness continued to hesitate in answering the question.

"The witness continued to hesitate in answering the question.

"The commission directed that the question be repeated to the witness in Japanese and directed the witness to answer the question.

"A. As I recall, I think I saw him going home or leaving."

The commission announced that the objection was not sustained.

151. Q. Will the witness read question 206 and the proceedings and the answer which is given in the record for that question 206?

This question was objected to by the judge advocate on the ground that it was leading, stating that the witness should be asked to read both questions 205 and 206.

The accused reframed the question.

152. Q. Read questions 205 and 206.

"205. Q. When did you see him leaving?
"A. I think it was about ten o'clock.

"206. Q. Where did you see him? Can you answer this simple question?

"The witness hesitated in answering the question.

"The commission directed the witness to answer the question if he understood it.

"The witness signified that he understood the question.

"The witness continued to hesitate in answering the question.

"The commission again directed the witness to answer the question.

"The witness continued to hesitate in answering the question.

"The commission directed the interpreter to ask the witness if he intended to answer the question or not, otherwise the commission will have to take some action.

"A. I saw him at the Naval Guard Unit."

153. Q. Will the witness read question 265 and the answer thereto?

"265. Q. Who was usually in charge of these drugs? You are a member of that surgical ward, you should know.
"A. As I was not a regular member of the Fourth Naval Hospital, and I was attached there while I was recuperating from my sickness, my position in the hospital was not clear, and according to the circumstances, I had been ordered to go from one ward one day to another ward another, and the conditions there, I do not remember clearly."

154. Q. Which witness was this Nakamura, a prosecution witness or defense witness?
A. He was a prosecution witness.

155. Q. Was it during the cross-examination by the accused that he committed suicide?

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

The accused reframed the question.

156. Q. Was it prior to the completion of the cross-examination or after the opening of the cross-examination that Nakamura committed suicide?
A. It was prior to the completion of the cross-examination.

157. Q. It is a very rare instance that a witness commits suicide during the course of cross-examination, did he leave any suicide note?

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

The accused replied.

The commission announced that the objection was not sustained.

A. There was no report of any suicide note made to our office.

158. Q. Did anyone try to investigate the cause of that suicide?
A. It was investigated by the Marine Corps but not by our office.

159. Q. Was that investigation reported to your office?
A. It was.

160. Q. Did the investigation disclose that the suicide had any connection with that testimony?
A. To the best of my recollection it did not.

Reexamined by the judge advocate concerning prosecution document marked "number 5" for identification:

161. Q. What was the number of the last question asked of Nakamura on direct examination?
A. Question number 162.

162. Q. What were the numbers included in the questions asked of Nakamura during cross-examination?
A. Question 163 to and including question number 454.

163. Q. Does the record indicate that counsel for the accused had concluded cross-examination at that time?
A. It does not indicate that the cross-examination was concluded.

The accused did not desire to recross-examine this witness concerning prosecution document marked "number 5" for identification.

The commission did not desire to examine this witness concerning prosecution document marked "number 5" for identification.

The accused moved to strike out all evidence relating to the testimony of Nakamura, Shigeyoshi on the ground that he had been shown to be incompetent as a witness, that it was immaterial and irrelevant, and that it was hearsay as to the accused.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

Examined by the judge advocate concerning prosecution document number 304:

164. Q. Does the witness have in his possession from the office of the Director War Crimes, Pacific Fleet, the record in the case of Tanaka, Masaharu and others before a military commission in the Marianas Area?
A. I have.

165. Q. Do the charges and specifications on which Tanaka and/or others were tried in that case deal with an incident occurring on or about February 17, 1944 on Truk Atoll?
A. They do.

166. Q. What does this incident involve with regard to prisoners of war?
A. It involves the execution of seven American prisoners of war with swords and a loaded firearm.

167. Q. Is this an official record of the office Director War Crimes, Pacific Fleet?
A. It is.

At the request of the judge advocate, this record was marked "number 6" for identification.

168. Q. Has the witness prepared certified copies of excerpts from the charges and specifications and action of convening and reviewing authorities in connection with the charge dealing with the incident that occurred on 17 February 1944?
A. I have.

169. Q. Does this certified excerpt contain excerpts of the specification dealing with this incident in the original charges and specifications and also the excerpt from the findings of the military commission, action of convening authority, reviewing authority, and the action of the confirming authority?
A. It does.

170. Q. Have you certified these to be true excerpts taken from the official record?
A. I have.

The certified excerpts were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 304:

171. Q. Are these excerpts made from a copy of the original record?
A. From a certified copy of the original record.

172. Q. Do the excerpts so state?
A. The excerpt states that it is taken from the official record of the Commander Marianas Area and that record is a certified copy.

173. Q. Do the excerpts from the charges and specifications which you have excerpted show the complete charges and specifications?
A. Complete as to Charge I, but not as to Charge II and Charge III.

174. Q. Is Charge III a neglect of duty, failing to control, a failing to protect prisoners of war on the part of Captain Tanaka?
A. It is.

175. Q. And the excerpts from the findings of the commission are incomplete as to the findings on this Charge III, is that correct?
A. That is correct.

176. Q. Do your excerpts show that the sentence of the military commission in the case of Captain Tanaka has been carried out?

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

The accused made no reply.

The commission announced that the objection was sustained.

Reexamined by the judge advocate concerning prosecution document number 304:

177. Q. Do the findings of the military commission in the case of Tanaka find Tanaka guilty of the specifications in Charge III which have not been included in your excerpt?
A. They do.

The witness was duly warned.

The commission then, at 11:25 a.m., took a recess until 2:20 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

The accused objected to the receipt in evidence of prosecution document number 304 on the ground that it was irrelevant, immaterial, and the prosecution was not introducing the document in the proper manner.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objections, the document was so received, appended marked "Exhibit 8."

Examined by the judge advocate concerning Exhibit 8:

178. Q. Will the witness read Exhibit 8?

(The witness read Exhibit 8.)

179. Q. What incidents do specification one and specification two of Charge III involve?
A. An incident which took place February 17, 1944.

180. Q. Do these specifications respectively charge neglect of duty in violation of the law and customs of war in disregarding and failing to discharge his duty to protect prisoners of war, and in disregarding and failing to control his subordinates in permitting the killing of American prisoners of war?
A. They do.

181. Q. Do these specifications charge Tanaka with neglect of duty with regard to the identical incidents set forth in the specifications to Charge I?
A. They do.

Cross-examined by the accused concerning Exhibit 8:

182. Q. What was the position of Tanaka, Masaharu at the Forty-first Guard Unit?
A. He was the commanding officer.

183. Q. According to Charge I did Tanaka actually participate in the killing?

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

The accused replied.

The commission announced that the objection was sustained.

184. Q. Does the witness know how Tanaka was found guilty in the first charge?

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

The accused replied.

The commission announced that the objection was sustained.

185. Q. Does the witness know the relation between Tanaka, Danzaki, and Yoshinuma at the Forty-first Guard Unit?
A. I do.

186. Q. What was the relation?
A. Danzaki - in the absence of the executive officer was performing duties of the executive officer. Yoshinuma was one of the officers attached to Captain Tanaka's unit.

187. Q. The excerpts which you made showing the action of the Secretary of the Navy show only that the Secretary of the Navy approved the sentence of Tanaka. Does that mean that Danzaki and Yoshinuma - that their sentence by the commission was not approved by the Secretary of the Navy?
A. As they did not receive the sentence of death their sentence did not have to be approved by the Secretary of the Navy.

188. Q. The Secretary of the Navy did not approve the sentence of Danzaki and Yoshinuma?

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

The accused replied.

The commission announced that the objection was sustained.

189. Q. Was the death sentence of the commission as regards Tanaka executed or carried out?
A. It was.

190. Q. When and where was Tanaka hanged?

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

The accused replied.

The commission announced that the objection was not sustained.

A. Tanaka was executed on the twenty-fourth of September 1947 on Guam, Marianas Islands.

191. Q. Was the accused Wakabayashi being held in solitary confinement here on Guam during the trial of Tanaka?
A. He was.

192. Q. Was he still being held in solitary confinement here at the time the sentence of death was carried out and Tanaka was hanged here on Guam?

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

The accused made no reply.

The commission announced that the objection was sustained.

Examined by the judge advocate concerning prosecution document number 271:

193. Q. Does the witness have in his possession the original record in the trial of Kobayashi, Masashi?
A. I have.

194. Q. Does this record contain an "Exhibit 12(a)" which consists of a statement by Captain Tanaka, Masaharu whom the witness has previously testified as being deceased?
A. It does.

At the request of the judge advocate, a certified copy of the trial of Kobayashi, Masashi, former vice admiral, Imperial Japanese Navy, was marked "number 7" for identification.

The accused objected to this certified copy being marked for identification on the ground that the proceedings had not yet been approved by the convening or reviewing authorities and on the further ground that since the original record was available, a copy should not be accepted.

The judge advocate replied.

The commission announced that the objection was not sustained, and the certified copy of the trial of Kobayashi was marked "number 7" for identification.

Examined by the judge advocate concerning prosecution document number 271:

195. Q. Has the witness prepared a certified copy of the "Exhibit 12(a)" of the statement of Captain Tanaka, Masaharu?
A. I have.

196. Q. Is that a true copy of the translation of the statement of Tanaka, Masaharu dated 22 September 1947 which was identified as "Exhibit 12(a)" in the Kobayashi case?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It is.

A certified copy of the English translation of the statement of Captain Tanaka, Masaharu, was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 271:

197. Q. When Tanaka made this statement on September 22, was the witness present?
A. I was.

198. Q. Did Tanaka on his own accord request to submit this statement?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. Tanaka did not request to make this statement. A further interview and the making of this statement was upon my request.

199. Q. When Tanaka made this statement was there confirmation from the Secretary of the Navy regarding Tanaka's death sentence already in the hands of the war crimes trial office?

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

The accused replied.

The commission announced that the objection was not sustained.

A. The confirmation of the death sentence had been received by our office but had not been communicated to Captain Tanaka at this time.

200. Q. Did the witness ask various questions of Tanaka before Tanaka made this statement?
A. I did.

201. Q. Then, was Tanaka's statement answers to previous questions?
A. In effect - yes.

202. Q. Was the witness aware of the discrepancy between this statement and what Tanaka said at his trial?
A. I was aware that this information supplemented or was in addition to information which Tanaka had given at his trial.

203. Q. You were not aware of the discrepancy?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did not feel that it was in conflict or a discrepancy of his prior testimony.

204. Q. Who translated this statement of Tanaka?
A. Lieutenant Kerrick.

205. Q. Is he available as a witness?
A. He is.

206. Q. What statement did Tanaka swear to - the Japanese or the English statement?
A. The Japanese.

207. Q. Was Lieutenant Kerrick the witness at the time this statement of Tanaka was made to you?
A. Lieutenant Kerrick was not present at that time. At that time Mr. Savory was acting as interpreter.

208. Q. Is Mr. Savory available as a witness?
A. He is.

209. Q. Where is the Japanese statement that Captain Tanaka made and swore to?
A. It is filed as "Exhibit 12" in the Kobayashi record.

210. Q. Then the original statement of Captain Tanaka is available as a document to be offered in this trial rather than a translation of this document. Is that true?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. The original document is presently in court but I would say it is not available as an exhibit in this case.

211. Q. What is being offered here then is only a true copy of a translation and not a true copy of an original document. Is that true?
A. That is correct.

212. Q. And you can not testify as regards the authenticity of the translation of the document that you have certified to, then. Is that correct?
A. I can not certify as to the correctness of the translation.

213. Q. Can you give any reason why this document here being offered is not being offered as an excerpt from the record of the trial of Kobayashi, Masashi?

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

The accused made no reply.

The commission announced that the objection was sustained.

Reexamined by the judge advocate concerning prosecution document number 271:

214. Q. Was the translation which you have certified to be a true copy of the original translation as filed in the original Kobayashi record made by one of the official court interpreters - Lieutenant Eugene E. Kerrick?
A. It was.

215. Q. Is Lieutenant Kerrick an official court interpreter in the instant case as well as in the Kobayashi case? Is the same Lieutenant Kerrick you referred to the same Lieutenant Kerrick you referred to in the instant case?
A. He is.

216. Q. Is the original Japanese statement which is part of the original Kobayashi record in court at this time for the examination of the defense counsel and their interpreters?
A. It is.

Recross-examined by the accused concerning prosecution document number 271:

217. Q. But the original Japanese document made by Captain Tanaka - that nor a certified copy is not here being offered into evidence?

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

The accused replied.

The commission announced that the objection was sustained.

The commission then, at 3:30 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt of prosecution document number 271 in evidence, appended marked "FF."

An interpreter read an English translation of the objection of Mr. Sanagi, appended marked "GG."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt of this document in evidence, appended marked "HH."

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

The judge advocate replied.

The commission announced that the objections were not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 9."

Examined by the judge advocate concerning Exhibit 9:

218. Q. Will the witness read Exhibit 9?

(The witness read Exhibit 9.)

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Friday, August 6, 1948.