DECLASSIFIED
Authority: NND 760050 (1945–1949)
By: NARA NARA Date: 1976

YAMAMOTO, KAZUHARU et al. (16 FEB 1948)

(163117)
PART 1 OF 6

0802

ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT
WASHINGTON 25, D. C.

JAG:I:WCK:lmh
Mil.Com. 00-Yamamoto, Kazuharu, et al/
A17-10 0Q (9-29-48) 163117

-6 OCT 1949

The remarks and recommendation of the Judge Advocate General, in the foregoing Military Commission case of former First Lieutenant Yamamoto, Kazuharu, Imperial Japanese Army, former Second Lieutenant Ichikawa, Yokichi, Imperial Japanese Army, former Sergeant Major Ishiyama, Zenzo, Imperial Japanese Army, former Sergeant Major Sugimoto, Takeji, Imperial Japanese Army, former Sergeant Ichimiya, Masao, Imperial Japanese Army, former Sergeant Ozaki, Katsutoshi, Imperial Japanese Army, former Sergeant Tamamoto, Tadashi, Imperial Japanese Army, former Sergeant Yokoyama, Kyohisa, Imperial Japanese Army, former Leading Private Ezure, Shigeru, Imperial Japanese Army, former Leading Private Fujitani, Yoshio, Imperial Japanese Army, former Leading Private Kawaguchi, Wahei, Imperial Japanese Army, former Superior Private Ando, Fukuichi, Imperial Japanese Army, former Superior Private Hayashi, Umeji, Imperial Japanese Army, former Superior Private Hidaka, Kinnosuke, Imperial Japanese Army, former Superior Private Ito, Mitsuyuki, Imperial Japanese Army, former Superior Private Iwamoto, Harukichi, Imperial Japanese Army, former Superior Private Nakamura, Jiro, Imperial Japanese Army, former Superior Private Okamura, Gintaro, Imperial Japanese Army, former Superior Private Sagara, Masashiro, Imperial Japanese Army, and former Private First Class Uchida, Fumio, Imperial Japanese Army, tried in joinder, are approved. Accordingly, the findings on Charge I as to all the aforementioned accused except Yamamoto (convicted also of specification 3), Hayashi and Sagara (both acquitted), and Ando (finding disapproved by reviewing authority), the findings on specifications 1 and 2 thereunder as to all the aforementioned accused except Hayashi and Sagara (specifications 1 and 2 not proved) and Ando (findings disapproved by reviewing authority) and the actions of the convening and reviewing authorities thereon, are set aside.

Acting Secretary of the Navy.

Note: This action was never promulgated and was superseded by Acting Secnav action dated 30 August 1949. Retain as part of file for record purposes only.

0003

In reply refer to Initials and No.

Op22D/flf
Serial 1104P22

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

for PEACE
SAVINGS BONDS

27 SEP 1948

FIRST ENDORSEMENT on
JAG Record of Proceedings
00-YAMAMOTO, Kazuharu/et al/
A17-10 CQ (8-18-48) WCK:mas
163117 dated 25 September 1948.

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

Subject: Record of Proceedings of Military Commission at Guam in the case of Kazuharu Yamamoto et al.

1. Returned, contents noted.

P. G. Hale
P. G. Hale,
By direction.

RECEIVED
28 SEP 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

RECEIVED
28 SEP 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

0004

JAG:I:HHW:bam
CO-Yamamoto, Kazuharu/A17-10 CQ
(2-20-46) 163117

From: Judge Advocate General
To: Commander Marianas Area
Via: Commander in Chief,
United States Pacific Fleet

Subj: Military Commission case of former First Lieutenant Yamamoto, Kazuharu, Imperial Japanese Army, former Second Lieutenant Ishikawa, Yoshishi, Imperial Japanese Army, former Sergeant Major Ishiyama, Kanao, former Sergeant Major Suginoto, Takeji, Imperial Japanese Army, former Sergeant Ishimiya, Kanao, Imperial Japanese Army, former Sergeant Onaki, Katsutoshi, Imperial Japanese Army, former Sergeant Yamamoto, Yudoshi, Imperial Japanese Army, former Sergeant Yokoyama, Kyohisa, Imperial Japanese Army, former Leading Private Nzuru, Shigeru, Imperial Japanese Army, former Leading Private Fujitani, Yoshio, Imperial Japanese Army, former Leading Private Kamaguchi, Wahei, Imperial Japanese Army, former Superior Private Ando, Fukuichi, Imperial Japanese Army, former Superior Private Hayashi, Umeji, Imperial Japanese Army, former Superior Private Hidaka, Kinnosuke, Imperial Japanese Army, former Superior Private Ito, Mitsuyuki, Imperial Japanese Army, former Superior Private Iwamoto, Haruichi, Imperial Japanese Army, former Superior Private Nakamura, Jiro, Imperial Japanese Army, former Superior Private Okamura, Gintaro, Imperial Japanese Army, former Superior Private Sagara, Masashiro, Imperial Japanese Army, and former Private First Class Uchida, Fumio, Imperial Japanese Army, tried in joinder by your order on 16 February 1946.

1. The Military Commission before which the subject-named former members of the Imperial Japanese Army were tried, made findings and adjudged sentences as follows:

a. In the case of former First Lieutenant Yamamoto, Kazuharu, Imperial Japanese Army, the Commission found him guilty of the Charges, I, Violation of the Law and Customs of War (3 specifications); and II, Murder (1 specification), and adjudged the following sentence:

"The Commission, therefore, sentences him, Yamamoto, Kazuharu, to be confined for a period of twenty-five (25) years."

b. In the case of former Second Lieutenant Ishikawa, Yoshishi, Imperial Japanese Army, the Commission found him guilty of the Charges, I, Violation of the Law and Customs of War (2 specifications); and II, Murder (1 specification), and adjudged the following sentence:

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CO-Yamamoto, Kazuharu/A17-10 CO

"The Commission, therefore, sentences him, Ishikawa, Yoichi, to be confined for a period of twenty-five (25) years."

c. In the cases of former Sergeant Major Ishiyama, Kenzo, Imperial Japanese Army, former Sergeant Major Sugimoto, Takaji, Imperial Japanese Army, former Sergeant Ishiniya, Nasao, Imperial Japanese Army, former Sergeant Ozaki, Katsutoshi, Imperial Japanese Army, former Sergeant Yamamoto, Tadashi, Imperial Japanese Army, and former Sergeant Yokoyama, Kyohien, Imperial Japanese Army, the Commission found them guilty of the Charges, I, Violation of the Law and Customs of War (2 specifications): and II, Murder (1 specification), and adjudged the following sentences:

"The Commission, therefore, sentences him, Ishiyama, Kenzo, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, Sugimoto, Takaji, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, Ishiniya, Nasao, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, Ozaki, Katsutoshi, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, Yamamoto, Tadashi, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, Yokoyama, Kyohien, to be confined for a period of twenty (20) years."

d. In the cases of former Leading Private Emura, Shigeru, Imperial Japanese Army, former Leading Private Fujitani, Yoshio, Imperial Japanese Army, former Leading Private Kawaguchi, Wahei, Imperial Japanese Army, former Superior Private Ando, Fukuichi, Imperial Japanese Army, former Superior Private Hidaka, Kinnosuke, Imperial Japanese Army, former Superior Private Ito, Mitsuyuki, Imperial Japanese Army, former Superior Private Iwamoto, Haruichi, Imperial Japanese Army, former Superior Private Nakamura, Jiro, Imperial Japanese Army, former Superior Private Okamura, Giniaro, Imperial Japanese Army, and former Private First Class Uchida, Fumio, Imperial Japanese Army, the Commission found them guilty of the Charges, I, Violation of the Law and Customs of War (2 specifications): and II, Murder (1 specification), and adjudged the following sentences:

"The Commission, therefore, sentences him, Emura, Shigeru, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Fujitani, Yoshio, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Kawaguchi, Wahei, to be confined for a period of fifteen (15) years."

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"The Commission, therefore, sentences him, Ando, Fukuichi, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Hidaka, Kinnosuke, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Ito, Mitsuyuki, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Iwamoto, Narukichi, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Nakamura, Jiro, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Okamura, Gintaro, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, Ushida, Fumio, to be confined for a period of fifteen (15) years."

c. In the cases of former Superior Private Hayashi, Umaji, Imperial Japanese Army, and former Superior Private Sagara, Masashiro, Imperial Japanese Army, the Commission found the accused of the charges, not guilty, and did, therefore, acquit them.

2. The Commander Marianas Area, the convening authority, on 13 May 1948, subject to remarks, approved the proceedings in the foregoing case as to Yamamoto, Ishikawa, Ishiyama, Suginoto, Ishimiya, Ozaki, Tamamoto, Yokoyama, Egure, Fujitani, Kawaguchi, Ando, Hayashi, Hidaka, Ito, Iwamoto, Nakamura, Okamura, Sagara, and Ushida. The findings of guilty and sentences as to Yamamoto, Ishikawa, Ishiyama, Suginoto, Ishimiya, Ozaki, Tamamoto, Yokoyama, Egure, Fujitani, Kawaguchi, Ando, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Ushida, were approved.

3. The Commander in Chief, Pacific and United States Pacific Fleet, the reviewing authority, on 17 June 1948, subject to remarks, approved the proceedings, but disapproved the findings, the sentence, and the convening authority's action with respect to Ando, solely; approved the proceedings with respect to Hayashi, and Sagara; and approved the proceedings, findings, and sentences, and convening authority's action, in the cases of the remaining subject-named former members of the Imperial Japanese Army

4. The Acting Secretary of the Navy, on 30 August 1949, approved the remarks and recommendation of the Judge Advocate General, in the foregoing case. Accordingly, the findings on Charge I as to all the aforementioned accused, except Yamamoto (convicted also of specification 3), Hayashi and Sagara (both acquitted), and Ando (finding disapproved by reviewing authority), the findings on specifications 1 and 2 thereunder as to all the aforementioned accused

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CO_Yamamoto, Kasuhara/A17-10 CQ

except Hayashi and Sagara (specifications 1 and 2 not proved) and Ando (findings disapproved by reviewing authority) and the actions of the convening and reviewing authorities thereon, were set aside. The sentences of confinement for periods of twenty-five (25) years with respect to the accused Yamamoto and Ichikawa; twenty (20) years with respect to the accused Yamamoto and Yokoyama; and fifteen (15) years with respect to the accused Ito and Okamura, were reduced to ten (10) years. The sentences of confinement for periods of twenty (20) years with respect to the accused Ishiyama, Suginoto, Ishimiya and Osaki, and fifteen (15) years with respect to the accused Kawaguchi, were reduced to eight (8) years. The sentences of confinement for a period of fifteen (15) years with respect to the accused Kuro, Fujitani, Nishka, Iwamoto, Nakamura and Uchida, were reduced to three (3) years. It was directed that time served in confinement by the foregoing accused since the thirteenth day of May 1948 should be regarded as time served upon the sentences as mitigated.

G. L. RUSSELL

Copy to:
The Chief of Naval Operations (Op 22)

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ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

I:WCK:bem
AND REFER TO:
00_Yamamoto, Kazuharu, et al
A17-10 OQ (8-5-49) 163117

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

23 AUG 1949

MEMORANDUM FOR THE SECRETARY OF THE NAVY:

Subj: Military Commission Case of former First Lieutenant Kazuharu Yamamoto, Imperial Japanese Army, et al.

1. Promulgation of the final action in subject case, dated 6 October 1948, has been withheld pending consideration as to reduction of the sentences which appear unduly excessive in relation to the sentences adjudged in other military commission cases for similar acts. This office is presently engaged in a review of all military commission cases involving Japanese war criminals with the view of recommending reduction of sentences where warranted by the clemency features presented, or by the severity of the sentence in relation to other sentences adjudged for similar acts, or both. The reduction of sentence as to each accused, contained in the prepared action, is proposed solely for the purpose of achieving some measure of uniformity with past sentences. It is not designed to include any clemency action which may result from the general review of all Japanese war crimes cases.

2. The prepared action would reduce the sentences of the two commissioned officers involved, Yamamoto and Ichikawa, from 25 to 10 years. Previous commissioned and warrant officer convictions in military commission cases, involving sentences of 25 years or less, fall roughly into three categories: (1) Participating in the physical act of killing under orders; (2) Conveying, but not initiating, the order to execute; and (3) Engaging in some act prior to and in preparation for the execution. Of nine sentences examined under the first category, five provided confinement for 10 years; three, confinement for 15 years; and one, confinement for 25 years. Of four sentences examined under the second category, two provided confinement for 25 years; one, confinement for 10 years; and one, confinement for 5 years. Of two sentences examined under the third category, one provided confinement for 20 years, and one, confinement for 10 years, the greater sentence having been adjudged for failure to prevent a subordinate from carrying out an execution. Neither Yamamoto nor Ichikawa were in command at the scene of the execution which was directed by a lieutenant colonel, neither gave the order to fire, and neither participated in the physical acts of killing. Evidence upon which prosecution witnesses did not agree, indicated that Yamamoto designated certain members of his unit to participate in the execution after the officer in command directed that he do so. Ichikawa made preliminary arrangements for the execution such as procurement of transportation, etc., in accordance with orders from his superior officer, and also held a candle to illuminate the scene of the execution. A sentence of 10 years for each appears to be in line with past sentences adjudged for officers.



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3. The prepared action would reduce the sentences of Yokoyama and Tamamoto (both sergeants) from 20 to 10 years, and the sentences of Ito and Okamura (both privates) from 15 to 10 years. One witness testified that Yokoyama fired. Another witness indicated that Tamamoto fired. Ito admitted in his statement that "we fired from the right". Yokoyama indicated in his statement the belief that Okamura had shot a child. A survey of sentences, 25 years or less, of enlisted men, involving confinement for the act of killing prisoners under orders, shows that one provided confinement for 25 years; three, confinement for 15 years; ten, confinement for 10 years; one, confinement for 9 years; and one, confinement for 8 years. Such sentences in the past appear to have been adjudged without regard to relative enlisted rank, while the sentences in the instant case were apparently adjudged arbitrarily on the basis of rank (20 years for all sergeants and 15 years for all of lesser rank) rather than on the degree of participation as shown by the evidence. A sentence of 10 years for each is in line with the usual sentence adjudged in past cases for similar acts.

4. The prepared action would reduce the sentences of Ishiyama, Ichimiya, Ozaki and Sugimoto (all sergeants) from 20 to 8 years, and the sentence of Kawaguchi (private) from 15 to 8 years. While there is no evidence indicating that any of these accused participated directly in the act of killing, there is evidence that the four sergeants bound the victims and escorted them to the scene. Kawaguchi's statement indicated that he held a candle at the scene of the execution. While such acts were sufficient to show an aiding and abetting in relation to the act of killing, such acts on their face appear less culpable than engaging directly in the act of killing. Accordingly, a sentence of 8 years for each, the minimum adjudged previously for direct participation, has been adopted as a fair uniform standard.

5. Finally, the prepared action would reduce the sentences of Ezure, Uchida, Fujitani, Iwamoto, Hidaka and Nakamura (all privates) from 15 to 3 years. There is no evidence that any of these low-ranking enlisted men performed any act at the scene of the execution and there is no precedent in past cases for arriving at an appropriate sentence based upon mere presence at the scene of the execution. The proceedings, findings and sentences with respect to these accused were considered legal on the theory that they had been so directed and were standing by, ready to come to the assistance of those who had a specific task to perform, if needed. The lowest sentence previously adjudged for an enlisted man, 5 years for bayoneting the body of a prisoner after beheading, furnishes the only available standard for these six accused. Inasmuch as an act of violence or desecration against a dead body appears more culpable than mere presence at the scene of an execution under orders, a sentence of three years for each has been arrived at as a fair standard consistent with past sentences.

6. It is recommended that the prepared action, if approved, be substituted for the action dated 6 October 1948.

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

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AND REFER TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

QO-Yamamoto, Kazuharu, et al/
A17-10 OQ (7-21-49) 163117

30 AUG 1949

The remarks and recommendation of the Judge Advocate General, in the foregoing Military Commission case of former First Lieutenant Yamamoto, Kazuharu, Imperial Japanese Army, former Second Lieutenant Ichikawa, Yokichi, Imperial Japanese Army, former Sergeant Major Ishiyama, Zenzo, Imperial Japanese Army, former Sergeant Major Sugimoto, Takeji, Imperial Japanese Army, former Sergeant Ichimiya, Masao, Imperial Japanese Army, former Sergeant Ozaki, Katsutoshi, Imperial Japanese Army, former Sergeant Tamamoto, Tadashi, Imperial Japanese Army, former Sergeant Yokoyama, Kyohisa, Imperial Japanese Army, former Leading Private Ezure, Shigeru, Imperial Japanese Army, former Leading Private Fujitani, Yoshio, Imperial Japanese Army, former Leading Private Kawaguchi, Wahei, Imperial Japanese Army, former Superior Private Ando, Fukuichi, Imperial Japanese Army, former Superior Private Hayashi, Umeji, Imperial Japanese Army, former Superior Private Hidaka, Kinnosuke, Imperial Japanese Army, former Superior Private Ito, Mitsuyuki, Imperial Japanese Army, former Superior Private, Iwamoto, Harukichi, Imperial Japanese Army, former Superior Private Nakamura, Jiro, Imperial Japanese Army, former Superior Private Okamura, Gintaro, Imperial Japanese Army, former Superior Private Sagara, Masashiro, Imperial Japanese Army, and former Private First Class Uchida, Fumio, Imperial Japanese Army, tried in joinder, are approved. Accordingly, the findings on Charge I as to all the aforementioned accused except Yamamoto (convicted also of specification 3), Hayashi and Sagara (both acquitted), and Ando (finding disapproved by reviewing authority), the findings on specifications 1 and 2 thereunder as to all the aforementioned accused except Hayashi and Sagara (specifications 1 and 2 not proved) and Ando (findings disapproved by reviewing authority) and the actions of the convening and reviewing authorities thereon, are set aside.

The sentences of confinement for periods of twenty-five (25) years with respect to the accused Yamamoto and Ichikawa; twenty (20) years with respect to the accused Tamamoto and Yokoyama; and fifteen (15) years with respect to the accused Ito and Okamura, are reduced to ten (10) years. The sentences of confinement for periods of twenty (20) years with respect to the accused Ishiyama, Sugimoto, Ichimiya and Ozaki, and fifteen (15) years with respect to the accused Kawaguchi, are reduced to eight (8) years. The sentences of confinement for a period of fifteen (15) years with respect to the accused Ezure, Fujitani, Hidaka, Iwamoto, Nakamura and Uchida, are reduced to three (3) years. Time served in confinement by the foregoing accused since the thirteenth day of May 1948 shall be regarded as time served upon the sentences as mitigated.

Dan A. Kimball.

DAN A. KIMBALL
Secretary of the Navy.

FINISHED FILE 27 OCT 1949

0011

00-YAMAMOTO [illegible]/et al/
A17-10 OQ (8-20-48), WCK:mas
163117

MEMORANDUM IN THE MILITARY COMMISSION CASE OF:

Kazuharu YAMAMOTO, then 1st Lt., Imperial Japanese Army
Yokichi ICHIKAWA, then 2nd Lt., Imperial Japanese Army
Zenzo ISHIYAMA, then Sgt.Major, Imperial Japanese Army
Takeji SUGIMOTO, then Sgt.Major, Imperial Japanese Army
Masao ICHIMIYA, then Sgt., Imperial Japanese Army
Katsutoshi OZAKI, then Sgt., Imperial Japanese Army
Tadashi TAMAMOTO, then Sgt., Imperial Japanese Army
Kyohisa YOKOYAMA, then Sgt., Imperial Japanese Army
Shigeru EZURE, then Leading Pvt., Imperial Japanese Army
Yoshio FUJITANI, then Leading Pvt., Imperial Japanese Army
Wahei KAWAGUCHI, then Leading Pvt., Imperial Japanese Army
Fukuichi ANDO, then Superior Pvt., Imperial Japanese Army
Umeji HAYASHI, then Superior Pvt., Imperial Japanese Army
Kinnosuke HIDAKA, then Superior Pvt., Imperial Japanese Army
Mitsuyuki ITO, then Superior Pvt., Imperial Japanese Army
Harukichi IWAMOTO, then Superior Pvt., Imperial Japanese Army
Jiro NAKAMURA, then Superior Pvt., Imperial Japanese Army
Gintaro OKAMURA, then Superior Pvt., Imperial Japanese Army
Masashiro SAGARA, then Superior Pvt., Imperial Japanese Army
Fumio UCHIDA, then Private First Class, Imperial Japanese Army

Place of trial:	Date of trial:	Date received:
Guam, Marianas	16 February 1948	28 June 1948

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

2. The record of the case is as follows:

CHARGES: I VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 18 Sept 1944, Babelthuap Island, Palau Islands, with premeditation and malice aforethought, and without justifiable cause, assaulted, struck, killed and caused to be killed, by shooting with firearms, one Agapito C. Hondonero, a national of the U.S.A. held captive by the armed forces of Japan, in violation of the law and customs of war. (all accused)

Spec 2 Same date, same place, killed and caused to be killed as aforesaid, six named Catholic priests and brothers, including five Spanish nationals and one Colombian national, held captive by the armed forces of Japan, in violation of the law and customs of war. (all accused)

Spec 3 Same date, same place, failed to discharge his duty as officer in charge of personnel from his unit and as senior officer present from his unit, to control the operations of members of his unit, permitting them to kill one national of U.S.A., one Colombian national and five Spanish nationals, as aforesaid, in violation of law and customs of war. (Yamamoto only)

Spec 4 Same date, same place, failed to discharge his duty, to take such measures as were within his power and appropriate in the circumstances to protect one national of U.S.A., one Colombian national, and five Spanish nationals, as aforesaid, in violation of law and customs of war. (Yamamoto only)



CHARGES (CONT'D)

II MURDER
Spec Same date, same place, killed and caused to be killed seven civilians, as aforesaid, and three named residents of Yap Island, in violation of effective law, especially Article 199 of the Criminal Code of Japan in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years." (all accused)

PLEAS: Not guilty to all. (all accused)

FINDINGS: HAYASHI and SAGARA - ACQUITTED OF ALL. II-G (spec P in P)
YAMAMOTO - I-G (specs 1 and 2 P in P; spec 3 proved; spec 4 not proved);
All other accused - I-G (specs 1 and 2 P in P); II-G (spec P in P)

SENTENCES: Yamamoto and Ichikawa - to be confined for a period of 25 years.
Ishiyama, Sugimoto,
Ichimiya, Ozaki,) - to be confined for a period of 20 years.
Tamamoto, and Yokoyama)

Ezure, Fujitani,)
Kawaguchi, Ando,)
Hidaka, Ito) - to be confined for a period of 15 years.
Iwamoto, Nakamura,)
Okamura, and Uchida)

CA ACTION: Subject to remarks, proceedings, (all accused) approved. Findings and sentences as to Yamamoto, Ichikawa, Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto, Yokoyama, Ezure, Fujitani, Kawaguchi, Ando, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Uchida approved. Hayashi and Sagara released from arrest and returned to Japan.

REVIEWING AUTHORITY ACTION: Findings, sentence, and the convening authority's action with respect to Ando disapproved. Subject to remarks, proceedings in cases of Hayashi and Sagara; proceedings, findings and sentences, and action of the convening authority thereon in cases of Yamamoto, Ichikawa, Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto, Yokoyama, Ezure, Fujitani, Kawaguchi, Ando, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Uchida approved.

3. FACTS: Prosecution

The evidence shows that about 0900 on 18 September 1944, Lt. Col. Miyazaki, IJA, commanding officer of a Japanese military police unit on Babelthuap Island, Palau Islands, informed several officers under his command that the Japanese had been defeated at Saipan, Peleliu and other islands; that in view of the fact that the bombing had become severe on Palau and the landing of American Forces might be imminent, the missionaries suspected of spying would be executed by orders of Division Headquarters in order to prevent them from running to the enemy. Captain Nakamura was placed in charge of the execution. All Kempeis (military police) and assistant Kempeis were ordered to attend the execution, set for the same day, with the exception of duty personnel and those who were ill. The accused Ichikawa was to prepare ammunition for rifles and obtain shovels and trucks. The commanding officer stated that Division orders would be issued to the Sumida unit (a transportation unit) for loan of trucks to accomplish the mission. The missionaries in question together with a Filipino and his family had been held under guard by the military police unit commanded by Miyazaki. This group had been evacuated to Babelthuap, one of the Palau islands, in July 1944 with other foreigners.



At about 1500 on the same date a general assembly was held at which Lt. Col. Miyazaki informed officers and men under his command, including all of the accused except Yamamoto, Hayashi, Ando and Hidaka, that the missionaries were to be executed by order of Division Headquarters. Captain Nakamura was then ordered to form the group into teams consisting of one Kempei and one assistant Kempei. Ten teams were thus formed by direction of Captain Nakamura. Nakamura directed that the Kempeis were to take pistols and the assistant Kempeis were to take rifles. In addition, he directed that candles and shovels be taken. Lt. Col. Miyazaki gave orders that each team would take charge of one person to be executed.

At about 1700 on the same date, another assembly was called. At this assembly an inspection was held. The commanding officer appeared and stated that the time was still too early and the meeting was disbanded temporarily. In the meantime, those assembled had been warned by Captain Nakamura not to divulge the action contemplated to any of the employees or natives. Approximately a half hour later, the purpose of the mission was again explained and Lt. Col. Miyazaki together with other officers and men proceeded to the road where they waited for trucks. The trucks were delayed and the accused Ichikawa explained to Commanding Officer Miyazaki that he had made arrangements for them. Later the trucks arrived with the accused Yamamoto and some men of the Sumida unit. A discussion ensued between Miyazaki and Yamamoto after which the entire party boarded the trucks by order of Miyazaki. The trucks proceeded up the road approximately 2000 meters. The officers and some of the enlisted men got out of the trucks at this point and proceeded to a farmhouse belonging to the South Seas Development Company in Gasupan. The persons living in the house were identified as six missionaries, a Filipino interpreter, his wife and two small children. Each was identified by name and nationality as alleged in the charges and specifications. Miyazaki informed Nakamura that the interpreter would be executed with the missionaries and since there would be no one to take care of their children, they would be executed also. Upon arrival at the house, Miyazaki directed the six missionaries, the Filipino interpreter, his wife and two children to accompany the party.

The ten people in the house boarded the trucks with the execution party. The two trucks proceeded to a place known as Gasupan Daijo. Here they stopped and all got off the truck. Miyazaki then spoke to the ten prisoners in a foreign language and advised the group that he had declared the death sentence upon them. Each team thereupon took charge of a prisoner. The missionaries and the interpreter were bound and some of the group were blindfolded. The woman and children were not bound. The party proceeded about 200 meters into the jungle to a hole which had been previously dug. Miyazaki directed that those who were not members of teams should guard the area in case the prisoners tried to escape. The prisoners were made to kneel down in a row in front of the hole. The execution teams were directed to kill the prisoners by firing at the back of the head. While enroute into the jungle, Miyazaki informed Yamamoto as to the purpose of the mission. At the scene of the execution, Miyazaki asked that men of the Sumida unit assist in the shooting. One witness testified that Yamamoto designated the members of his unit to assist although another witness testified that Yamamoto protested and stated that he would like the military police to do it, whereupon Miyazaki addressed himself directly to members of the Sumida unit. As a result two Sumida men stepped forward, relieving two members of the military police who had been previously assigned. Either Miyazaki or Nakamura gave the order to fire. Those who were not killed in the first volley were shot by orders of Miyazaki. The ten bodies were then placed in the hole and buried. Evidence indicated that some members of the party took no part in the actual shooting but held candles to illuminate the scene or merely stood by and watched. The evidence was not conclusive as to all persons who took part in the shooting. However, evidence for the prosecution showed that all of the accused except Hayashi, Sagara and Ando were present at the execution.



Defense

One Sano testified that the accused Ezure was his orderly at the scene of the execution. He gave Ezure no orders at this time and did not remember that Ezure did anything.

Risaku Gomi testified that he was in bed suffering from malnutrition on the day of the execution and that the accused Hayashi was also in the quarters with him suffering from a wounded foot.

The accused Hayashi testified that he did not attend the assembly or the execution because he was in bed with a foot wound.

The accused Sagara testified that he attended the assembly but did not attend the execution because he was assigned to road lookout duty on that day.

The accused Uchida testified that he attended the execution but did nothing at the scene.

The accused Ezure testified that he attended the execution but did nothing. He admitted that he helped load the gear of the missionaries on the truck and that he carried a small boy part of the way to the scene because the grass was high and the child had difficulty in walking.

The accused Yamamoto testified that he was adjutant of the Sumida unit which was engaged in transportation duties. About noon on 18 September 1944, he received a call from the military police requesting the loan of trucks. Yamamoto inquired as to the purpose of the loan and was told that the trucks were needed at 1800, and that he would be contacted for further discussion. About ten minutes later, the accused Ichikawa arrived and requested that the trucks be loaned for the purpose of escorting spies. Since one truck was already at the military police headquarters, Yamamoto sent a messenger to one of the companies to issue a truck to the military police to be available at 1800. Ichikawa assured Yamamoto that authorization for the loan would be confirmed by Division Headquarters. Shortly before 1800, the authorization had not arrived and Yamamoto proceeded to the highway where he met Miyazaki coming from the other direction. Miyazaki immediately demanded to know where the truck was. Yamamoto replied that he had not received orders from Division Headquarters. Miyazaki replied that the transportation was to be conducted by orders of Division Headquarters and that he (Miyazaki) would assume responsibility. Yamamoto replied that his commanding officer was absent and he (Yamamoto) could not assume the responsibility. Miyazaki then ordered Yamamoto to come along with the trucks. Yamamoto testified that he was thus intimidated and therefore accompanied the trucks along with two drivers, two assistant drivers and an orderly from the Sumida unit. Miyazaki gave the orders as to destination. At the first stop, Yamamoto remained in the truck. After sometime the trucks started moving again and after proceeding some distance beyond the place called Gasupan Heights, they stopped and everybody got off by orders of Miyazaki. Miyazaki ordered three men of the Sumida unit to remain as air raid lookouts and Yamamoto, his orderly and one Namekawa, all of the Sumida unit, accompanied the party into the jungle. Yamamoto questioned Miyazaki as to what he was going to do. Miyazaki informed him that "We are going to knock them off". Upon arrival at the scene, Miyazaki asked that men of the Sumida unit assist with the execution. Yamamoto replied that he had no authority to order Sumida men to assist and suggested that it was proper for the military police to do it. Miyazaki then touched Namekawa and pushed him forward telling him to shoot. At the same time, Miyazaki said, "This is by order of Division Headquarters. Do you mean to say that you are not going to obey these Division Headquarters orders? We are in the face of the enemy, you fool!" Yamamoto denied that he was the officer in charge of the Sumida men at the time, stating that he was placed in such a position as to be subordinate to the exacting orders of Miyazaki. Yamamoto also denied that he had any part in the shooting.



4. APPLICABLE LAW AND DISCUSSION:

Specification 1 under Charge I alleged that the accused and other former members of the armed forces of Japan, "all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, * * * did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, * * * one Agapito C. HONDONERO, a national of the United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war."

Specification 2 under Charge I alleged that the accused, at the same time and place and under the same circumstances as alleged in specification 1 under Charge I, killed and caused to be killed six named civilians, including five Spanish nationals and one Colombian national, this in violation of the law and customs of war.

The single specification under Charge II alleged that the accused, at the same time and place and under the same circumstances as alleged in specifications 1 and 2 under Charge I, unlawfully killed and caused to be killed unlawfully ten named persons, including those set out in specifications 1 and 2 under Charge I and three others, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

The allegations of killing an American national (specification 1) and six Spanish and Colombian nationals (specification 2) under Charge I and the allegations of killing the same (together with three others) in the single specification under Charge II, being based as they were on the same circumstances, were preferred to provide for the contingencies of proof insofar as they referred to the same victims. Therefore, since the accused Yamamoto, Ichikawa, Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto, Yokoyama, Ezure, Fujitani, Kawaguchi, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Uchida stand convicted of three offenses growing out of but one act, to wit, the killing of the ten persons named in the specification under Charge II, the findings on Charge I as to all the aforementioned accused except Yamamoto, and the findings on specifications 1 and 2 thereunder as to all the aforementioned accused, and the actions of the convening and reviewing authorities thereon, should be set aside. C.M.O. 3, 1948, 97.

The accused Yamamoto was found guilty in connection with specification 3 under Charge I wherein it is alleged that as officer in charge of the Sumida unit, he failed to discharge his duty to control the operations of members of said unit, permitting them to kill and cause to be killed seven named civilians. Yamamoto was also found guilty in connection with the specification under Charge II wherein the killing of the same seven civilians, and three others, is alleged. Since both offenses arose out of the same circumstances, it may appear that the finding on specification 3 under Charge I (the lesser offense) could be set aside. This question, however, was passed upon in Military Commission Case No. 162424, Koichi, Hiroe, et al. (See CMBd RevCase No. 1207 dated 1 July 1948) and in Military Commission Case No. 161779, Asano, Shimpei, et al. (See Consulting Attorney Memo. dated 2 June 1948 BdRev File #1139) where offenses of a similar nature were permitted to stand.

As to the conviction of the accused persons on Charge II, the question may arise as to whether the proof was sufficient to sustain the conviction of those



whom the evidence shows did no particular act at the scene of the execution. It is apparent that the court determined that such persons had aided and abetted in the offense of murder and were therefore guilty as principals. As to the accused Ezure and Uchida, there is no affirmative evidence showing that they did anything at the scene of the execution, except stand by as orderlies to two officers present. As to some of the accused, there is evidence that they were on the firing line (immediately behind the victims) or were on execution teams, but there is no evidence that they shot or did anything to assist in performing the purpose of the mission. There is evidence, however, that those who had no specific task to perform were ordered by the commanding officer to see that the prisoners did not escape. The fact that they were present ready to come to the assistance of those who performed a specific task, such knowledge giving additional confidence to the principal perpetrators, makes them aiders and abettors and, as such, equally guilty with the principals. Wharton's Criminal Law, Vol. 1, section 246. Naval Courts and Boards, section 41.

5. CONCLUSIONS AND RECOMMENDATIONS:

That an opinion be written recommending that the findings on specifications 1 and 2 under Charge I and the finding on the charge as to all accused except Yamamoto, (stands convicted of spec 3), Hayashi and Sagara (acquitted), and Ando (conviction ~~set aside~~ by reviewing authority), be set aside.

T. H. HUMPHREYS
Lt. Comdr., USN

W. C. KIRACOFE
Lieut., USN

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

00-YAMAMOTO, Kazuharu, et al/
A17-10 OQ (8-23-48) I:WCK:mas
163117

23 SEP 1948

1. The record of proceedings in the foregoing military commission case of former First Lieutenant Yamamoto, Kazuharu, Imperial Japanese Army, former Second Lieutenant Ichikawa, Yokichi, Imperial Japanese Army, former Sergeant Major Ishiyama, Zenzo, Imperial Japanese Army, former Sergeant Major Sugimoto, Takeji, Imperial Japanese Army, former Sergeant Ichimiya, Masao, Imperial Japanese Army, former Sergeant Ozaki, Katsutoshi, Imperial Japanese Army, former Sergeant Tamamoto, Tadashi, Imperial Japanese Army, former Sergeant Yokoyama, Kyohisa, Imperial Japanese Army, former Leading Private Ezure, Shigeru, Imperial Japanese Army, former Leading Private Fujitani, Yoshio, Imperial Japanese Army, former Leading Private Kawaguchi, Wahei, Imperial Japanese Army, former Superior Private Ando, Fukuichi, Imperial Japanese Army, former Superior Private Hayashi, Umeji, Imperial Japanese Army, former Superior Private Hidaka, Kinnosuke, Imperial Japanese Army, former Superior Private Ito, Mitsuyuki, Imperial Japanese Army, former Superior Private Iwamoto, Harukichi, Imperial Japanese Army, former Superior Private Nakamura, Jiro, Imperial Japanese Army, former Superior Private Okamura, Gintaro, Imperial Japanese Army, former Superior Private Sagara, Masashiro, Imperial Japanese Army, and former Private First Class Uchida, Fumio, Imperial Japanese Army, tried in joinder, shows that the accused Hayashi and Sagara were acquitted of I, Violation of the Law and Customs of War, and II, Murder; that the accused Yamamoto was convicted of I, Violation of the Law and Customs of War (4 specifications, specification 4 not proved, specifications 1 and 2 proved in part); and II, Murder (specification proved in part); and that all other accused were convicted of I, Violation of the Law and Customs of War (2 specifications proved in part); and II, Murder (specification proved in part). Yamamoto and Ichikawa were sentenced to confinement for a period of twenty-five (25) years; Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto and Yokoyama were sentenced to confinement for a period of twenty (20) years; and Ezure, Fujitani, Kawaguchi, Ando, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Uchida were sentenced to confinement for a period of fifteen (15) years. The convening authority, subject to remarks, approved the proceedings, the findings as to those accused who were found guilty, and the sentences. The reviewing authority approved the proceedings, disapproved the findings, sentence, and the action of the convening authority thereon with respect to the accused Ando, and approved the findings, sentences, and the action of the convening authority thereon with respect to the remaining accused who were found guilty.

2. Specification 1 under Charge I alleged that the accused and other former members of the armed forces of Japan, "all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, * * * did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, * * * one Agapito C. HONDONERO, a national of the United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war."

3. Specification 2 under Charge I alleged that the accused, at the same time and place and under the same circumstances as alleged in specification 1 under Charge I, killed and caused to be killed six named civilians consisting of one Colombian and five Spanish nationals, this in violation of the law and customs of war.



OO-YAMAMOTO, Kazuharu, et al/
A17-10 OQ (9-20-48) I:WCK:mas
163117

WCK
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4. The single specification under Charge II alleged that the accused, at the same time and place and under the same circumstances as alleged in specifications 1 and 2 under Charge I, unlawfully killed and caused to be killed ten named persons, including those set out in specifications 1 and 2 under Charge I and three others, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

5. The allegations of killing an American national (specification 1) and one Colombian and five Spanish nationals (specification 2) under Charge I and the allegations of killing the same persons (together with three others) in the single specification under Charge II, being based as they were on the same circumstances, were preferred to provide for the contingencies of proof insofar as they referred to the same victims. Therefore, since the accused Yamamoto, Ichikawa, Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto, Yokoyama, Ezure, Fujitani, Kawaguchi, Hidaka, Ito, Iwamoto, Nakamura, Okamura and Uchida stand convicted of three offenses growing out of but one act, to wit, the killing of the ten persons named in the specification under Charge II, it is recommended that the findings on Charge I as to all the aforementioned accused except Yamamoto (convicted also of specification 3), the findings on specifications 1 and 2 thereunder as to all the aforementioned accused, and the actions of the convening and reviewing authorities thereon be set aside. C.M.O. 3, 1948, 97.

6. Subject to the foregoing remarks and recommendation, the proceedings, findings and sentences, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

7. The accused Yamamoto stands convicted of I, Violation of the Law and Customs of War by the finding on specification 3 thereunder; and II, Murder. The remaining accused, with the exception of Hayashi and Sagara (both acquitted) and Ando (findings disapproved by the reviewing authority), stand convicted of II, Murder.

8. Referred to the Chief of Naval Operations for information.

G. L. RUSSELL
Judge Advocate General of the Navy

Copies furnished:
Cin; Pers. Scm;
Publications
Smth

B C D

0019

15 March 1948-2000

GENERAL COURT MARTIAL DATA SHEET

YAMAMOTO KAZUHARU (Last Name) (First Name) Middle Initial) 1ST LT. (Rating) IJA ET AL. (Classification)

H. C. Biracofe
(Reviewing Officer)

Docket No 163117

	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. Does the record show place and date the court met?	✓		
5. Did the court have jurisdiction of the person of the accused?	✓		
6. Did the court have jurisdiction of the offenses charged?	✓		
7. Were the members and judge advocate shown to be present named in the precept or its modification?	✓		
8. Were there five members or more present at every meeting?	✓		
9. Were any "members" present who were not legally assigned?		✓	
10. Were any members legally assigned not present or accounted for?	✓		
11. Was the accused asked whether he desired counsel?	✓		
12. Was the accused extended the right of challenge as to members?	✓		
13. Were the judge advocate, the members, the reporter and the interpreter sworn?	✓		
14. Did the accused acknowledge receipt of a copy of the charges and specifications?	✓		
15. Was the accused asked if he had any objection to the charges and specifications?	✓		
16. Did the accused object to the charges and specifications or any of them?	✓		
17. Does each specification state an offense?	✓		
18. Does each specification support the charge under which laid?	✓		
19. Is the Statute of Limitations involved?		✓	
20. Was the accused asked if he was ready for trial?	✓		

Review Panel No. V

0020

	Yes	No	Remarks
21. Does the record show that no witnesses not otherwise connected with the trial were present?	✓		
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, if any, recorded?	✓		
25. Were the witnesses, if any, sworn?	✓		
26. Was the accused afforded opportunity to make a statement?	✓		
27. Was the accused's statement consistent with his pleas? (applies only to pleas of "guilty")	~		
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, if any, of previous convictions admissible?	~		
32. Is the sentence legal, not excessive (NC&B, 457), and in proper form?	✓		
33. Was the sentence authenticated by the signatures of all members of the court and of the judge advocate?	✓		
34. Was the record authenticated by the signature of the president of the court and of the judge advocate?	✓		
35. Was clemency recommended by any members of the court?		✓	
36. Was the accused's receipt for a copy of the proceedings appended to the record?		✓	Mil. Com Case.
37. Does the action of the convening authority?			
(a) Have a date and signature?	✓		
(b) Expressly approve the proceedings, findings and sentence?	✓		
(c) Is the action otherwise legal?	✓		
38. Was there loss to the Government?		✓	
39. Is the general court martial card properly made out?	✓		
40. Additional Remarks.			

16 Aug. 1948
(Date)

H. C. Kirasfe
(Signature of reviewing officer

0021

File

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

F13-10

Serial: 2003

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr F13-10(3)
of 8 June 1949.

#163117

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of ICHIKAWA, Yokichi, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuharu and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yokuchi.

1. Forwarded.

J Campbell

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

RECEIVED
12 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

Form No. Cincpacflt-86

0022

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

FF12/F13-10(3)
02-MEC-ce

11 JUN 1949

Serial: 3753

FIRST ENDORSEMENT on Defense Counsel, War Crimes Trials, Guam, ltr FF12/F13-10(3) over 02-MEC-ce dtd 8 June 1949.

RECEIVED
JUN 28 2 44 PM
CINCPAC FI...

From: Commander Naval Forces, Marianas.
To: The Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General, United States Navy.

Subject: The case of ICHIKAWA, Yokichi, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuharu and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yokichi.

1. Forwarded, contents noted.

C. A. Pownall

C. A. POWNALL

RECEIVED
12 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

0023

FF12/F13-10(3)
02-MEC-ce

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

8 JUN 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) The Commander Naval Forces Marianas.
(2) The Commander in Chief, United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of ICHIKAWA, Yokichi, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuharu and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yokuchi.

Enclosure: (A) Letter written to Commander Martin E. Carlson by ICHIKAWA, Yokuchi requesting review and mitigation of sentence.

1. The request of ICHIKAWA, Yokuchi, enclosure (A) is forwarded with the request that the proceedings of his trial held on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, ICHIKAWA, Yokuchi.

2. We request that the proceedings of the trial of INOUE, Sadae who was tried in joinder with TADA, Tokuchi under charges and specifications serial 1618 dated 17 March 1949, be reviewed and be taken into consideration and compared with the evidence as presented at the trial of ICHIKAWA, Yokuchi.

3. We respectfully petition for a mitigation of the sentence of twenty-five (25) years imprisonment imposed upon ICHIKAWA, Yokuchi in view of the evidence of superior orders and to assure uniformity of sentence for like offenses under similar circumstances.

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

RECEIVED
12 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

0024

Dear Commander Martin E. Carlson:

I believe you are well as ever.

I am very thankful for your kind help on Guam, especially for your kindness in my trial in which, I hear, you exerted yourself day and night to defend us, despite the fact that the trial was a tough and complicated one because of the numerous defendants and victims involved in the case. I hear that the trial on Guam was finished on April 28. I wish to ask your favor that, in case of review of the Palau incidents, you will take steps to request the review of my case also. I sincerely wish that you will understand that we had no alternative at that time, and that you will try to have our sentences mitigated.

I am very glad that, because of your considerations, we could arrive in Japan safely and meet our family. I shall never forget your kindness.

I hear that Chaplain Spohn might be visiting Japan in the near future and I am looking forward to the time I can see him again.

Please send my best regard to Commander Ogden and Commander Regan.

Sincerely,

/s/ ICHIKAWA, Yokichi
c/o Sugamo Prison,
Nishisugamo-machi, Toshima-ku
Tokyo, Japan.

0025

No. 4

激愛なる千ヶ・カレルソン中佐殿

益々御健勝の事と御喜び申上ます
私が帝地を去ら拙助を頼り等に私達の
裁判を終りました為に辨護事務多忙を
極め或は連續深夜に至る迄努力下さし事を當時閉
き國際も越へた暁の御厚情に對し私の心は今
も感謝の念に堪へません

四月三十日は帝地に於ける裁判も完了した旨聞いて居
ますが就いては甚だ恐縮ではありますが若し再
審議の場合は私達の辨護を爲す爲に於ける宣
誓に就いても何卒帝吟味下さり私の主張す
る點を認め下され且つ減刑等御考慮下さる樣何卒帝取計ひ方願申上ます
中佐殿の御取計ひに依り無事帰國も出來又近し

0026

No. 2.

家族共御拳の事と此の上もなく喜んで居ります
此の御恩は決して忘れる事は出来ません
程遠かず又遠くは無いと決心して居ります
居ますポン殿も来朝なされる由ご主君を伺って
尚甚だ勝手ながら仏蘭西公使の書を表し度いと決心して居ります
其の他国侯諸官殿に拝謁し御傳へ下され度御
願申上ます
右御願迄、
最後に御尊父様の益々御壮健なる事を祈り致します
敬具

五月二十日

東京府豊島の西巣鴨村
巣鴨村役所
御中

0027

Comds. Martin E. Carlson. USNR.
Headquarters, Commander Marianas,
Guam, M. I.

0028


Yokichi Ishikawa
c/o Sugamo Prison
Tokyo Japan
0029

File

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

FI3-10

Serial: 2003

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr FI3-10(3)
of 8 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of ICHIKAWA, Yukiaki, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuharu and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yukiaki.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

Form No. Cinepacflt-86

0030

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

[redacted]

Serial: 3753

11 JUN 1949

[redacted]

From: Commander Naval Forces, Marianas.
To: The Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General, United States Navy.

Subject: The case of [redacted], Yabluk, former second Lieutenant, [redacted], tried in joinder with [redacted], Numbers and nineteen (19) others under charges and specifications serial number 1990 dated January 31, 1949; Request for review of trial and mitigation of sentence of [redacted], Yabluk.

2. Forwarded, contents noted.

C. A. POWNALL

0031

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

~~FF12/FF3-19(3)~~
~~CO-[illegible]-gs~~

8 JUN 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) The Commander Naval Forces Marianas.
(2) The Commander in Chief, United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of [redacted], Yukichi, former second Lieutenant, IJA, tried in joinder with [redacted], Kiyoharu and nineteen (19) others under charges and specifications serial number 1390 dated January 31, 1949; Request for review of trial and mitigation of sentence of [redacted], Yukuchi.

Enclosure: (A) Letter written to Commander Martin E. Carlson by [redacted], Yukichi requesting review and mitigation of sentence.

1. The request of [redacted], Yukuchi, enclosure (A) is forwarded with the request that the proceedings of his trial held on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, [redacted], Yukuchi.

2. We request that the proceedings of the trial of [redacted], Sadao who was tried in joinder with TANA, Yukuchi under charges and specifications serial 1618 dated 17 March 1949, be reviewed and be taken into consideration and compared with the evidence as presented at the trial of [redacted], Yukuchi.

3. We respectfully petition for a mitigation of the sentence of twenty-five (25) years imprisonment imposed upon [redacted], Yukuchi in view of the evidence of superior orders and to ensure uniformity of sentence for like offenses under similar circumstances.

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

0032

Dear Commander Martin H. Carlsons

I believe you are well as ever.

I am very thankful for your kind help on Guam, especially for your kindness in my trial in which, I hear, you exerted yourself day and night to defend us, despite the fact that the trial was a tough and complicated one because of the numerous defendants and victims involved in the case. I hear that the trial on Guam was finished on April 28. I wish to ask your favor that, in case of review of the Palau incidents, you will take steps to request the review of my case also. I sincerely wish that you will understand that we had no alternative at that time, and that you will try to have our sentences mitigated.

I am very glad that, because of your considerations, we could arrive in Japan safely and meet our family. I shall never forget your kindness.

I hear that Chaplain Spohn might be visiting Japan in the near future and I am looking forward to the time I can see him again.

Please send my best regard to Commander Ogden and Commander Regan.

Sincerely,

/s/ [illegible], Yukichi
c/o Sugamo Prison,
Nishisugamo-machi, Toshima-ku
Tokyo, Japan.

0033

File

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

FE3-10

Serial: 2003

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr FE3-10(3)
of 8 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of ICHIKAWA, Yoichi, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuhara and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yoichi.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
Commandant
Defense Counsel, War Crimes Trials, Guam

Form No. Cincpacflt-26

0034

File

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

FI3-10

Serial: 2003

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr FI3-10(3)
of 8 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of ICHIKAWA, Yoshishi, former second lieutenant, IJA, tried in joinder with YAMAMOTO, Kazuharu and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of ICHIKAWA, Yoshishi.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

Form No. Cincpacfit-26

0035

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

[redacted]/RS-20(3)
[redacted]

Serial: 3753

11 JUN 1949

[redacted] on Defense Counsel for Ichiro Ishida, Guam, his [redacted]/RS-20(3) ser [redacted] 6 June 1949.

From: Commander Naval Forces, Marianas.
To: The Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General, United States Navy.

Subject: The case of ICHIKAWA, Ishichi, former second Lieutenant, IJA, tried in joinder with [redacted], Numbers and nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1949; Request for review of trial and mitigation of sentence of ICHIKAWA, Ishichi.

2. Forwarded, comments noted.

C. A. POWNALL

0036

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

FF12/FF3-10(3)
CO-350-49

8 JUN 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) The Commander Naval Forces Marianas.
(2) The Commander in Chief, United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of ISHIYAMA, Yukichi, former second Lieutenant, IJA, tried in joinder with YAMAMOTO, Kanehara and nineteen (19) others under charges and specifications serial number 2390 dated January 31, 1948; Request for review of trial and mitigation of sentence of ISHIYAMA, Yukichi.

Enclosure: (A) Letter written to Commander Martin E. Carlson by ISHIYAMA, Yukichi requesting review and mitigation of sentence.

1. The request of ISHIYAMA, Yukichi, enclosure (A) is forwarded with the request that the proceedings of his trial held on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, ISHIYAMA, Yukichi.

2. We request that the proceedings of the trial of ISHII, Sadao who was tried in joinder with YAMA, Yukichi under charges and specifications serial 2618 dated 17 March 1949, be reviewed and be taken into consideration and compared with the evidence as presented at the trial of ISHIYAMA, Yukichi.

3. We respectfully petition for a mitigation of the sentence of twenty-five (25) years imprisonment imposed upon ISHIYAMA, Yukichi in view of the evidence of superior orders and to secure uniformity of sentence for like offenses under similar circumstances.

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

0037

BEST COPY AVAILABLE

Dear Commander Martin E. Carlson:

I believe you are well as ever.

I am very thankful for your kind help on Guam, especially for your kindness in my trial in which, I hear, you exerted yourself day and night to defend us, despite the fact that the trial was a tough and complicated one because of the numerous defendants and victims involved in the case. I hear that the trial on Guam was finished on April 26. I wish to ask your favor that, in case of review of the Palau incidents, you will take steps to request the review of my case also. I sincerely wish that you will understand that we had no alternative at that time, and that you will try to have our sentences mitigated.

I am very glad that, because of your considerations, we could arrive in Japan safely and meet our family. I shall never forget your kindness.

I hear that Chaplain Spahn might be visiting Japan in the near future and I am looking forward to the time I can see him again.

Please send my best regard to Commander Ogden and Commander Ragan.

Sincerely,

/s/ HOSHINA, Tokichi
c/o Sugamo Prison,
Nishisugamo-machi, Toshima-ku
Tokyo, Japan.

0038

BEST COPY AVAILABLE

File

P13-10

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

Serial: 2002

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr P13-10(3)
of 8 June 1949.

#163117

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded.

J. Campbell

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

RECEIVED
12 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

Form No. Cincpacflt-26

0039

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

FF12/F13-10(3)
02-MEC-ce

CINCPAC FLT.
JUN 28 2 24 PM 1949
RECEIVED

Serial: 3750

11 JUN 1949

FIRST ENDORSEMENT on Defense
Counsel, War Crimes Trials, Guam
ltr FF12/F13-10(3) over 02-MEC-ce
dtd 8 June 1949.

From: Commander Naval Forces, Marianas.
To: The Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded, contents noted.

C. A. Powhall

C. A. POWHALL

RECEIVED
12 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

0040

BEST COPY AVAILABLE

FF12/F13-10(3)
02-MEC-ce

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

8 JUN 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) The Commander Naval Forces Marianas.
(2) Commander in Chief United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. It is respectfully requested that the proceedings of the trial of YAMAMOTO, Kazuharu and nineteen others tried in joinder on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, YAMAMOTO, Kazuharu.

2. We request that the proceedings of the trial of INOUE, Sadae who was tried in joinder with TADA, Tokuchi under charges and specifications dated 17 March 1949, serial 1618 be reviewed and be taken into consideration and compared with the evidence as presented at the trial of YAMAMOTO, Kazuharu.

3. We respectfully petition for a mitigation of the sentence of twenty-five (25) years imprisonment imposed upon YAMAMOTO, Kazuharu in view of the evidence of superior orders and to assure uniformity of sentence for like offenses under similar circumstances.

Martin E. Carlson

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

0041

BEST COPY AVAILABLE

File

P13-10

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

Serial: 2002

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr P13-10(3)
of 8 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

Form No. Cincpacfit-66

0042

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

FF12/FF3-10(3)
G2-MEC-ca

Serial: 3750

11 JUN 1949

[redacted] on Defense
General, War Crimes Trials, Guam
Ltr FF12/FF3-10(3) over G2-MEC-ca
dtd 8 June 1949.

From: Commander Naval Forces, Marianas.
To: The Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded, contents noted.

C. A. POWNALL

0043

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

8 JUN 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) The Commander Naval Forces Marianas.
(2) Commander in Chief United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. It is respectfully requested that the proceedings of the trial of YAMAMOTO, Kazuharu and nineteen others tried in joinder on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, YAMAMOTO, Kazuharu.

2. We request that the proceedings of the trial of INOUE, Sadao who was tried in joinder with TADA, Tokuchi under charges and specifications dated 27 March 1949, serial 1618 be reviewed and be taken into consideration and compared with the evidence as presented at the trial of YAMAMOTO, Kazuharu.

3. We respectfully petition for a mitigation of the sentence of twenty-five (25) years imprisonment imposed upon YAMAMOTO, Kazuharu in view of the evidence of superior orders and to assure uniformity of sentence for like offenses under similar circumstances.

MARTIN R. CARLSON,
Commander, USNR,
Defense Counsel.

0044

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File

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

FE3-10

Serial: 2002

5 JUL 1949

SECOND ENDORSEMENT on
Defense Counsel, War Crimes
Trials, Guam ltr FE3-10(3)
of 6 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
ComMarianas
Defense Counsel, War Crimes Trials, Guam

Form No. Cincpacfit-24

0045

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FF12/F13-10(3)
02-MEC-ce

Serial: 3750

11 June 1949

FIRST ENDORSEMENT on Defense Counsel, War Crimes Trials, Guam ltr FF12/F13-10(3) over 02-MEC-ce dtd 8 June 1949.

From: Commander Naval Forces, Marianas.
To: Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General , United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded, contents noted.

C. A. POWNALL

0046

FW12/F13-10(3)
e2-MEC-ce

8 June 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) Commander Naval Forces, Marianas.
(2) Commander in Chief United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. It is respectfully requested that the proceedings of the trial of YAMAMOTO, Kazuharu and nineteen others tried in joinder on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, YAMAMOTO, Kazuharu.

2. We request that the proceedings of the trial of INOUE, Sadao who was tried in joinder with TADA, Tokuchi under charges and specifications dated 17 March 1949, serial 1616 be reviewed and be taken into consideration and compared with the evidence as presented at the trial of YAMAMOTO, Kazuharu.

3. We respectfully petition for a mitigation of the sentence of twenty-five years imprisonment imposed upon YAMAMOTO, Kazuharu in view of the evidence of superior orders and to assume uniformity of sentence for like offenses under similar circumstances.

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

0047

File

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

FF3-10

Serial: 2002

5 JUL 1949

AMEND MEMORANDUM on
Defense Counsel, War Crimes
Trials, Guam ltr FF3-10(3)
of 6 June 1949.

From: Commander in Chief U. S. Pacific Fleet.
To: Secretary of the Navy.
Via: Judge Advocate General.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded.

G. CAMPBELL
Assistant Chief of Staff
for Administration

Copies to: (2nd end. only)
CinCMarianas
Defense Counsel, War Crimes Trials, Guam

Form No. Cincpacflt-26

0048

FF12/FF13-10(3)
G2-MEC-ce

Serial: 3750

11 June 1949

FIRST ENDORSEMENT on Defense
Counsel, War Crimes Trials, Guam
ltr FF12/FF13-10(3) over G2-MEC-ce
dtd 8 June 1949.

From: Commander Naval Forces, Marianas.
To: Secretary of the Navy.

Via: (1) Commander in Chief, United States Pacific Fleet.
(2) Judge Advocate General , United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948; Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. Forwarded, contents noted.

C. A. POWNALL

0049

FF12/FF3-10(3)
ea2-MRC-ce

8 June 1949

From: Defense Counsel for War Crimes Trials, Guam.
To: The Secretary of the Navy.

Via: (1) Commander Naval Forces, Marianas.
(2) Commander in Chief United States Pacific Fleet.
(3) Judge Advocate General, United States Navy.

Subject: The case of YAMAMOTO, Kazuharu, former first lieutenant, IJA, tried in joinder with nineteen (19) others under charges and specifications serial number 1290 dated January 31, 1948 - Request for review of trial and mitigation of sentence of YAMAMOTO, Kazuharu.

1. It is respectfully requested that the proceedings of the trial of YAMAMOTO, Kazuharu and nineteen others tried in joinder on Guam from February 16, 1948 to March 25, 1948 be reviewed with respect to matters of law raised at the trial and which materially prejudiced the substantial rights of the accused, YAMAMOTO, Kazuharu.

2. We request that the proceedings of the trial of INOUE, Sadae who was tried in joinder with TADA, Tokuchi under charges and specifications dated 17 March 1949, serial 1616 be reviewed and be taken into consideration and compared with the evidence as presented at the trial of YAMAMOTO, Kazuharu.

3. We respectfully petition for a mitigation of the sentence of twenty-five years imprisonment imposed upon YAMAMOTO, Kazuharu in view of the evidence of superior orders and to assume uniformity of sentence for like offenses under similar circumstances.

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

0050

ROUTING SLIP
NAVMC 361 (7-46)

DATE: 10/5/48 Received OCT 4

ROUTING NO. _____

FROM: THE SECRETARY OF THE NAVY

TO:		FOR INFORMATION AND INITIALING	FOR COMMENT OR RECOMMENDATION	FOR APPROPRIATE ACTION**	PREPARE REPLY FOR SECNAV'S SIGNATURE*	SEE SECNAV ABOUT THIS	BRIEF FOR SECNAV	RETAIN	COPY FOR INFORMATION
	UNDER SECRETARY								
	ASST. SECRETARY FOR AIR								
	ASSISTANT SECRETARY								
	ADMIN. ASST. TO SECRETARY								
	CHIEF OF NAVAL OPERATIONS								
	CHIEF BU. AERONAUTICS								
	CHIEF OF NAVAL PERSONNEL								
	CHIEF BU. MEDICINE & SURGERY								
	CHIEF BU. ORDNANCE								
	CHIEF BU. SHIPS								
	CHIEF BU. SUPPLIES & ACCOUNTS								
	CHIEF BU. YARDS & DOCKS								
	COMDT. MARINE CORPS								
	JUDGE ADVOCATE GENERAL								
	CHIEF PUBLIC RELATIONS								
	CHIEF INDUSTRIAL RELATIONS								
	NAVAL INSPECTOR GENERAL								
	CHAIRMAN GENERAL BOARD								
	BOARD DECORATIONS & MEDALS								
	BD. REVIEW DISCHARGES & DISMISSALS								
	BD. CORRECTION NAVAL RECORDS								
	RETIREMENT ADVISORY BOARD								

REMARKS

S010 5 43

RECEIVED
6 OCT 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

SECNAV CORRESPONDENCE

All SecNav mail shall be handled expeditiously.

"Use form of salutation appearing in the Secretary's interim acknowledgement.

*"*All mail requiring an answer, addressed to the Secretary and referred for appropriate action shall be answered using the introductory phrase: "The Secretary of the Navy has referred to me for reply your letter of_____".*

A-180

0051

6th OCT A.M.

Castle Lodge
Lismore
Co. Waterford
Eire

J.A.G. 20 Sep 48

Sir,

I have the honour to refer to attached correspondence originated by Commander Martin E. Carlson U.S.N.R. on 28 July 48 and just received by me, referring to the case of:-
YAMAMOTO, KAZUHARU, First Lieutenant.

I have no knowledge of the crime for which Yamamoto was sentenced.

While a War Prisoner in Malaya in 1942 I had dealings with the sentenced man for a period of three or four months while I was Senior Officer of a party of War Prisoners and he was Japanese officer in charge.

He exercised his authority in an extremely enlightened manner. He did what he could to obtain medicine and treatment for the sick, and on one occasion organized transport from Kuala Lumpur to Singapore for a sick British

SO10 5 43

0052

Private Soldier who could not obtain proper treatment locally. He also did something to mitigate the miserable ration situation. During this period there were no beatings of P.W. by Japanese guards, nor were there any deaths. Yamamoto was personally liked by the other Ranks under my charge.

I take no brief for the miserable ramshackle Japanese regime which caused much senseless and brutal suffering to myself, my comrades and so many others, but I wish to place on record the fact that for a while in 1942 Yamamoto in Kagumbaru was good to the Prisoners under his charge, and hope that this may influence any possibility of mitigation of sentence.

My home address is "Fernhill", Brengora, Hampshire, and my service address is 1st Bn. The Loyal Regiment, P.O.B 3, Mogadishu, Somalia.

I have the honour to be,
Sir,
Your obedient servant,

J.A. Gardner Major
The Loyal Regiment
NO. 53753 MAJOR J.A. GARDNER

To The Honorable Secretary of the
United States Navy,
Washington D.C.,
U.S.A.

SC10 5 43

0053

Guam, Marianas Islands,
July 28, 1948.

Dear Captain Gardner,

First Lieutenant YAMAMOTO, Kazuo, formerly of the Imperial Japanese Army,was tried here at Guam for a war crime alleged to have been committed on September 18, 1944 on Babelthuap Island, Palau Islands. Enclosed is an excerpt from the charges.

I assure you that Yamamoto was not guilty of murder. I acted as the American defense counsel and his trial was fair but the findings of the Commission, in my opinion, cannot be justified unless a person be guilty of murder simply because he happens to be present at an execution. Yamamoto was a transportation officer and the head of the military police had required a truck for use one night. Yamamoto walked out of his office a short distance to see that the truck was as ordered. He was berated for not having the truck there on time and when the truck did arrive was told to come along to see what the truck was to be used for. So, unwittingly, Yamamoto witnessed an execution of ten persons. The colonel who ordred the execution is dead and the next in command was tried for other crimes so was only a witness at the trial. Yamamoto was joined with nineteen other persons and because he was the senior officer tried for the crimes was found guilty along with the enlisted men who actually did the shooting. Yamamoto was only there but was sentenced to twenty-five years' imprisonment.

If you remember Lieutenant Yamamoto and would be so kind as to write a letter to the Honorable Secretary of the United States Navy, Washington D. C., United States, requesting that he mitigate the 25 years sentence which Yamamoto received, it would be greatly appreciated. Anything you can say regarding the character of Yamamoto which will prove to the authorities that Yamamoto was not a person who would murder innocent and helpless victims may be just the evidence that will mitigate his heavy sentence.

Thaking you in advance, I am,

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

Captain J. A. Gardner,
The Brackens Castle Hill, Parkstone,
Dorset, England.

SO10 5 43

0054

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 1290

31 January 1948

From: .....
To: .....

Subject: Charges and Specifications in the case of:

YAMAMOTO, Kazuharu
.....
.....

.....
.....

CHARGE I

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ..., ..., all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, be shooting with firearms, exact description to the relator unknown, on Agapito C. HONDENERO, a national of the United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

Specification 3

Specification 4

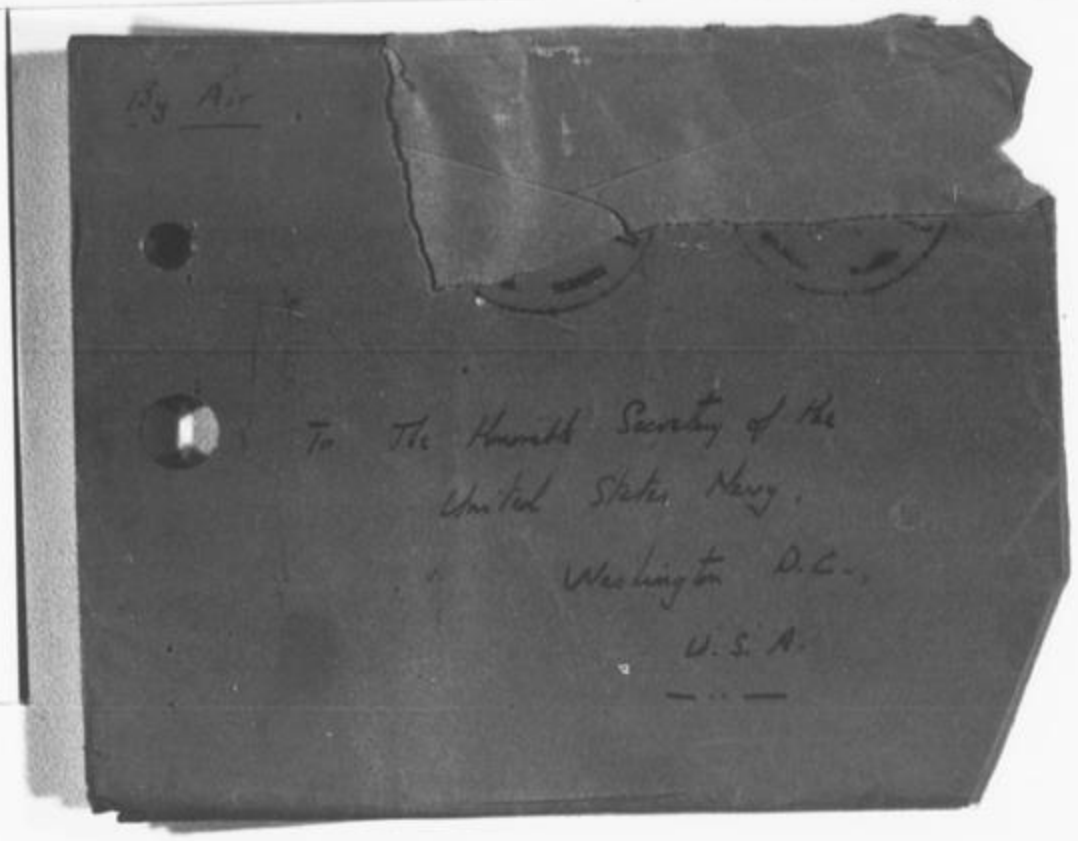
SD10 5 43

CHARGE II

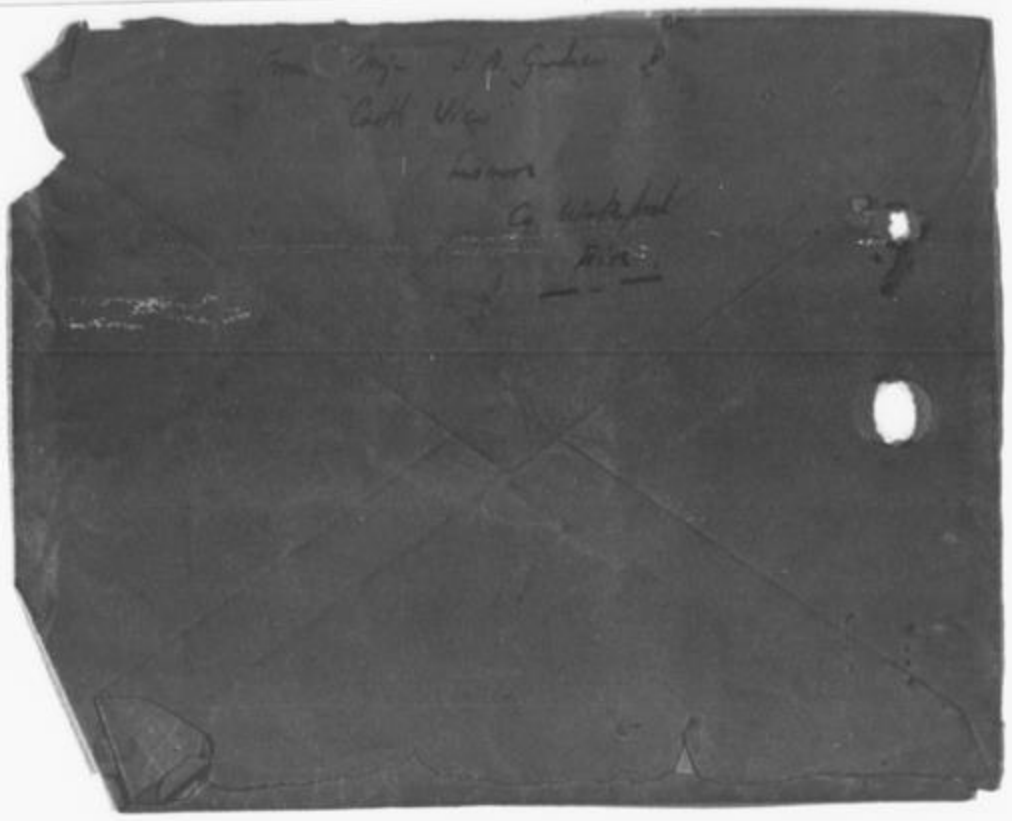
Specification

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

0055


By Air
To The Honorable Secretary of the
United States Navy.
Washington D.C.,
U.S.A.

0056



0057

FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

8 MAY 1948

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

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

Reference: (a) CinCPac/PQR rest. despp. 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 Marianas).
(B) Proposed action to be taken by ComMarianas on subject case.
(C) Proposed action to be taken by CinCPacFlt on subject case.

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

2. TRIAL:

a. Offenses.

CHARGE I - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies

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and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, one Agapito C. HONDONERO, a national of The United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, six civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, and Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, this in violation of the law and customs of war.

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Specification 3

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty as officer in charge of personnel from said unit and as senior officer present from said unit, to control the operations of members of said unit and persons subject to his control and supervision, namely, KAWAGUCHI, Wahei, then a leading private, IJA, NAMEKAWA, Genzo, deceased, then a superior private, IJA, and other members of said unit, names to the relator unknown, all members of the armed forces of Japan, as it was his duty to do, permitting them the aforesaid persons, on or about September 18, 1944, at Babelthuap Island, Palau Islands, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, seven civilians, then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, this in violation of the law and customs of war.

Specification 4

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, seven civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident

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of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, in that he permitted the unlawful killing of said persons by shooting with firearms, exact description to the relator unknown, by members of the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II - MURDER

Specification

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenso, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, INAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, at Babelthuap Island, Palau Islands, on or about September 18, 1944, unlawfully kill and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, ten persons, namely, Luis BLANCO Y SUAREZ, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Colombian national, resident of Yap Island, Marino DE LA HOZ, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Spanish national, resident of Yap Island, Emilio VILLAR, Spanish national, resident of Koror Island, Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, Filimina Untalan HONDONERO, wife of the said Agapito C. HONDONERO, resident of Yap Island, Baltazar Untalan HONDONERO, son of the said Agapito and Filimina HONDONERO, resident of Yap Island, and Caroline Untalan HONDONERO, daughter of the said Agapito and Filimina HONDONERO, resident of Yap Island, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

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b. Pleas, to charges and specifications by individual accused:

YAMAMOTO, Kazuharu

CHARGE I	- Not guilty	(R.p. 13)
Specification 1	- Not guilty	(R.p. 13)
Specification 2	- Not guilty	(R.p. 13)
Specification 3	- Not guilty	(R.p. 13)
Specification 4	- Not guilty	(R.p. 13)
CHARGE II	- Not guilty	(R.p. 13)
Specification	- Not guilty	(R.p. 13)

ICHIKAWA, Yokichi

CHARGE I	- Not guilty	(R.p. 13)
Specification 1	- Not guilty	(R.p. 13)
Specification 2	- Not guilty	(R.p. 13)
CHARGE II	- Not guilty	(R.p. 13)
Specification	- Not guilty	(R.p. 13)

ISHIYAMA, Zenzo

CHARGE I	- Not guilty	(R.p. 13)
Specification 1	- Not guilty	(R.p. 13)
Specification 2	- Not guilty	(R.p. 13)
CHARGE II	- Not guilty	(R.p. 14)
Specification	- Not guilty	(R.p. 14)

SUGIMOTO, Takeji

CHARGE I	- Not guilty	(R.p. 14)
Specification 1	- Not guilty	(R.p. 14)
Specification 2	- Not guilty	(R.p. 14)
CHARGE II	- Not guilty	(R.p. 14)
Specification	- Not guilty	(R.p. 14)

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ICHIMIYA, Masao

CHARGE I	- Not guilty	(R.p. 14)
Specification 1	- Not guilty	(R.p. 14)
Specification 2	- Not guilty	(R.p. 14)
CHARGE II	- Not guilty	(R.p. 14)
Specification	- Not guilty	(R.p. 14)

OZAKI, Katsutoshi

CHARGE I	- Not guilty	(R.p. 14)
Specification 1	- Not guilty	(R.p. 14)
Specification 2	- Not guilty	(R.p. 14)
CHARGE II	- Not guilty	(R.p. 15)
Specification	- Not guilty	(R.p. 15)

TAMAMOTO, Tadashi

CHARGE I	- Not guilty	(R.p. 15)
Specification 1	- Not guilty	(R.p. 15)
Specification 2	- Not guilty	(R.p. 15)
CHARGE II	- Not guilty	(R.p. 15)
Specification	- Not guilty	(R.p. 15)

YOKOYAMA, Kyohisa

CHARGE I	- Not guilty	(R.p. 15)
Specification 1	- Not guilty	(R.p. 15)
Specification 2	- Not guilty	(R.p. 15)
CHARGE II	- Not guilty	(R.p. 15)
Specification	- Not guilty	(R.p. 15)

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EZUKE, Shigeru

CHARGE I	- Not guilty	(R.p. 15)
Specification 1	- Not guilty	(R.p. 15)
Specification 2	- Not guilty	(R.p. 15)
CHARGE II	- Not guilty	(R.p. 15)
Specification	- Not guilty	(R.p. 15)

FUJITANI, Yoshio

CHARGE I	- Not guilty	(R.p. 16)
Specification 1	- Not guilty	(R.p. 16)
Specification 2	- Not guilty	(R.p. 16)
CHARGE II	- Not guilty	(R.p. 16)
Specification	- Not guilty	(R.p. 16)

KAWAGUCHI, Wahei

CHARGE I	- Not guilty	(R.p. 16)
Specification 1	- Not guilty	(R.p. 16)
Specification 2	- Not guilty	(R.p. 16)
CHARGE II	- Not guilty	(R.p. 16)
Specification	- Not guilty	(R.p. 16)

ANDO, Fukuichi

CHARGE I	- Not guilty	(R.p. 16)
Specification 1	- Not guilty	(R.p. 16)
Specification 2	- Not guilty	(R.p. 16)
CHARGE II	- Not guilty	(R.p. 16)
Specification	- Not guilty	(R.p. 16)

HAYASHI, Umeji

CHARGE I	- Not guilty	(R.p. 17)
Specification 1	- Not guilty	(R.p. 17)
Specification 2	- Not guilty	(R.p. 17)

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CHARGE II - Not guilty (R.p. 17)
Specification - Not guilty (R.p. 17)

HIDAKA, Kinnosuke

CHARGE I - Not guilty (R.p. 17)
Specification 1 - Not guilty (R.p. 17)
Specification 2 - Not guilty (R.p. 17)

CHARGE II - Not guilty (R.p. 17)
Specification - Not guilty (R.p. 17)

ITO, Mitsuyuki

CHARGE I - Not guilty (R.p. 17)
Specification 1 - Not guilty (R.p. 17)
Specification 2 - Not guilty (R.p. 17)

CHARGE II - Not guilty (R.p. 17)
Specification - Not guilty (R.p. 17)

IWAMOTO, Harukichi

CHARGE I - Not guilty (R.p. 18)
Specification 1 - Not guilty (R.p. 18)
Specification 2 - Not guilty (R.p. 18)

CHARGE II - Not guilty (R.p. 18)
Specification - Not guilty (R.p. 18)

NAKAMURA, Jiro

CHARGE I - Not guilty (R.p. 18)
Specification 1 - Not guilty (R.p. 18)
Specification 2 - Not guilty (R.p. 18)

CHARGE II - Not guilty (R.p. 18)
Specification - Not guilty (R.p. 18)

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OKAMURA, Gintaro

CHARGE I	- Not guilty	(R.p. 18)
Specification 1	- Not guilty	(R.p. 18)
Specification 2	- Not guilty	(R.p. 18)
CHARGE II	- Not guilty	(R.p. 18)
Specification	- Not guilty	(R.p. 18)

SAGARA, Masashiro

CHARGE I	- Not guilty	(R.p. 19)
Specification 1	- Not guilty	(R.p. 19)
Specification 2	- Not guilty	(R.p. 19)
CHARGE II	- Not guilty	(R.p. 19)
Specification	- Not guilty	(R.p. 19)

UCHIDA, Fumio

CHARGE I	- Not guilty	(R.p. 19)
Specification 1	- Not guilty	(R.p. 19)
Specification 2	- Not guilty	(R.p. 19)
CHARGE II	- Not guilty	(R.p. 19)
Specification	- Not guilty	(R.p. 19)

c. Findings, on charges and specifications with reference to each accused:

YAMAMOTO, Kazuharu

CHARGE I	- Guilty	(R.p. 329)
Specification 1	- Proved in part	(R.p. 329)

Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

Specification 2	- Proved in part	(R.p. 329)

Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

Specification 3 - Proved (R.p. 329)
Specification 4 - Not proved (R.p. 329)

CHARGE II - Guilty (R.p. 329)
Specification - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

ICHIKAWA, Yokichi

CHARGE I - Guilty (R.p. 329)
Specification 1 - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 329)
Specification - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

ISHIYAMA, Zenzo

CHARGE I - Guilty (R.p. 329)
Specification 1 - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 329)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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CHARGE II - Guilty (R.p. 330)
Specification - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

SUGIMOTO, Takeji

CHARGE I - Guilty (R.p. 330)
Specification 1 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 330)
Specification - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

ICHIMIYA, Masao

CHARGE I - Guilty (R.p. 330)
Specification 1 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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CHARGE II - Guilty (R.p. 330)
Specification - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

OZAKI, Katsutoshi

CHARGE I - Guilty (R.p. 330)
Specification 1 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 331)
Specification - Proved in part (R.p. 330)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

TAMAMOTO, Tadashi

CHARGE I - Guilty (R.p. 331)
Specification 1 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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CHARGE II - Guilty (R.p. 331)
Specification - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

YOKOYAMA, Kyohisa

CHARGE I - Guilty (R.p. 331)
Specification 1 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 331)
Specification - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

EZURE, Shigeru

CHARGE I - Guilty (R.p. 331)
Specification 1 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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CHARGE II - Guilty (R.p. 331)
Specification - Proved in part (R.p. 331)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

FUJITANI, Yoshio

CHARGE I - Guilty (R.p. 332)
Specification 1 - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 332)
Specification - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

KAWAGUCHI, Wahei

CHARGE I - Guilty (R.p. 332)
Specification 1 - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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CHARGE II - Guilty (R.p. 332)
Specification - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

ANDO, Fukuichi

CHARGE I - Guilty (R.p. 332)
Specification 1 - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 332)
Proved except the words"HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 332)
Specification - Proved in part (R.p. 332)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

HAYASHI, Umeji

CHARGE I - Not guilty (R.p. 333)
Specification 1 - Not proved (R.p. 333)
Specification 2 - Not proved (R.p. 333)

CHARGE II - Not guilty (R.p. 333)
Specification - Not proved (R.p. 333)

HIDAKA, Kinnosuke

CHARGE I - Guilty (R.p. 333)

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Specification 1 - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 333)
Specification - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

ITO, Mitsuyuki

CHARGE I - Guilty (R.p. 333)
Specification 1 - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 333)
Specification - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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IWAMOTO, Harukichi

CHARGE I - Guilty (R.p. 334)
Specification 1 - Proved in part (R.p. 333)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 334)
Specification - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

NAKAMURA, Jiro:

CHARGE I - Guilty (R.p. 334)
Specification 1 - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 334)
Specification - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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OKAMURA, Gintaro

CHARGE I - Guilty (R.p. 334)
Specification 1 - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.
Specification 2 - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 334)
Specification - Proved in part (R.p. 334)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

SAGARA, Masashiro

CHARGE I - Not guilty (R.p. 335)
Specification 1 - Not proved (R.p. 334)
Specification 2 - Not proved (R.p. 334)

CHARGE II - Not guilty (R.p. 335)
Specification - Not proved (R.p. 335)

UCHIDA, Fumio

CHARGE I - Guilty (R.p. 335)
Specification 1 - Proved in part (R.p. 335)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

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Specification 2 - Proved in part (R.p. 335)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

CHARGE II - Guilty (R.p. 335)
Specification - Proved in part (R.p. 335)
Proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

d. Sentences.

YAMAMOTO, Kazuharu	Twenty-five (25) years confinement	(R.p. 338)
ICHIKAWA, Yokichi	Twenty-five (25) years confinement	(R.p. 338)
ISHIYAMA, Zenzo	Twenty (20) years confinement	(R.p. 338)
SUGIMOTO, Takeji	Twenty (20) years confinement	(R.p. 338)
ICHIMIYA, Masao	Twenty (20) years confinement	(R.p. 338)
OZAKI, Katsutoshi	Twenty (20) years confinement	(R.p. 338)
TAMAMOTO, Tadashi	Twenty (20) years confinement	(R.p. 338)
YOKOYAMA, Kyohisa	Twenty (20) years confinement	(R.p. 338)
EZURE, Shigeru	Fifteen (15) years confinement	(R.p. 339)
FUJITANI, Yoshio	Fifteen (15) years confinement	(R.p. 339)
KAWAGUCHI, Wahei	Fifteen (15) years confinement	(R.p. 339)
ANDO, Fukuichi	Fifteen (15) years confinement	(R.p. 339)
HIDAKA, Kinnosuke	Fifteen (15) years confinement	(R.p. 339)

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ITO, Mitsuyuki	Fifteen (15) years confinement	(R.p. 339)
IWAMOTO, Harukichi	Fifteen (15) years confinement	(R.p. 339)
NAKAMURA, Jiro	Fifteen (15) years confinement	(R.p. 339)
OKAMURA, Gintaro	Fifteen (15) years confinement	(R.p. 339)
UCHIDA, Fumio	Fifteen (15) years confinement	(R.p. 339)

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.

16 February 1948 to 25 March 1948
Arraignment: 17 February 1948 (R.p. 12, 13, 14, 15, 16, 17, 18, 19).
Sentences: 25 March 1948 (R.p. 338, 339).

3. FORMAL MATTERS:

a. Authority for the commission to act.

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

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

c. All members of the commission, judge advocates, reporters,



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interpreters, and witnesses were sworn (R.p. 1, 6, 7, 22, 55, 66, 95, 133, 137, 148, 167, 175, 208, 219, 236, 253, 255, 259, 261, 277, 300, 355).

d. The charges and specifications were shown to have been served on the accused on February 2, 1948 (R.p. 6).

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

f. The accused challenged each member of the commission on the grounds that they sat as members of the military commission which tried NAKAMURA, Kazuo and KOKUBO, Chihiro on offenses similar in nature for which the accused are now on trial in the present case, and have formed a definite opinion as to the guilt of each accused (R.p. 2, 3, 4, 5, 6).

Each of the challenged members replied and acknowledged that the statements of defense counsel were substantially correct, but that they had not formed a definite opinion and could try the present case without prejudice or partiality (R.p. 2, 3, 4, 5, 6).

The commission properly denied the challenges (Sec. 388, N.C. & B., 1937 and JAG Desp. 101635 July 1946).

g. The accused objected to the charges and specifications (R.p. 6, 7, Prefix "I," "J") on grounds similar to those which formed the basis for objections to the specifications in the case of former Captain Hiroe KOICHI, et al.

The action of the commission in overruling all the objections was, in my opinion, correct (see para. 3(g) my memorandum on KOICHI, et al case, dated 20 March 1948; advance copy C.M.O. No. 6, 1948, p. 26).

h. The commission found the charges and specifications in due form and technically correct (R.p. 7).

i. The accused were properly arraigned (R.p. 12, 13, 14, 15, 16, 17, 18, 19).

4. MOTIONS AND PLEAS:

a. The accused made a motion for a change of venue (R.p. 6, Prefix "F") on the grounds that the action was brought in the wrong place and that

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all six members of the commission were disqualified because they had formed a positive and definite opinion as to the guilt of the accused.

This motion was denied (R.p. 6). The action of the commission in this instance was proper, for there is no provision for such a motion in Naval Courts and Boards (Sec. 404, N.C. & B.). The grounds averred by defense counsel are incorrect for BABELTHUAP Island, PALAU Islands, where the war crime complained of occurred, is within the command of The Commander Marianas Area, the convening authority of the commission. Immediately before making this motion, counsel for the accused had challenged each of the six members of the commission individually (R.p. 2, 3, 4, 5, 6) and each of them had denied having formed any opinion as to the guilt of the accused.

b. The accused made a plea in bar of trial on the grounds of the present insanity of ISHIYAMA, Zenzo and FUJITANI, Yoshio (R.p. 7, Prefix "K," "L").

Comment: This plea was denied (R.p. 10). Prior to the trial and at the request of defense counsel the accused ISHIYAMA and FUJITANI had been placed under the observation of medical officers. After the plea was made a medical officer who observed ISHIYAMA and FUJITANI was called as a witness and testified as to findings made as a result of the medical observation. The question of the sanity of ISHIYAMA and FUJITANI resolved itself to one of fact which was within the province of the members of the commission, in their capacity as jurors, to pass upon (Secs. 304 and 305, N.C. & B.). From the evidence (R.pp. 8 to 10; "Exhibits 1 and 2") it appears that the commission's action in not sustaining the plea in bar of trial was warranted. The plea in bar of trial was, in my opinion, properly not sustained (R.p. 10).

c. The accused made a plea to the jurisdiction (R.p. 10, Prefix "M," "O") in effect upon the following grounds:

(1) The crimes against the five Spanish nationals are not war crimes and thus are not triable by the Military Commission.

(2) The offense alleged in Charge II, namely, murder in violation of effective law, especially Article 199 of the Criminal Code of Japan, does not come under the jurisdiction of the Military Commission.

(3) The commission does not have jurisdiction because the twenty accused were not properly extradited and are therefore not legally before the commission.

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(4) The commission does not have jurisdiction because the offenses complained of occurred in September, 1944, which was before the occupation of PALAU by the American armed forces.

(5) The commission does not have jurisdiction because neglect of duty is not a crime.

The plea to the jurisdiction was denied (R.p. 11). The action of the commission in denying the plea was, in my opinion, proper for the reasons stated in paragraph 6 (a) below.

d. The accused made a plea in bar of trial (R.p. 12, Prefix "P") on the ground that the alleged offenses had taken place more than two years before the charges 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). There is no statute of limitations for wilful murder under Federal law (18 U.S.C.A., Sec. 581). An indictment for any offense punishable by death may be found at any time without any regard to any statute of limitations (18 U.S.C.A., Sec. 581a).

The plea was not sustained (R.p. 12). This action was proper.

e. The accused all pleaded "Not Guilty" to all charges and specifications (R.p. 13, 14, 15, 16, 17, 18, 19, 20).

f. When the prosecution rested, and before the defense began, the accused made a motion for a directed acquittal of the following named accused: YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; OZAKI, Katsutoshi; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; NAKAMURA, Jiro; IMAMOTO, Harukichi; SAGARA, Masashiro; and UCHIDA, Fumio (R.p. 239) on the ground that the law and the evidence clearly show these accused not guilty as charged.

This motion was denied (R.p. 239). The action of the commission was proper, for there is no provision in Naval Courts and Boards for such a motion (N.C. & B., Sec. 404).

g. The defense objected (R.p. 22, Appendix "U," "V") to the prosecution's request that the commission take judicial notice of (1) The Geneva Prisoner of War Convention of July 27, 1929; (2) The Hague Convention of October 18, 1907; (3) that BABELTHUAP Island, PALAU Islands, is located in the Western Caroline Islands and is part of the Commander Marianas Area; (4) that the local criminal law effective in the mandated islands at the time of the commission of the alleged crimes was the Criminal Code of Japan; (5) The Criminal Code of Japan as applicable to the Caroline Islands, particularly Article 199 which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years;" (6) that on or about September 15, 1944 the PALAU Islands were occupied by the Armed Forces of the United States and Military Government was established by C. W. Nimitz, Fleet Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas; and (7) Proclamations No. 1, 2 and 3 to the People of the Caroline Islands, issued by and under the authority of C. W. Nimitz, Fleet Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas and Military Governor of the Caroline Islands.

Comment: The commission announced it would take judicial notice of all items requested by the Judge Advocate (R.p. 22). The action of the commission was, in my opinion, legal for Section 309, Naval Courts and Boards, 1937, provides: "Courts should 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...." (Advance Copy, C.M.O. No. 6, 1948, p. 26).

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

a. For the prosecution.

On 18 September 1944, the commanding officer of the South Seas Kempeitai (T.N. "Kempeitai" means Japanese Military Police Force), Lieutenant Colonel MIYAZAKI, had a conference in his office located at MISUZU Bridge in GASUPAN on BABELTHUAP Island, PALAU Islands (R.p. 23, 68, "Exhibit 17(a)"). Present at this

conference were Kempeitai Captain Kazuo NAKAMURA, Head of the First Detachment, First Lieutenant Yokichi ICHIKAWA, Adjutant of the South Seas Kempeitai, and Kempeitai First Lieutenant Giichi SANO, Chief of the Special Higher Section of the South Seas Kempeitai (R.p. 23, 67, 68). Lieutenant Colonel MIYAZAKI informed the officers that SAIPAN was almost lost and that PELELIU was lost. That the bombing on PALAU had become very severe and that an American landing was imminent and therefore the missionaries who are suspected of spying will be executed by orders of Division Headquarters (R.p. 23, 68). MIYAZAKI ordered Adjutant ICHIKAWA to prepare ammunition, shovels and two trucks (R.p. 23). MIYAZAKI said all Kempeis and Auxiliary Kempeis, (T.N. "Kempei" means Military Policeman in Japanese)(R.p. 23), excluding duty personnel of the day and those who were ill would go to the execution (R.p. 68). Details were to be planned by Captain NAKAMURA and he was to be in command at the scene (R.p. 68). On that day about three o'clock in the afternoon, there was a general assembly at the Kempei Headquarters (R.p. 96, 176, 260). At this assembly MIYAZAKI told the gathering that the missionaries were to be executed by order of Division Headquarters (R.p. 96, 150, 260). Present at this assembly were Second Lieutenant ICHIKAWA, Sergeant Major SUGIMOTO, Sergeant Major ICHIMIYA, Sergeant Major ISHIYAMA, Sergeant OZAKI, Sergeant TAMAMOTO, Sergeant YOKOYAMA, Sergeant YAMADA, Leading Private EZURE, Superior Private ITO, Superior Private OKAMURA, Superior Private IWAMOTO, Superior Private NAKAMURA, Leading Private FUJITANI, Private First Class UCHIDA, Leading Private KAWAGUCHI, Superior Private SAGARA (R.p. 98, 150, 177, 282). Captain NAKAMURA told the men to form teams of one Kempei and one Auxiliary Kempei and about ten teams were formed (R.p. 97, Exh. 7(a), 10(a)). He told them to bring candles and shovels and that the noncommissioned officers were to take pistols and the Auxiliary Kempeis were to take rifles (R.p. 97, Exh. 7(a), 10(a)). After supper the men assembled again and were inspected (R.p. 98, 180). MIYAZAKI said that it was too early, so the men dispersed (R.p. 179). At this assembly the men were warned by Captain NAKAMURA and MIYAZAKI not to divulge the action they were going to take (R.p. 181). Later they again assembled and marched to the road where they waited until two trucks appeared (R.p. 98, 180, 181). Trucks came from the Sumida Unit driven by Sumida Unit men (R.p. 69, 98, 182, 304). First Lieutenant YAMAMOTO of the Sumida Unit and his orderly KUMAGAI came with the trucks (R.p. 69, 182). The trucks had been delayed although ICHIKAWA had made arrangements for them (R.p. 182, 302). The Kempeis and Auxiliary Kempeis boarded the first truck and the officers and their orderlies boarded the second truck (R.p. 26, 69, 182). The trucks proceeded to a farmer's house which belonged to the South Seas Company, about 2000 meters from the Kempeitai (R.p. 26, 69). The missionaries, a Filipino, his wife and two children were living in this house (R.p. 26, 70). MIYAZAKI and Captain NAKAMURA went into the house and MIYAZAKI spoke to the missionaries (R.p. 27, 69). The missionaries already had their belongings packed and were ready to move (R.p. 69). The mission-

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aries were Luis Blanco Y SUAREZ, Catholic priest, Spanish national, Bernardo De La ESPRIELLA, Catholic priest, Colombian national, Marino De La HOZ, Catholic priest, Spanish national, Elias Fernandez GONZALEZ, Catholic priest, Spanish national, Francisco Hernandez ESCUDERO, Catholic brother, Spanish national, and Emilio VILLAR, Catholic brother, Spanish national (R.p. 57, Exh. 4, 5). The Filipino and his family were Agapito C. HONDONERO, Filimina Untalan HONDONERO, Baltazar Untalan HONDONERO, and Caroline Untalan HONDONERO (R.p. 57, 133, 134, 139, 140). The two children were aged five and three respectively (R.p. 134). All the persons in the house left and boarded the second truck (R.p. 28, 70, 98, 184). The trucks proceeded to GASUPAN DAIJO where all persons got off the trucks (R.p. 28, 70, 98, 184). The missionaries were made to line up and each one was placed in charge of a team (R.p. 70, 99, 184). The missionaries were bound and blindfolded (R.p. 29, 185). MIYAZAKI spoke to the missionaries in a foreign language and then told the soldiers that he had declared the death sentence on the missionaries (R.p. 70). MIYAZAKI spoke to the others who were not on the teams and told them that since the missionaries might make an escape to guard the area (R.p. 185, 270). The missionaries, the Filipino and his wife and children were led into the jungle some distance from the road where a hole had already been prepared (R.p. 30, 70, 99, 186). While proceeding into the jungle MIYAZAKI told YAMAMOTO, "We are going to knock them off" (R.p. 313). The scene was illuminated by candles and battle lanterns (R.p. 30, 71, 186). The missionaries and the others were made to kneel at the edge of the hole (R.p. 30, 70, 99, 187). The Kempeis and Auxiliary Kempeis lined up behind the missionaries (R.p. 99, 273, 285). Some of the Kempeis were relieved by Sumida men (R.p. 30, 31, 187, 307). KAWAGUCHI and NAMEKAWA were members of the Sumida Unit (R.p. 34, 305) and were present. At the command of MIYAZAKI the soldiers shot the missionaries and the four others (R.p. 31, 70, 188). Present that night at the scene of the execution were Lieutenant YAMAMOTO, Lieutenant ICHIKAWA, Sergeant Major ISHIYAMA, Sergeant Major SUGIMOTO, Sergeant ICHIMIYA, Sergeant OZAKI, Sergeant TAMAMOTO, Sergeant YOKOYAMA, Leading Private EZURE, Leading Private FUJITANI, Leading Private KAWAGUCHI, Superior Private ANDO, Superior Private HIDAKA, Superior Private ITO, Superior Private IWAMOTO, Superior Private NAKAMURA, Superior Private OKAMURA, and Private First Class UCHIDA (R.p. 31, 70, 71, 101, 189, 275, 287). The bodies were buried in the hole, and after the end of the war, they were dug up and cremated (R.p. 31, 70).

b. For the defense.

A prosecution witness, SANO, Giichi, was recalled by the defense (R.p. 251) and testified that Leading Private EZURE, one of the accused, was his orderly in September, 1944, and that he gave him no orders at the scene of the execution nor did he see him do anything at the scene (R.p. 251).

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A witness, GOMI, Risaku, was called by the defense (R.p. 253) and testified that in September, 1944, he was confined in his quarters as a result of illness (R.p. 254) and that he had not attended either the assembly or the execution (R.p. 254). GOMI testified that Superior Private HAYASHI, one of the accused, was in the quarters with him also, ill with an infected foot having stepped on a nail (R.p. 255).

An accused, HAYASHI, Umeji, took the stand as a witness in his own behalf (R.p. 255). He testified that he had not attended either the assembly or the execution as he was sick with an infected foot (R.p. 158, 256) and confined to his quarters with GOMI (R.p. 158, 256).

An accused, SAGARA, Masashiro, took the stand as a witness in his own behalf (R.p. 259). He testified that he had attended the general assembly in September, 1944, but had not participated in the execution because he was assigned road lookout duty that day (R.p. 260, 152, 197). He testified that his post was fifteen hundred meters as the crow flies from the scene where the execution took place (R.p. 260).

An accused, UCHIDA, Fumio, took the stand as a witness in his own behalf (R.p. 261). He testified that he had not been present at the general assembly (R.p. 263), but had attended the execution as the orderly for NAKAMURA, (R.p. 262). He testified that he did not execute the missionaries nor did he do anything at the scene of the execution (R.p. 263).

An accused, EZURE, Shigeru, took the stand as a witness in his own behalf (R.p. 277). He testified that he was present at the assembly which was concerned with missionaries and that he did attend the execution as the orderly for Lieutenant SANO (R.p. 278, 279).

An accused, YAMAMOTO, Kazuharu, took the stand as a witness in his own behalf (R.p. 300). He testified that he was the adjutant of the Sumida Unit and was in charge of dispatching trucks (R.p. 300, 301). He testified that, upon request of Lieutenant ICHIKAWA, he had dispatched two trucks to the Kempeitai (R.p. 302, 303), but having no written orders, he became worried and approached MIYAZAKI on this point (R.p. 303, 304). MIYAZAKI ordered him to accompany the trucks and he did so (R.p. 304). When they arrived at the scene, MIYAZAKI wished Sumida men to assist in the execution (R.p. 306), but YAMAMOTO told him transportation men should not take part (R.p. 306). MIYAZAKI then gave orders directly to NAMEKAWA and pushed NAMEKAWA forward (R.p. 306, 307).

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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 letter serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in his command (App. D, N.C. & B., 1937; Yamashita v. Styer, 327 U.S. 1).

The accused made a plea to the jurisdiction as indicated in paragraph 4 (c) above. 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); App. D, N.C. & B., 1937; SecNav ltr. re war crimes dated 13 Jan. 1945; and, CinC U.S. Fleet ltr. serial 2812, dated 6 April 1945). One of the murders complained of in the instant case was that of Agapito C. HONDONERO, a national of the United States. The murder by the armed forces of a country at war of a civilian enemy alien who has been interned is a violation of the law and customs of war if such interned persons are to be accorded the treatment of prisoners of war. Such interned persons are under the American and English practice as well as by the weight of authority under international law treated as prisoners of war (Law of Land Warfare, JAGS's Text No. 7, p. 48). The United States and the enemy governments, namely, Germany, Italy, and Japan agreed through the Swiss government to treat interned civilian alien enemies on a reciprocal basis, at least as favorably as a prisoner of war (U.S. Dept. of State Bull., Vol. VI, No. 152, p. 446, May 1942).

Discussion of the question as to whether the commission had jurisdiction in this case to try the accused for the murder of the five Spanish nationals, interned by the armed forces of Japan, is not considered necessary as the matter was, prior to the trial, presented to the Navy Department by the Commander-in-Chief, U. S. Pacific Fleet, in his communication of 2 October 1947, which passed for action Commander Marianas despatch 292336, September 1947. The Secretary of the Navy in his reply of 8 October 1947 to the Commander-in-Chief in effect held that a military commission convened by Commander Marianas Area would have jurisdiction to try former Japanese nationals for the murder of foreign nationals, such as the five Spanish victims, who were residents of the former Japanese mandated islands during Japanese control of such islands.

It is my opinion that there is no merit in any of the grounds, listed in subparagraphs 4(c)(2), (3), (4), and (5), given by the accused

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in support of the plea to the jurisdiction, for the reasons discussed in previous memoranda submitted by me on war crimes records (see particularly paragraph 6(a) of my memorandum in the KOICHI, Hiroe, et al case, dated 20 March 1948; see also the Judge Advocate General's action OO-INOUE, Fumio/A17-10 OQ(1-22-48)I:HMM:VII 159116 approved by the Acting Secretary of the Navy on 12 Feb. 1948, JAG:I:RAS: bem OO-INOUE, Fumio/A17-10/OQ(2-20-48)159116).

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 to meet necessities. 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) were authorized for use as necessary to obtain justice.

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

(4) The sentences are legal.

c. As to evidence.

Referring to Charge I and the specifications thereunder, there is sufficient competent evidence to support the commission's findings of guilty relative to accused, YAMAMOTO, ICHIKAWA, ISHIYAMA, SUGIMOTO, IGAIMIYA, OZAKI, TAMAMOTO, YOKOYAMA, EZURE, FUJITANI, KAWAGUCHI, ANDO, HIDAKA, ITO, IWAMOTO, NAKAMURA, OKAMURA, and UCHIDA. The commission's findings of "proved in part" on Specifications 1 and 2 of Charge I relative to the above mentioned eighteen accused are based on the acquittal of HAYASHI and SAGARA. The commission's findings of "proved in part" as to Specifications 1 and 2 of Charge I do not affect the legality of the findings of "Guilty" as to the charge, inasmuch as the exceptions made by the commission leave the specifications still supporting the charge (Sec. 429, N.C. & B., 1937).

Referring to Charge II and the specification thereunder, there is sufficient competent evidence to support the commission's findings of guilty relative to the eighteen accused mentioned above. The commission's findings of "proved in part" on the specification relative to the eighteen accused are based on the acquittal of HAYASHI and SAGARA. The commission's findings of "proved in part" as to the specification of Charge II do not affect the legality of the findings of "Guilty" as to the charge, in as much as the exceptions made by the commission leave the specification still supporting the charge (Sec. 429, N.C. & B., 1937).

There is, in my opinion, sufficient evidence in the record to warrant the commission in finding that the eighteen convicted accused each had knowledge that the execution of the ten victims was to be performed and that they each participated in this execution as an aider and abettor thus becoming principals (Section 550, Title 18, U.S.C.A.).

The commission's findings of "not proved" on Specification 4 of Charge I as to the accused YAMAMOTO can be supported on the theory that the members of the commission, in weighing the evidence, believed that the record contained no positive affirmative evidence that YAMAMOTO had the duty to protect the seven civilians since there was an officer senior to himself present. The commission's findings of "not proved" on Specifications 1 and 2 of Charge I and on the specification of Charge II and "not guilty" on Charges I and II as to the accused HAYASHI and SAGARA are supportable on the grounds of reasonable doubt as the record contains only meager evidence, which was controverted by the defense, to the effect that either HAYASHI or SAGARA participated in the unlawful executions.

There are, as to be expected, numerous conflicts in the evidence throughout the record. Certain of the accused took the stand in their own defense and flatly denied alleged guilt on their part. It is the duty of the members of the commission, in their capacity as jurors, to weigh the evidence (Sec. 304, N.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Secs. 304 and following, N.C. & B., 1937), or exceeded their allowed discretion in this matter.

d. As to sentence.

The accused were sentenced to terms of confinement as indicated in paragraph 2(d) above. The sentences are legal and appear justified by the nature of the offense of which the respective accused were convicted and the circumstances surrounding the offenses as indicated by the evidence.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

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

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e. Generally.

(1) Specifications 3 and 4 of Charge I concerned the accused YAMAMOTO alone. Specification 3 was found proved, but Specification 4 was found not proved against YAMAMOTO. Specification 3 of Charge I alleged a distinct offense, but was based on the same circumstances as Specifications 1 and 2 of Charge I on which YAMAMOTO was also convicted. Specifications 1 and 2 of Charge I concerned all eighteen accused who were convicted of Charge I as Specifications 1 and 2 were found proved against them, with certain exceptions based on the acquittal of HAYASHI and SAGARA. Charge I was a Violation of the Law and Customs of War. Charge II was Murder. The specification under Charge II alleged a violation of effective law, especially Article 199 of the Criminal Code of Japan. The specification of Charge II concerned all eighteen accused who were convicted of Charge I, as the specification was found proved against them with certain exceptions based on the acquittal of HAYASHI and SAGARA. The specification of Charge II alleged a distinct offense, but was based on the same circumstances as Specifications 1 and 2 of Charge I.

In accordance with the Judge Advocate General's action (00-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 (00-INOUE, Fumio/A17-10 0Q(1-22-48) I:HMM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem 00-INOUE, Fumio/A17-10/0Q (2-20-48) 159116), the findings on Specification 3 of Charge I as to the accused YAMAMOTO could be set aside. Either the findings on Charge I and the first two specifications thereunder as to all the eighteen convicted defendants, or the findings on Charge II and the specification thereunder as to all the same eighteen convicted defendants could be set aside. It is my opinion that any action with a view to setting aside the findings of conviction on Charge I and the relative specifications thereunder, or Charge II and the specification thereunder, should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Marianas Area or the Commander-in-Chief, U. S. Pacific Fleet.

(2) During the trial the accused made certain motions and requests as indicated on pages 220, 238, and 316 of the record, and also the judge advocate and accused made various objections to the admissibility of certain evidence. Each of these motions, requests, and 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.

(3) The commission approved a procedure, which was in effect a stipulation, prior to the members having been sworn (R.p. 1). This was improper (Sections 394-5, Naval Courts and Boards; see also C.M.O. 2-1943, p. 183). However, while the commission erred in approving this procedure before the members were sworn, it is my opinion that the substantial rights of the accused were not prejudiced. The procedure was obviously requested by the judge advocate and approved by the commission for the purpose of cryptographic security and it did not involve the issues of the case.

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

a. The military commission was legally constituted.

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

c. The evidence supports the findings of "proved" and "guilty" as to all accused on all relative specifications and charges. The nature, character, and general insufficiency of the evidence warrants the finding of "not proved" on Specification 4 of Charge I as to the accused YAMAMOTO and of "not guilty" as to Charges I and II as to the accused HAYASHI and SAGARA.

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

e. The sentences are legal.

8. RECOMMENDATIONS:

It is recommended (1) that the convening authority and the reviewing authority approve the proceedings in the case of YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenzo; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI, Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kyohisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; SAGARA, Masashiro; and UCHIDA, Fumio and (2) that the convening and reviewing authorities approve the findings of guilty and the sentences in the case of YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenzo; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI,Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kyohisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi;

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FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

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

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HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; and UCHIDA, Fumio; (3) that the convening and reviewing authorities in effect concur in the acquittals of accused YAMAMOTO, Kazuharu on Specification 4 of Charge I and HAYASHI, Umeji and SAGARA, Masashiro on Charges I and II by taking no action relative thereto (Sec. 472½, N.C. & B., 1937); and (4) that the record, in conformity with Appendix D-14 of 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).

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

cc: JAG, USN

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. Ø2Ø1Ø3Z Oct. '47; SecNav Desp. Ø31946Z Oct. '47; CinCPacFlt Desp. Ø92353Z Oct. '47). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued January 31, 1948 and served on the accused on February 2, 1948. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

On page 1 of the record it is noted that the commission, before its members were sworn, approved a procedure, which was in effect a stipulation, concerning the security of classified matter. "Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members" (Sect. 394, N. C. &B). Accordingly the action of the commission in approving the procedure was erroneous. However, here the procedure related only to matters pertaining to the security of classified material and did in no way involve the issues of the case. It is the opinion of the convening authority that the substantial rights of the accused were not prejudiced (CMO 2-1943, p. 183).

Subject to the above remarks, the proceedings in the foregoing case of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HAYASHI, Umeji, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, SAGARA, Masashiro, and UCHIDA, Fumio are approved. The findings of guilty and sentences as to the accused YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio are approved.

YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke,

ENCLOSURE (B)

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

HAYASHI, Umeji and SAGARA, Masashiro, who were acquitted, were released from arrest and returned to Japan.

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

ENCLOSURE (B)

0092

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

CinCPacFlt File
A17-10(2)

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

Serial:

The proceedings in the foregoing case of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, ~~HAYASHI, Umeji~~, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, ~~SAGARA, Masashiro~~, and UCHIDA, Fumio are approved. The findings of guilty and sentences as to the accused YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio are approved. The action of the convening authority is approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial 01P22 of 28 November 1945 transmitted to the Judge Advocate General of the Navy.

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

ENCLOSURE (C)

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RECEIVED
23 AUG1948
OFFICE OF JUDGE
ADVOCATE GENERAL

FF12/P13-10(10)
O2-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 13187

10 AUG 1948.

From: Commander Naval Forces, Marianas.
To : Commanding General, U.S. Eighth Army.

Subject: Convicted War Criminals of Japanese Origin Sentenced to terms of confinement - transfer of to Japan.

References: (a) CinCAFPac Desp. 100551 dated Aug. 1946.
(b) CinCAFPac Ltr. AG 000.5 dated 21 Oct. 1946.
(c) ComNavForMar Desp. 100007Z dated August 1948.

1. The below listed War Criminals of Japanese origin, who have been sentenced to terms of confinement, are in accordance with the provisions of reference (a), being transferred from the War Criminal Stockade, Guam to the Commanding General, Eighth Army for confinement in Sugamo Prison, Tokyo, Japan. They are scheduled to depart Guam, on or about 13 August 1948, via Military Air Transport Service. They will be guarded by Chief Warrant Officer Ernest D. HULETT, U.S. Marine Corps and six (6) Marine Corps enlisted men. By reference (c), the Commanding General, Eighth Army, the Commander in Chief, U.S. Pacific Fleet, the Commander Naval Forces, Far East, the Commander in Chief, Far East and the Commanding Officer, Sugamo Prison, Tokyo, Japan were advised of the contemplated transfer of these prisoners:

Name	Former Rank	Sentence	Effective Date of Sentence
YAMAMOTO, Kazuharu	Capt., IJA	25 years	25 March 1948
SUGIMOTO, Takeji	W.O., IJA	20 years	25 March 1948
ISHIYAMA, Zenzo	Sgt Major, IJA	20 years	25 March 1948
ICHIMIYA, Masao	Sgt Major, IJA	20 years	25 March 1948
OZAKI, Katsutoshi	Sgt Major, IJA	20 years	25 March 1948
TAMAMOTO, Tadashi	Sgt Major, IJA	20 years	25 March 1948
YOKOYAMA, Kyohisa	Sgt Major, IJA	20 years	25 March 1948
IZURE, Shigeru	Sgt., IJA	15 years	25 March 1948
FUJITANI, Yoshio	Corp., IJA	15 years	25 March 1948
KAWAGUCHI, Wahei	Corp., IJA	15 years	25 March 1948 -
IWAMOTO, Harukichi	Corp., IJA	15 years	25 March 1948
NAKAMURA, Jiro	Corp., IJA	15 years	25 March 1948
OKAMURA, Gintaro	Corp., IJA	15 years	25 March 1948
HIDAKA, Kinnosuke,	Ldg.Pvt., IJA	15 years	25 March 1948
ITO, Mitsuyuki	Ldg.Pvt., IJA	15 years	25 March 1948
UCHIDA, Fumio	Sup.Pvt., IJA	15 years	25 March 1948

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23 AUG1948
OFFICE OF JUDGE
ADVOCATE GENERAL
U.C.M.J. SECTION

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 13187

10 AUG 1948

Subject: Convicted War Criminals of Japanese Origin Sentenced to Terms of Confinement - transfer of to Japan.

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2. By copy of this letter the Commanding Officer of the Marine Barracks, Guam is directed to assure that the Military Commission Orders covering each prisoner listed above, together with other personnel records required by reference (b), are delivered to your representative at the time the prisoners are delivered to such representative in Japan by Chief Warrant Officer Ernest D. HULETT, U.S. Marine Corps. It is requested that Chief Warrant Officer HULETT be given a receipt for such documents as well as a receipt for the prisoners.

3. The conduct of the Japanese War Criminals listed has been excellent during the time they were confined at War Criminal Stockade, Guam.

/s/ C. A. Pownall
C. A. POWNALL

cc: CinCPacFlt
JAG, USN
CNO
SCAP
National War Crimes Office (War Dept.)
ComNavFE
CO MarBks, Guam
CO VR-6
Chief Warrant Officer Ernest D. HULETT.

AUTHENTICATED:
H. D. VANSTON
Flag Secretary.

0095

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10125

13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

1. During period 16 February to 25 March 1948, YAMAMOTO, Kazuharu, former first lieutenant, IJA, ICHIKAWA, Yokichi, former second lieutenant, IJA, ISHIYAMA, Zenzo, former sergeant major, IJA, SUGIMOTO, Takeji, former sergeant major, IJA, ICHIMIYA, Masao, former sergeant, IJA, OZAKI, Katsutoshi, former sergeant, IJA, TAMAMOTO, Tadashi, former sergeant, IJA, YOKOYAMA, Kyohisa, former sergeant, IJA, EZURE, Shigeru, former leading private, IJA, FUJITANI, Yoshio, former leading private, IJA, KAWAGUCHI, Wahei, former leading private, IJA, ANDO, Fukuichi, former superior private, IJA, HAYASHI, Umeji, former superior private, IJA, HIDAKA, Kinnosuke, former superior private, IJA, ITO, Mitsuyuki, former superior private, IJA, IWAMOTO, Harukichi, former superior private, IJA, NAKAMURA, Jiro, former superior private, IJA, OKAMURA, Gintaro, former superior private, IJA, SAGARA, Masashiro, former superior private, IJA, and UCHIDA, Fumio, former private first class, IJA, were tried by a United States Military Commission, convened by order of the Commander Marianas Area, dated 8 November 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications.

CHARGES:

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

Spec.	Nature	Place and Date of Offense	Names of Accused
1	Kill 1 civilian (Agapito C. HONDONERO, U. S. national,) held captive by the armed forces of Japan.	Babelthuap Island, Palau Islands, 18 September 1944.	YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenzo; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI, Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kyohisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; SAGARA, Masashiro; UCHIDA, Fumio.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10125

13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

Spec.	Nature	Place and Date of Offense	Names of Accused
2	Kill 6 civilians (Luis BLANCO Y SUAREZ, Spanish national, Bernardo DE LA ESPRIELLA, Colombian national, Marino DE LA HOZ, Spanish national, Elias FERNANDEZ GONZALES, Spanish national, Francisco HERNANDEZ Y ESCUDERO, Spanish national, Emilio VILLAR, Spanish national,) held captive by the armed forces of Japan.	Babelthuap Island, Palau Islands, 18 September 1944.	YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenso; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI, Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kychisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; SAGARA, Masashiro; UCHIDA, Fumio.
3	Failure to control operations of members of his unit in that he permitted the killing of 7 civilians (Luis BLANCO Y SUAREZ, Spanish national, Bernardo DE LA ESPRIELLA, Colombian national, Marino DE LA HOZ, Spanish national, Elias FERNANDEZ GONZALEZ, Spanish national, Francisco HERNANDEZ Y ESCUDERO, Spanish national, Emilio VILLAR, Spanish national, Agapito C. HONDONERO, U. S. National,) held captive by the armed forces of Japan.	Babelthuap Island, Palau Islands, 18 September 1944.	YAMAMOTO, Kazuharu.
4	Failure to protect 7 civilians (Luis BLANCO Y SUAREZ, Spanish national, Bernardo DE LA ESPRIELLA, Colombian national, Marino DE LA HOZ, Spanish national, Elias FERNANDEZ GONZALEZ, Spanish national, Francisco HERNANDEZ Y ESCUDERO, Span-	Babelthuap Island, Palau Islands, 18 September 1944.	YAMAMOTO, Kazuharu.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10125

13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

Spec.	Nature	Place and Date of Offense	Names of Accused
	ish national, Emilio VILLAR, Spanish national, Agapito C. HONDONERO, U. S. national,) held captive by the armed forces of Japan.		

CHARGE II - Murder (one specification)

Spec.	Nature	Place and Date of Offense	Names of Accused
1	Kill 10 civilians (Luis BLANCO Y SUAREZ, Spanish national, Bernardo DE LA ESPRIELLA, Colombian national, Marino DE LA HOZ, Spanish national, Elias FERNANDEZ GONZALEZ, Spanish national, Francisco HERNANDEZ Y ESCUDERO, Spanish national, Emilio VILLAR, Spanish national, Agapito C. HONDONERO, U. S. national, Filimina Untalan HONDONERO, Baltazar Untalan HONDONERO, Caroline Untalan HONDONERO, residents of Yap Island ,) then held captive by the armed forces of Japan, in violation of effective law, especially Art. 199 of the Criminal Code of Japan.	Babelthuap Island, Palau Islands, 18 September 1944.	YAMAMOTO, Kazuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenzo; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI, Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kyohisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; SAGARA, Masashiro; UCHIDA, Fumio.

FINDINGS: The Commission on 25 March 1948 made the following findings:

"As to the accused, YAMAMOTO, Kazuharu:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10125

13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

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The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The third specification of the first charge proved.
The fourth specification of the first charge not proved.
And that the accused, YAMAMOTO, Kazuharu, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, YAMAMOTO, Kazuharu, is of the second charge guilty."

"As to the accused, ICHIKAWA, Yokichi:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ICHIKAWA, Yokichi, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ICHIKAWA, Yokichi, is of the second charge guilty."

"As to the accused, ISHIYAMA, Zenzo:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ISHIYAMA, Zenzo, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ISHIYAMA, Zenzo, is of the second charge guilty."

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13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

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"As to the accused, SUGIMOTO, Takeji:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, SUGIMOTO, Takeji, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, SUGIMOTO, Takeji, is of the second charge guilty."

"As to the accused, ICHIMIYA, Masao:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ICHIMIYA, Masao, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ICHIMIYA, Masao, is of the second charge guilty."

"As to the accused, OZAKI, Katsutoshi:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, OZAKI, Katsutoshi, is of the first charge guilty."



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"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, OZAKI, Katsutoshi, is of the second charge guilty."

"As to the accused, TAMAMOTO, Tadashi:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, TAMAMOTO, Tadashi, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, TAMAMOTO, Tadashi, is of the second charge guilty."

"As to the accused, YOKOYAMA, Kyohisa:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, YOKOYAMA, Kyohisa, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, YOKOYAMA, Kyohisa, is of the second charge guilty."

"As to the accused, EZURE, Shigeru:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, than a superior private, IJA,'



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and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, EZURE, Shigeru, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, EZURE, Shigeru, is of the second charge guilty."

"As to the accused, FUJITANI, Yoshio:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, FUJITANI, Yoshio, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, FUJITANI, Yoshio, is of the second charge guilty."

"As to the accused, KAWAGUCHI, Wahei:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, KAWAGUCHI, Wahei, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, KAWAGUCHI, Wahei, is of the second charge guilty."

"As to the accused, ANDO, Fukuichi:
The first specification of the first charge proved in part, proved, except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.

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The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ANDO, Fukuichi, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ANDO, Fukuichi, is of the second charge guilty."

"As to the accused, HAYASHI, Umeji:
The first specification of the first charge not proved.
The second specification of the first charge not proved.
And that the accused, HAYASHI, Umeji, is of the first charge not guilty; and the commission does, therefore, acquit the said. HAYASHI, Umeji, of the first charge."

"The specification of the second charge not proved.
And that the accused, HAYASHI, Umeji, is of the second charge not guilty; and the commission does, therefore, acquit the said HAYASHI, Umeji, of the second charge."

"As to the accused, HIDAKA, Kinnosuke:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, HIDAKA, Kinnosuke, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, HIDAKA, Kinnosuke, is of the second charge guilty."

"As to the accused, ITO, Mitsuyuki:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.

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(In re YAMAMOTO, Kazuharu, et als.)

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The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ITO, Mitsuyuki, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, ITO, Mitsuyuki, is of the second charge guilty."

"As to the accused, IWAMOTO, Harukichi:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, IWAMOTO, Harukichi, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, IWAMOTO, Harukichi, is of the second charge guilty."

"As to the accused, NAKAMURA, Jiro:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, NAKAMURA, Jiro, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, NAKAMURA, Jiro, is of the second charge guilty."

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02-JDM-re

UNITED STATES PACIFIC FLEET
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Serial: 10125

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MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

"As to the accused, OKAMURA, Gintaro:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, OKAMURA, Gintaro, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, OKAMURA, Gintaro, is of the second charge guilty."

"As to the accused, SAGARA, Masashiro:
The first specification of the first charge not proved.
The second specification of the first charge not proved.
And that the accused, SAGARA, Masashiro, is of the first charge not guilty; and the commission does, therefore, acquit the said SAGARA, Masashiro, of the first charge."

"The specification of the second charge not proved.
And that the accused, SAGARA, Masashiro, is of the second charge not guilty; and the commission does, therefore, acquit the said SAGARA, Masashiro, of the second charge."

"As to the accused, UCHIDA, Fumio:
The first specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
The second specification of the first charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, UCHIDA, Fumio, is of the first charge guilty."

"The specification of the second charge proved in part, proved except the words 'HAYASHI, Umeji, then a superior private, IJA,' and the words 'SAGARA, Masashiro, then a superior private, IJA,' which words are not proved.
And that the accused, UCHIDA, Fumio, is of the second charge guilty."

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02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10125

13 MAY 1948

MILITARY COMMISSION ORDER NO. 44

(In re YAMAMOTO, Kazuharu, et als.)

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SENTENCES: The Commission on 25 March 1948 sentenced the accused as follows:

"The Commission, therefore, sentences him, YAMAMOTO, Kazuharu, to be confined for a period of twenty-five (25) years."

"The Commission, therefore, sentences him, ICHIKAWA, Yokichi, to be confined for a period of twenty-five (25) years."

"The Commission, therefore, sentences him, ISHIYAMA, Zenzo, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, SUGIMOTO, Takeji, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, ICHIMIYA, Masao, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, OZAKI, Katsutoshi, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, TAMAMOTO, Tadashi, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, YOKOYAMA, Kyohisa, to be confined for a period of twenty (20) years."

"The Commission, therefore, sentences him, EZURE, Shigeru, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, FUJITANI, Yoshio, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, KAWAGUCHI, Wahei, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, ANDO, Fukuichi, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, HIDAKA, Kiyonosuke, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, ITO, Mitsuyuki, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, IWAMOTO, Harukichi, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, NAKAMURA, Jiro, to be confined for a period of fifteen (15) years."



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- -

"The Commission, therefore, sentences him, OKAMURA, Gintaro, to be confined for a period of fifteen (15) years."

"The Commission, therefore, sentences him, UCHIDA, Fumio, to be confined for a period of fifteen (15) years."

2. On 13 May 1948 the convening authority (Commander Marianas), subject to certain remarks not herein quoted, took the following action:

".....the proceedings in the foregoing case of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HAYASHI, Umeji, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, SAGARA, Masashiro, and UCHIDA, Fumio are approved. The findings of guilty and sentences as to the accused YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio are approved."

".....YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

"HAYASHI, Umeji and SAGARA, Masashiro, who were acquitted, were released from arrest and returned to Japan."

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

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, Guam (6)
ComMarianas Liaison Officer, Tokyo, Japan (3)

AUTHENTICATED:

H. D. VANSTON,
Flag Secretary.

0107

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

Cincpacflt File
A17-25

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

7 JUN 1948

Serial: 2769

In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et al/A17-20 I(3-19-47) HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld A17-20/00(6-25-47) 154578) and the Judge Advocate General's action (OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:HMM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem OO-INOUE, Fumio/A17-10/OQ (2-20-48) 159116), it is believed the finding on specification 3 of Charge I (failure to discharge his, YAMAMOTO's, duty to control his subordinates, permitting them to murder seven civilians) could be set aside, but it is considered more appropriate that such action, if taken, be taken by the final reviewing authority if considered warranted by that authority.

Subject to the above, the proceedings in the foregoing cases of HAYASHI, Umeji and SAGARA, Masashiro, the proceedings, findings, and sentences, and the action of the convening authority thereon in the foregoing cases of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio, are approved.

DeWitt C. Ramsey

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

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of Proceedings of a Military Commission in the case of former First Lieutenant YAMAMOTO, Kazuharu, I.J.A., et al.

Copies to:
ComMarianas
Cincpacflt War Crimes Officer, Guam

0108

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

Cincpacflt File
A17-25

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

17 JUN 1948

Serial 2769

In the foregoing case the military commission was convened by the Commander Marianas Area pursuant to his authority as a military commander and to his specific authorization by the Commander in Chief, U. S. Pacific Fleet, (Cincpacflt Desp. 020103Z OCT 1947; Secnav Desp. 081946Z OCT 1947; Cincpacflt Desp. 092353Z OCT 1947).

With respect to the accused ANDO, Fukuichi, then superior private, Imperial Japanese Army, there is no direct evidence in the record to support his conviction. He made no confession. No prosecution witness remembered him as present at the execution and two prosecution witnesses excluded him from their lists of persons present. The only direct evidence connecting him in any way with the events which culminated in the murders is testimony that he was present at an assembly of soldiers on the evening of the shooting, that at this assembly some soldiers procured shovels, that the Commanding Officer MIYAZAKI informed the assembly that since the hour was still early they would wait a while, and that the soldiers thereupon dispersed. While the only circumstantial evidence suggesting that he may have participated in the execution is TAKAHASHI's testimony that he (TAKAHASHI) received an order, source not named, that all soldiers were to attend the execution except duty men, air raid wardens, road lookouts, and sick personnel, the exact number and identity of those excluded categories appearing nowhere in the testimony.

No evidence was offered, with regard to the order in question, which excluded the possibility that:

(a) This order may never have reached ANDO.
(b) He may have fallen within its exceptions.
(c) He may have been prevented from carrying it out.
(d) He may have intentionally disobeyed it.
(e) It may have been withdrawn or superseded by other orders.

No direct evidence of ANDO's participation being available, his conviction by such circumstantial evidence cannot stand. "In a case depending on circumstantial evidence, the court, in order to convict, must find the circumstances to be satisfactorily proved as facts and must also find that these facts clearly and unequivocally imply the guilt of the accused and cannot reasonably be reconciled with any hypotheses of his innocence." Naval Courts and Boards (1937) Sec. 144.

Accordingly the court erred in denying ANDO's motion for acquittal, authorized by Regulations Governing the Trials of Accused War Criminals promulgated December 5, 1945 by the Supreme Commander for the Allied Powers; and with respect to ANDO, Fukuichi solely, the findings, the sentence, and the convening authority's action thereon are disapproved.

0109

Case of:

Yamamoto, Kazuharu
Ichikawa, Yokichi
Ishiyama, Zenzo
Sugimoto, Takeji
Ichimiya, Masao
Ozaki, Katsutoshi
Tamamoto, Tadashi
Yokoyama, Kyohisa
Ezure, Shigeru
Fujitani, Yoshio
Kawaguchi, Wahei
Ando, Fukuichi
Hayashi, Umeji
Hidaka, Kinnosuke
Ito, Mitsuyuki
Iwamoto, Harukichi
Nakamura, Jiro
Okamura, Gintaro
Sagara, Masashiro
Uchida, Fumio

February 16, 1948

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

convened at

United States Pacific Fleet

Commander Marianas

Guam, Marianas Islands

by order of

The Commander Marianas Area

RECEIVED
28 JUN 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION
163 117

FINISHED FILE
7 OCT 1948

0110

Yamamoto, Kazuharu
Ichikawa, Yokichi
Ishiyama, Zenzo
Sugimoto, Takeji
Ichimiya, Masao
Ozaki, Katsutoshi
Tamamoto, Tadashi
Yokoyama, Kyohisa
Ezure, Shigeru
Fujitani, Yoshio
Kawaguchi, Wahei
Ando, Fukuichi
Hayashi, Umeji
Hidaka, Kinnosuke
Ito, Mitsuyuki
Iwamoto, Harukichi
Nakamura, Jiro
Okamura, Gintaro
Sagara, Masashiro
Uchida, Fumio

Trial by Military Commission

at Guam

Marianas Islands

February 16, 1948

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FF12/A17-10
Q2-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

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

Subject: Precept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander-in-Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. Pac. Flt. serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt. Desp. 092353Z Oct. '47), military commission is hereby ordered to convene at the Headquarters Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m. on Thursday, November 20, 1947, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

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

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

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

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

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

"A (1)"



FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

Subject: Precept for a military commission.

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

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

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

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

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lieut. USN

"A (2)"

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

Serial 22660

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

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

Subject: Temporary relief of member of commission.

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

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

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

A true copy. Attest:

James P. Kenny

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

"B"

0117

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

Serial: 22661

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

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

Subject: Appointment of member of commission.

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

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

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

A true copy. Attest:

James P. Kenny

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

"C"

0 1 18

A17-2e/FF12
e2-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 85

3 JAN 1948

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

Subject: Change in Membership of Military Commission.

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

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lieut. USN

"D"

0119

FF12/A17-20
02-JDM-sh

Serial: 136

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

6 JAN 1948

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

Subject: Change in Membership of Military Commission.

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

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lieut USN

"E"

0120

MOTION FOR A CHANGE OF VENUE

delivered by

Commander Martin E. Carlson

May it please the Commission:

All of the twenty accused hereby make this motion for a change of venue on the grounds that the action is brought in the wrong place or district, and on the ground of disqualification of all six of the members of this Commission, viz, Lieutenant Commander Edwin M. Koos, USN, Major Donald B. Cooley, junior, USMC, Lieutenant Commander Bradner W. Lee, junior, USNR., Lieutenant Colonel Victor J. Garbarino, CAC, USA, Lieutenant Colonel Henry K. Roscoe, CAC, USA, and Rear Admiral Arthur G. Robinson, USN, because they have formed a positive and definite opinion as to the guilt of these accused having sat and tried interlocking cases involving members of the "Kempeitai" of the Palau Islands.

Charge II alleges that the offense took place at Babelthuap Island, Palau Islands, and is "in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

In criminal cases the proper venue at common law is the country where the crime was committed.

The above mentioned last four members of the Commission sat as members of the Commission which tired Ajioka, Misao and Yamada, Kiyoshi both subordinates of Lieutenant Colonel Miyazaki, Aritsune and members of the "Kempeitai" or Japanese Military Police organization on the Palau Islands and all six sat as members of the Commission which tried Nakamura, Kazuo and Kokubo, Chihiro, both subordinates of Lieutenant Colonel Miyazaki, Aritsune and members of the "Kempeitai" or the Japanese Military Police organization on the Palau Islands.

In the case of Nakamura, Kazuo and Kokubo, Chihiro it was alleged that "acting together with Miyazaki, Aritsune, deceased, then a Lieutenant Colonel, IJA, did each and together at Babelthuap Island, Palau Islands, on or about September 4, 1944." Although the evidence showed that both Nakamura and Kokubo acted on direct orders of their superior, Lieutenant Colonel Miyazaki, at the scene and in his presence, and the Commission did take judicial notice of paragraph 347 of War Department Basic Field Manual, Rules of Land Warfare, FM 27-10 (1940), particularly Change 1, FM-27-10, par. 345.1, "Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment" both Nakamura and Kokubo were sentenced to death by hanging.

0121

In the case of Ajioka and Yamada the evidence showed they acted in the presence of their superior, Nakamura, and all three acted on December 29, 1944, in accordance with the orders of their superior, Lieutenant Colonel Miyazaki, Aritsune, deceased, the commanding officer and head of the "Kempeitai", Japanese Military Police on the Palau Islands. Ajioka and Yamada were both found guilty.

In the present case the offense is alleged to have been committed by all twenty accused. "all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, did each and together."

In this present case the offense is alleged to have been committed by all twenty accused, "all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, did each and together."

In the trial of Ajioka and Yamada, Nakamura, Kazuo the chief prosecution witness on the first day of the trial to the fourteenth question put by the prosecution, "What particular orders did Miyazaki give you?", answered in part as follows: "The Englishman at the Gasupan Kempeitai is to be executed...The place of execution will be near the place where the Spanish were killed formerly..."

There was other testimony about the execution of the Spanish in the Ajioka and Yamada trial.

All of the twenty accused were regularly demobilized and were living as citizens of and resident in Japan. If the court will not take judicial notice of this fact, affidavits and other evidence will be submitted.

For the convenience of witnesses and that the ends of justice may be promoted, all twenty of the accused individually and jointly pray for a change of venue.

Respectfully,

Martin E. Carlson

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

16 February 1948.

0122

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:
1393

4 FEB 1948

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

Subject: Authorizing correction in specifications.

1. You are hereby authorized and directed to change the charges and specifications dated 31 January 1948, preferred by me against YAMAMOTO, Kazuharu and nineteen other accused in the following particulars: Wherever it appears change the spelling of the first name of the accused SAGARA, from "Seishiro" to "Masashiro."

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

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

"G"

0123

山本一治等の起許及び
罪状項目に対する異議
昭和二十三年二月十六日
弁護人　鍬田日出夫

全被告は以下述べる理由に因り本件起許及び罪状項目に対して異議を申立てる。

(1) 第一起許第一罪状項目に掲げられた犯罪と同起許第二罪状項目に掲げられた犯罪とは其の参加者、日時、場所及び行為の点に於て全く同一である。唯異る所は、前者に於ける被害者は米国人であり後者のそれはスペイン人或はコロンビヤ人であるとするに過ぎない。犯罪の主体、日時、場所及び行為が同一である以上、同一の罪状項目中に包括すべきである。若し被害者の国籍が罪状項目を分つ標準であるならば第一起許第二罪状項目中のコロンビヤ人に対する犯罪も別個の罪状項目の下に置かねばならぬ筈である。被害者が米国人だから別個の罪状項目に掲げコロンビヤ人ならば他の国籍を有する者即ちスペイン人と一緒にするとするごときは全く理由なきことである。尚ほ第一起許第一及び第二罪状項目は被害者の数に応じて十個の罪状項目に分つべきものと思ふ。

(2) 第一起許第三罪状項目は被告山本一治が彼の部隊員及び其の抑制監督下に在った人々に丈人の民間人を殺すことを許可することによって、処刑現場に於ける住田部隊の先任将校としての部下に対する監督義務違反を問い、同起許第四罪状項目は之を全く同一の理由に基いて被告山本

"H(1)"

0124

一治の七名の民間人に対する保護義務違反を問責してゐるのである。換言すれば此等二つの罪状項目は孰れも被告山下の職務怠慢を問ふものであつて、彼及び其の他の被告等の殺人を起訴してゐる第一起訴状第一及び第二罪状項目とは全く其の性質を異にしてゐる。Naval Courts & Boards 第23節にも「異なる性質の犯罪を同一の起訴の下に置かぬ様注意せねばならぬ」と規定されてゐる様に、第一起訴状第三及び第四罪状項目は同起訴状第一及び第二罪状項目とは分離して別個の起訴の下に置かねばならぬものと思ふ。従来の裁判に於ける起訴状に於ても殺人と職務怠慢とは常に別個のchargeの下に置かれてゐたのであつて、今回の如く、両者を同一のchargeの下に置いたのは全く異例に属することである。

(3) 第一起訴状第三罪状項目は、全起訴状第一及び第二罪状項目に於て主張された殺人行為に基き被告山下、一治の部下に対する監督義務違反を問責してゐるものであるが、第一起訴状第一及び第二罪状項目には故陸軍上等兵無滑川源三なる者が本件の殺人行為に関係したとは主張されてゐない。基本的行為に参加してゐない者の行為に付き被告山下が監督責任を問ふことは明らかに誤謬なるが故に、第一起訴状第三罪状項目から故陸軍上等兵無滑川源三なる語は削除すべきものと考へる。若し之を其の儘維持せんとするならば、第一起訴状第一及び第二罪状項目中にも故陸軍上等兵無滑川源三なる語を挿入せねばならぬ。

(4) 第一起訴状第四罪状項目は、全起訴状第一及び第二罪状

0125

項目に於て主張されてゐる殺人行為に基き被告山东一治の七名の民間人に対する保護義務違反を問うてゐるのであるが、第一起訴第一及び第二罪状項目に於ては、山东一治及び其の他の被告等は故陸軍中佐宮崎有垣と共同して七名の民間人を殺したと主張されてゐるのである。其此故に処刑現場に於ける最先任将校は宮崎有垣であることは一見して明瞭である。されば、七名の民間人に対して保護責任を有するのは被告山东ではなくて、宮崎有垣であることも亦一見して明瞭であるから、此の罪状項目は取消さるべきである。

(5) 第二起訴罪状項目殺人に於て主張されてゐる犯罪は最初の七名の被害者即ち Filimina Untalan Mondonero, Baltazar Untalan Mondonero 及び Caroline Untalan Mondonero の三名を除く其余の被害者に関しては、第一起訴第一及び第二罪状項目中に主張された犯罪と全く同一なるが故に明らかに二重起訴であるから、第一起訴第一及び第二罪状項目に掲げられた七名の被害者の名前は本罪状項目から削除せらるべきである。

(6) 第二起訴罪状項目の末尾に「右の行為は現行法特に日东刑法第199條に違反してゐる」と主張されてゐるが、現行法とは何時何処に施行されてゐる法律を指称するかのか明瞭でない。又「現行法特に日东刑法第199條」とあるが日东刑法第199條を其の一部として包含する此の現行法なる観念は此も如何なる法律を包含するのか明瞭でない。斯様に曖昧な法律に照して被告を処罰せんとするは甚の重大なる権利を侵害するものである。何となれば違反したと主張されてゐる法

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規が如何なるものであるかを十分に知らしめらるずしては、被告は適當な弁護を準備し得ないから。

次に日本刑法第199條に付いて云へば、日本が南洋諸島の上に主權を喪失した今日、日本刑法（其の第199條を含めて）が南洋諸島に施行されてゐないことは明らかである。本件法廷員会の如き米国裁判所が日本の法律を適用するに當つては如何なる權限に基くものであるかを明示せねばならぬ。然らずして日本法を適用することは明らかに違法である。又日本が南洋諸島の上に主權を行使してゐた当時に於ても日本刑法は直接に南洋諸島に適用されてゐたのではない。其所には南洋諸島裁判等令施行令が施行されて居り、此の勅令中に日本刑法と同一内容の刑法が南洋諸島に施行される旨規定されてゐるのである。故に此の勅令を引用せずして直接日本刑法を適用するのは全く違法である。加之日本刑法を適用すべき様な犯罪は日本の国内犯罪であつて、戰爭犯罪ではないから、第二起訴罪狀項目は取消さるべきである。

(ア) 第一起訴第一及び第二罪狀項目の末尾には孰れも「之は戰爭の法規並に慣習に違反してゐる」を主張されてゐるが被告等は如何なる法規、如何なる慣習に違反したか、明記されてゐない。Naval Courts & Boards 第27節には

"It is not essential to state in a specification that an offense was committed in breach of any Federal statute, article of the Government of the Navy, law of the state in which

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the court is sitting, or general regulation, as the court takes judicial notice of such statute, articles, state law, or regulation, under which the charge is laid, but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other fact." を規定されてゐる。然に所謂戰爭法規慣例に慣習は國際法に過ひないから、米國の裁判所に取つては國内法ではない。故にそれは外國法と全様に逐語的に明記せねばならぬ。若しそれがヘーグ條約第23條ヒ等を意味するものならば第一起訴事實及び第二罪狀項目中に其の様に記載はねばならぬ。弁護人は審理毎に此の異議を提出して来たが、検事は其の都度委員会が法廷認知を爲すから逐語的に明記する必要はないと答弁してゐる。然しNaval Courts & Boards 第309節に依れば委員会は外國法に對しては法廷認知を爲へてはならぬのである。

(ヌ) 第一起訴事實及び第四罪狀項目Nの末尾にも「之は戰爭の法規慣例に慣習に違反してゐる」と主張されてゐる。然し被告人等が違反したと主張せられる戰爭の法規慣例慣習とは何であるか。是等の罪狀項目に於ける戰爭法規慣例慣習違反とは如何なる法規慣習を指すのであるか。

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米国大審院のMurphy判事も山下事件のdissenting opinion
に於て述べてゐる様に、吾人は山东が有罪をせられる犯罪
を想定した法規慣習は日东にも米国にも見出し得ない。
山东が當該事情の下に遂行すべき義務を定めた法規
慣習を見出し得ないのである。山东の為に適当な弁護を準
備する為には、山本が違反したとされる義務を定めた国際
法規慣習を明示すると共に、第一起訴第三又は第四罪
状の項目をその様に訂正して欲しい。其の時吾人はそれが
1944年9月18日当時に於てそれが有効な法律であつたか、
どうかを知るであらう。

(終)

鍬田日出丈

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OBJECTIONS TO THE CHARGES AND SPECIFICATIONS

IN THE CASE OF

YAMAMOTO, KAZUHARU, ET AL.

Delivered by

Defense Counsel Mr. KUWATA, Hideo.

on

February 16, 1948.

May it please the commission:

All the accused object to the charges and specifications in the present case on the following grounds:

1. The offenses alleged in Specifications 1 and 2 of Charge I are quite identical with regard to their participants, time, place and acts. The only difference between the two is that the victim in the former is an alleged American national, while those in the latter are Spanish or Columbian nationals. Since the offenders, time, place and acts are identical, all the alleged offenses should be laid under the same specification. If the nationality of the victim should be considered as a standard for a separate specification, the offense against the Columbian national should have also been set out under a separate specification. There is no reason whatsoever in drawing a charge to make distinction between an offense against an American national and that against a Columbian national. Therefore, Specification 2 of Charge I should be separated into nine different specifications.

2. In Specification 3 of Charge I, the accused YAMAMOTO is charged with disregarding and failing to discharge his duty as senior officer in charge of personnel of the Sumida Unit at the scene of the execution, to control the operations of members of the said unit and persons subject to his control and supervision, permitting them to kill unlawfully seven civilians; while in Specification 4 of the same charge he is charged with disregarding and failing to discharge his duty to protect the seven civilians for the reason based on the same fact as in Specification 3. In other words, both specifications allege the neglect of duty on the part of the accused, YAMAMOTO, and totally differ in nature from Specifications 1 and 2 of Charge I wherein he and the rest of the accused are charged with murder. As it is provided in Section 23 of Naval Courts and Boards, "Care should be exercised to insure that offenses of a different nature are not laid under the same charge." It is believed that Specifications 3 and 4 of Charge I should be laid under a separate and distinct charge from Specifications 1 and 2 of the same charge. In the indictment of the previous trials, murder and neglect of duty have always been laid under distinct charges, and it is highly irregular to place murder and neglect of duty under the same charge as in the present indictment.

3. Specification 3 of Charge I alleges the accused, YAMAMOTO, Kazuharu to have disregarded and failed to discharge his duty to control the operations of his subordinates on the basis of the murder alleged in Specifications 1 and 2 of the same charge. In Specifications 1 and 2 of Charge I, however,

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it is not alleged that NAMEKAWA, Genzo, deceased, former superior private, IJA participated in the act of the alleged murder. Since it is erroneous to charge the accused, YAMAMOTO, with failure to control and supervise a person who did not participate in this basic offense, we hold that the words, "NAMEKAWA, Genzo, deceased, then a superior private, IJA", should be deleted from Specification 3 of Charge I. If the specification is to be maintained as it is, the phrase "NAMEKAWA, Genzo, deceased, then a superior private, IJA" should also be interposed in Specifications 1 and 2 of Charge I.

4. Specification 4 of Charge I alleges the accused, YAMAMOTO, to have failed to protect the seven civilians in relation to the murder alleged in Specifications 1 and 2 of Charge I. In Specifications 1 and 2, however, it is alleged that YAMAMOTO and the other accused killed the seven civilians acting together with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA. Therefore, it is clear that MIYAZAKI, Aritsune was the senior officer present at the scene of the execution. It is also apparent that it is MIYAZAKI, not YAMAMOTO , who was the person responsible to protect the seven civilians. Therefore, this specification should be quashed.

5. The offense alleged in the specification of the second charge, murder, is entirely identical with those alleged in Specifications 1 and 2 of Charge I, so far as it concerns the first seven victims, namely all the victims except FILIMINA UNTALAN HONDONERO, BALTAZAR UNTALAN HONDONERO, and CAROLINE UNTALAN HONDENERO. Thus this charge is clearly a duplication. Therefore, the names of the seven victims alleged in specifications 1 and 2 of Charge I should be deleted from this specification.

6. At the end of the specification of Charge II, it is alleged, "this in violation of effective law, especially Article 199 of the Criminal Code of Japan," but it is not specifically shown when and where this law was effective. Moreover, it can not be understood from the allegation what laws other than Article 199 of the Criminal Code of Japan are included in the term of "effective law, especially.....". To try and punish them with such vague law is most prejudicial to the substantive rights of the accused, because they can not properly prepare their defense without being apprised of the laws they are alleged to have violated.

In connection with Article 199 of the Criminal Code of Japan, it is evident that the Japanese Criminal Code (including Article 199 thereof) is no longer effective on the South Seas Islands since Japan lost her sovereignty over these islands. When such an American court as this military commission intends to apply the law of Japan, it should show by what authority the application is made. It is clearly illegal to apply the Japanese Criminal Code without showing the authority for the application. Even at the time of the commission of the alleged offense when Japan exercised her sovereignty over the South Sea Islands, the Criminal Code of Japan did not directly apply to the South Sea Islands. The Imperial Ordinance concerning the treatment of judicial affairs of the South Seas Islands was effective in this territory at that time, stipulating that the criminal law of the same substance as the Criminal Code of Japan shall be effective on these islands. Therefore, it is illegal directly to apply the Criminal Code of Japan without referring to this Imperial Ordinance. Besides, a crime to which the Criminal Code of Japan applies is not a war crime but a domestic crime of Japan. Therefore, the specification of Charge II should be quashed.

7. At the end of Specifications 1 and 2 of Charge I, it is alleged, "this in violation of the law and customs of war," but it is not specifically shown what law and what customs the accused violated. Section 27 of Naval Courts and Boards provides:

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"It is not essential to state in a specification that an offense was committed in breach of any Federal Statute, articles of the Articles of the Government of the Navy, law of the state in which the court is sitting, or general regulations, as the court takes judicial notice of such statute, articles, state law, or regulation, under which the charge is laid, but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order,) the same should be set forth verbatim in the specification and proved like any other fact."

The law and customs of war stated in this charge are sure to be international law and international customs, and not the domestic law of the United States. Therefore, they should be set forth verbatim like any other foreign law. If they stand for Article 23 (e) of Hague Convention 1907, etc., it should be alleged so in Specifications 1 and 2 of Charge I. In every case, the accused have made objections regarding this point, and the judge advocate has always replied to it that it is not necessary to set forth the law verbatim because the commission will take judicial notice of such conventions. According to Section 309 of Naval Courts and Boards, however, the commission should not take judicial notice of foreign laws.

6. In Specifications 3 and 4 of Charge I, again, it is alleged "this in violation of the law and customs of war." But what are the law and customs of war which the accused YAMAMOTO is alleged to have violated? As Mr. Justice MURPHY of the United States Supreme Court stated in his dissenting opinion of the YAMASHITA Case,"we can not find any law or custom by which a defeated commander (YAMASHITA) is found guilty of such neglect of duty either in Japan or in the United States," nor can we find any law or customs which provide that YAMAMOTO had a duty to perform under such circumstances. In order to make proper preparation for the defense of the accused YAMAMOTO, we request that international law and customs setting forth such a duty as YAMAMOTO is alleged to have failed to discharge be clearly shown, and that Specifications 3 and 4 of Charge I be corrected accordingly. Then, we shall be able to know if they were effective at the time of the incident, namely, on September 18, 1944.

Respectfully,

KUWATA, Hideo
of
Tokyo, Japan.

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

Eugene E. Kerrick Jr.

EUGENE E. KERRICK, JR.
Lieutenant, U. S. N. R.
Interpreter.

"I (3)"

0132

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS
in re: YAMAMOTO, Kazuharu, et al.

Objection to the Charges and Specifications in the case of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HAYASHI, Umeji, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, SAGARA, Seishiro, UCHIDA, Fumio, delivered by Martin E. Carlson, Commander, USNR, Defense Counsel before the Military Commission convened by the Commander Marianas Area, at Guam, Marianas Islands.

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

First, the twenty accused persons object to the trial in joinder. Section 17, Naval Courts and Boards reads: "Trial in joinder * Accused persons will not be joined in the same charge and specification unless for concert of action in an offense.

"The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge."

C.M.O. 77-1919 states the rule as to when joint trial should not be held. Trial in joinder: When joint trial should not be had:

"The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge. Thus where two or more persons in the naval service take occasion to desert or absent themselves without leave, in company but not in pursuance of a common unlawful design and concert, the case is not one of a single joint offense, but of several separate offenses of the same character, which are no less several in law though committed at the same moment."

"File 26262-5714, G.C.M. Rec. No. 41468."

C.M.O. 1-1929 reads: "It is well settled that the necessary elements for a joint charge and joint trial are that the offense must be one that is not in its nature several, and that there must exist a conspiracy or concert of action.

In Digest of Opinions of the Judge Advocate General of the Army (1901) p. 201 it is stated: "Properly to warrant the joining of several persons in the same charge and bringing them to trial together thereon, the offense must be such as required for its commission, a combination of action, and must have been committed by the accused in concert or in pursuance of a common intent."

In C.M.O. 4-1931 pp. 13-14, the Judge Advocate General of the Navy held: "Parties to the particular offense alleged under the charge: "Striking another person in the Navy", may, under certain circumstances, namely, where common unlawful design, concerted action or conspiracy are involved, be properly joined; but a trial in joinder cannot properly be had unless these circumstances are alleged to have obtained..., the mere fact that several persons happen to have committed the same offense at the same time does not authorise them being joined in the charge. (See also File: A17-9 (3) EN4 (211227) July 23, 1928.)

"J(1)"

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"(2) In view of the foregoing, the proceedings, findings, and sentence were set aside."

We hold that the allegations: "acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA," is a mere conclusion of the pleader in this present case.

We specifically object to those words in specification 1 and 2 of Charge I and in the specification of Charge II and move these words be stricken from the specification.

Wintrop's Military Law, p. 208, states: "But whenever the offense is, in its nature, several there can be no joinder."

In footnote 3 on page 208, Wintrop quotes Hawkins, c. 25, S89, as follows: "Where the offense indicted doth not wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant, without which it would be no offense... the indictment must charge them severally and not jointly."

We hold that the defenses of these joint defendants are antagonistic and it is therefore proper to grant a severance. In support of this we cite Wharton's Criminal Procedure, Vol. 1, page 411, and Wharton cites the following cases: Ala - Hawkins v. State, 25 Ala. 41; Ill. - Maton v. People, 15 Ill. 536; Me. - State v. Soper, 16 Me. 293, 33 Am. Dec. 665; Mass. (1 Gray) 555; Miss. - Mask v. State, 32 Miss. 405; Tenn. - Roach v. State, 45 Tenn. (5 Cold) 39; Fed. U.S. v. Marchant, 25 U.S. (12 Wheat.) 480, 6 L.Ed. 700; U.S. v. Kelly, 4 Wash. cc. 528, Fed. Cas. No. 15516.

In Texas this is so by statute. - Wiby v. State, 22 Tex. App. 408, 3 S.W. 570.

Wharton's Criminal Procedure Vol. 1 page 411 states:

"Where the defenses of joint defendants are antagonistic, it is proper to grant a severance. And this is eminently the case where one joint defendant has made a confession implicating both, and which the prosecution intends to offer on Trial." Citing Com v. James 99 Mass. 438. This present case is exactly in point and we move that the commission quash the charges and specifications.

Not only are Yamamoto, Ichikawa, Ishiyama, Sugimoto, Ichimiya, Ozaki, Tamamoto, Yokoyama, Ezure, Fujitani, Kawaguchi, Ando, Hayashi, Hidaka, Ito, Iwamoto, Nakamura, Okamura, Sagura and Uchida joined in specifications one and two of Charge I and in the specification of Charge II to the prejudice of each one individually but these twenty accused are joined with "other members of the armed forces of Japan names to the relator unknown and acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA." This joining of these twenty accused with others not even known to the prosecution is certainly vague as to numbers and as to persons. All of these twenty accused should be informed who these others are. It is not the burden of the accused to have to prove the specifications are correct and sufficient when the accused are described as above. It is, however, prejudicial to the accused here in court today to so charge them.

"J(2)"

We have always objected to the accused being joined with "others unknown" or as in this instance with "other members of the armed forces of Japan, names to the relator unknown." There has yet in previous trials here on Guam been no answer to our objection or has there been any proof in any previous cases as to who these "others unknown" are. Yet the commission invariably find the allegation and "others to the realtor unknown" proved. Can it be said that the "others to the relator unknown" are not accused of the crime charged in Specification 1 and 2 of Charge I? And under Charge II? Why then, are they alleged as unknown and why are the twenty accused who are named joined with "other members of the armed forces of Japan, names to the relator unknown." The others to the relator unknown are certainly at issue in this trial and the commission should require the allegations to be proved. This is no trivial matter. It prejudices the substantive rights of the accused.

It is important in this case. It was important in the Iwanami case. The commission will remember that in the Iwanami case in Specification 2 of Charge I, Sakagami and Iwanami were charged with murder of two priscners acting with Okuyama..., and "others unknown." The prosecution in that case only produced one witness, Nakamura, Shigeyoshi, who testified Iwanami was not there. Here was the testimony that if believed would limit the crime to only three persons, Okuyama, Sakagami and Nakamura. Nakamura wasn't charged with the crime and he committed suicide and yet the commission found the specification as to "others unknown" proved. If the commission believed that the "others unknown" was Nakamura, then his testimony was as we held objectionable and Nakamura was not a credible witness especially after having committed suicide while still in the status of a witness. Our objection is as fundamental and as important in this case as in the instance we cited in the Iwanami case.

In the list of witnesses which the prosecution has submitted to us appear the names of Nakamura, Kazuo, and Yamada, Kiyoshi, both convicted of similar crimes by this commission and Sano, Giichi, who has appeared many times as a witness in these war crimes trials. It certainly cannot be said that these persons are the "other members of the armed forces of Japan, names to the relator unknown."

The event happened on or about September 18, 1944, about three and one half years ago and yet after all that time the prosecution came before this court today with specifications that allege that twenty accused "and other members of the armed forces of Japan, names to the relator unknown" committed an offense. It is most prejudicial to so charge these twenty accused. We move that the twenty accused be granted a severance from the "other members of the armed forces of Japan, names to the relator unknown."

Clearly there is a limit to the number of the people who were present at this scene. The judge advocate should know the number of persons present and who they were since this case has been investigated for a long time. Can anyone do the act alleged if he were not present at the scene? The judge advocate should know who every person was at that scene because he has gone to trial. Not to name these other persons who are also charged in this specification is most unfair and prejudicial to the substantive rights of all twenty accused.

"J(3)"

After more than two years of investigation of this incident the judge advocate should know for certain who the accused are to be in this particular trial. We do not ask that they be joined in trial because we object to each and every one of these accused being joined with each other in trial, but we do object that here are others who are accused of this same crime and are not named and not brought to trial at this time but are nevertheless joined in trial with these accused under the allegation "and other members of the armed forces of Japan, names to the relator unknown."

If these others to the relator unknown are the prosecution witnesses we shall object to them as witnesses when they go on the witness stand and here and now we object to the allegation "and other members of the armed forces of Japan, names to the relator unknown." If the judge advocate knows who the others are we ask that they be named at this time.

We call the attention of the commission to the rule of evidence laid down in Wharton's Criminal Evidence, Vol. 2, Sec. 714, which reads: "Narratives of past events after the conspiracy is fully executed are to measures taken in execution or furtherance of the common purpose inadmissible against co-conspirators."

State v. Huckins, 212 Iowa, 283, 234 NW 554 holds: "One conspirator does not.....by its execution under his authority, authorize his co-conspirator to make confessions or admissions of guilt for him or to narrate past events."

"When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirators is permitted by an subsequent action or declaration of his own to affect the others." --from Wharton's Criminal Evidence, Vol. 2, par. 714, citing: Logan v. U.S., 144 U.S. 263 36 L.Ed. 429, 12S. ct. 617; Brown v. States, 150 U.S. 93, 37 L.Ed. 1010, 14 Sct. 37; Goll v. U.S., 1667, 419 (cca7th); Hauger v. U.S., 1737 54 (cca7th); Sorenson v. State (cca 8th) 1437, 820; Wht of Manner v. U.S., 377 (2d) 506 (cca10th) 557 (Ed) 506; Condagarda v. U.S., (cca 10th)647 (2d) 182; U.S. v. White, 5 Cranch (cca) 387 Cas. No. 16-675.

Section 33 of Naval Courts and Boards requires that the accused should be described by his rank or rating, Christain name and surname, written at full length. Nowhere in Naval Courts and Boards can we find any authority for describing the accused as "other members of the armed forces of Japan, names to the relator unknown." Section 34 of Naval Courts and Boards relates only to the party injured. This section reads:

"In the case of offenses against the person or property of individuals, the Christain name and surname, with the rank and station, if known. If not known, the party injured must be described as a person "by name to the relator unknown."

We hold that these specifications 1 and 2 of Charge I as well as the specification of Charge II are not definite enough for the accused to prepare their defense and to get witnesses to meet the charge. Citing: People v. Brudy, 272 Sec 401, 112 N.E. 126, Ann Cas 1918 c 540; Brockway v. State, 192 Ind 656, 138 N.E. 83, 26 ALR 69.

"J(4)"

0136

In 27 Am. Jurispradence, page 641, Section 79, it is held "A proper and sufficient allegation of the names of the defendant in the charging part of an indictment or information is essential to the validity thereof and it is the universal rule that the omission of his name therefrom is a fatal and incurable defect." Citing Culpepper v. State, 173 Ga. 779, 161 SE 623, 79 ALR 217.

In 27 Am. Jur. Sec. 183, p. 728: "If the name of a person, necessary to be referred to is alleged to be to the grand jurors unknown, and it appears that the name could have been easily ascertained, this has been held to be a fatal variance," citing State V. Klasuer, 19 N.M. 474, 145, 0 679, Am. Cas. 1917 D 824; Mc Cloy v. State, 47 Tex Crim Rep 124, 80 Sec 524; 122 Am St Rep 678.

In Kerrs Wharton's Criminal Procedure, Vol. I, Section 154 P. 210 it is held: "But if the third party's name be known to the grand jury, or would have been known by inquiry of witness at hand, the allegation will be improper, and the defendant must be acquitted on that indictment."

Section 155 of Wharton's ibid, p. 211 says, "The test is, had the grand jury notice, actual or constructive, of the name: for if so, the name must be averred. Citing Ind. Blodgett v. State, 3 Ind. 403; Mass. Com. v. Sherman, 95 Mass. (13 Allen) 249; Com. v. Glover, Ill Mass. 401; Texas Atkinson v. State, 19 Tex. app 462; Eng., Rex v. Strond, 1 Car. _ K. 187 47 Eng. C. L. 186; Rex v. Robinson, Holt N.P. 595, 3 Eng. C.L. 233.

Not to name these accused is most prejudicial to all of the twenty accused because the accused are thereby prevented from calling certain persons who may be able to testify for them if they are not accused and not naming all the accused or describing the victims, or the date of the crime exactly, prevents the accused from knowing for a certainty the crime with which they are charged and prevents them from setting up as a defense the absence of the accused from their command when the crime was commited. Three and one half years ago is a long time and time gradually wears out proof of innocence.

We make a motion for a more Definite Statement and for a Bill of Particulars in the case of Yamamoto, Kazuharu and the nineteen other accused:

In behalf of all twenty of these accused we make this motion for a more definite statement of the charges and for a bill of particulars in order to enable the accused to prepare for trial so that they may be apprised before hand of the particulars of the charge which he is expected to meet. In order to effectuate justice and not to impose an undue burden upon these twenty accused who can neither read, write, speak or understand English, French or any other language than Japanese. (See Rule 12(e) Federal Rules of Civil Procedure for the District Courts of the United States and the case of Herman v. Mutual L. Ins. Co. (C C A 3d) 1087 (2d) 678, 127 ALR 1458.)

We pray that specifications 1, 2, 3 and 4 of Charge I set about the law and customs of war especially which it is alleged was violated.

"J(5)"

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The object of this motion is to make more definite and certain this Charge I. See 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 at this time with a certainty just what law and what customs of war they are charged with having violated.

This is particularly necessary in the case of Yamamoto, Kazuharu as regards to Specification 3 and 4 of Charge I. We know of no international law or customs of war or anything in all history which justified such a charge against Yamamoto, Kazuharu.

Mr. Justice Murphy in the dissenting opinion appreication of Yamashita, Yamashita v. Styer, Cited as 66 S. ct 340 at 347 says:

"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."

Can the prosecution cite any case at all or any international law, or an instance in all of history which holds that the senior officer from a unit has a legal duty to perform to protect individuals from being killed by others. Even in civil society today you can let a man be killed before your eyes when you might have saved him without danger to yourself and avoid any civil or criminal liability. So the civil and criminal law viewed from the progress of society is its lack of humanity.

Grant you there is a moral obligation but so far there has been no legal rules worked out or put into effect to give effect to the moral obligation to try to save a man from being killed.

There is no law or customs of war which imposed upon Yamamoto an obligation to try to save any one or all ten of the victims from being executed by Lieutenant Colonel Miyazaki.

The accused Yamamoto, Kazuharu cannot properly prepare a defense to charges based upon vague and indefinite references in certain of the Hague Convention and Geneva Red Cross Convention No. IV of October 18, 1907. See the case of Gross v. Big Creek Development Co., 75 W.Va. 749, 84 S.E. 75 LRA 1915 E 1057.

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

41 Am. Jr. "Pleading" Sec. 271.

A bill of particulars should be granted in furtherance of justice, citing the following cases:

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Filton v. Beecher 59 N.Y. 176, 17 Am Rep. 337; Hawkins v. Lassel, 43 SD. 191, 178 N.W. 731 citing RCL; May v. Ill, CRC, 129 Tenn. 521, 1678 W 477; LRA 1915 A 781, Am. Cas. 1916 A 213; Richmond and DR Co. v. Payne, 86 Va. 481, 10 SE, 749, 6 LRA 849; Turner v. Great Northern RR Co. 15 Wash 213, 46 P 243, 55 Am. St. Rep. 883.

A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused, citing the case of Williams v. Chattanooga Iron Works, 131 Tenn. 683, 176 SW. 477, LRA 1915 A 781, Am.Cas. 1916 A 213.

It is my belief that there is good ground to support this motion.

This motion is not interposed for delay but to make the charges and specifications more definite and certain and in order to effectuate justice and to insure a fair trial for these twenty accused who can neither read, write, speak nor understand English.

If this motion is not granted we move that the words, "and other member of the armed forces of Japan names to the relator unknown" be stricken from Specification 1 and 2 of Charge I and the specification of Charge II.

In connection with our objection to these charges and specifications on the grounds of misjoinder we hereby enter a motion for severence on the part of each and every one of the twenty accused. Each of the twenty accused makes a motion for severance from the other nineteen accused on the grounds of misjoinder of parties as set forth above.

We further object to the charges and specifications because all the accused are not included in all charges.

The rule as laid down in 27 Am. Jur. Section 123 page 683: "Different defendants cannot be charged in the same indictment where they are not al included in each count thereof." Citing McElroy v. U.S. 164 US 76, 41 L.Ed. 355, 17 S.Ct. 31; Culjak v. U.S. (CCA 9th) 537 (2d) 554 82 AIR 480.

We move therefore that the charges be quashed.

We further object to Charge II because of duplicity, and as to specification 3 and 4 of Charge I because of duplicity. The rule is that one offense only can be charged in one count of an indictment. We call the commission's attention to specification 1 and 2 of Charge I wherein Yamamoto, Kazuharu with the nineteen other accused and Miyazaki and others to the relator unknown, is charged with wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault strike, kill and cause to be killed by shooting with firearms, and then in specification 3 and 4 of Charge I Yamamoto is charged with neglect of duty for the same acts he is charged with doing wilfully under specification 1 and 2 of charge I and what he is charged with.

Om 28 Am.Jur., Section 124, pp 683-684, the rule is: "Duplication in

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criminal pleading is the joinder of two or more distinct and separate offenses in the same count of indictment or information. 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. (citing Hamilton v. State 129 Fla. 219, 176 So. 89, 112 ALR 1013 citing RCL).

All the accused object to Specification 1 and 2 of Charge I and the specification of Charge II labeled "Murder" because these specifications do not follow the sample specification in Section 53, Naval Courts and Boards. These specifications not only contain allegations of statutory murder such as "this in violation of the law and customs of war" but allege the elements of common law murder. This sort of pleading is vague and the defendant does not know if he is being charged with common law murder or statutory murder. We object to the common law specification of murder in both specifications 1 and 2 of Charge I and move that all such allegations as to common law murder be stricken from these specifications. This on the basis that there are no common law offenses against the United States. None of these specifications allege that the victims died within a year and a day. This must be alleged in all the specifications and particularly of the specification of Charge II.

In Am. Jur. Criminal Law page 158 we read: "There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable (citing Pettit v. Walshe, 194 U.S. 205; 18 U.S.C.A. Para. 451 et seq.).

The strict common law is that all crimes are local. If a common law offense is alleged you must find that the offense charged is not a common law offense and particularly so when the Federal Case of Pettit v. Walshe holds there are no common law offenses against the United States and that the crime of murder and manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable.

Remember that at common law it was necessary to allege the name of the person against whom the offense was directed, "And at common law and under the practice in some states, it is vital importance that the name of the person against whom the offense was directed be stated with exactitude." 27 Am.Jur. Sec. 80 p 643 (citing people v. Gormach 302 Ill. 332, 134 N.E. 756, 29 ALR 1120; Com. v. Snow, 269 Mass. 598, 169 N.E. 542.)

We object because specification 1 and 2 of Charge I do not show the statute of murder which has been violated. Not to set out the statute verbatim is prejudicial to the substantive rights of the accused and he is precluded from preparing a proper defense not being fully apprised as to the law he has violated. In the specification of Charge II the statute is set out so it should be set out in the specification under Charge I.

"J(8)"

0140

The specification 1 and 2 of Charge I allege "This in violation of the law and customs of war." What law and what customs of what? We hold that not to set out such law and customs is prejudicial to the substantive rights of the accused. Among other things he is not fully apprised of the law and the customs he has violated, and cannot prepare a proper defense.

In Kerr's Wharton's Criminal Procedure, Vol. 1, Sec. 269, the rule is laid down that "Where a statute prescribes or implies the form of indictment, it is usually sufficient to describe the offense in the words of the statute, and for this purpose it is essential that these words should be used." The following cases cited: Hale 517, 526, 535; Fost. 423, 424; Ala. State v. Click, 2 Ala. 26; Iodino v. State, 25 Ala. 64; Mason v. State 42 Ala. 534; Cal. People v. Martin 32 Cal. 91; People v. Murray, 67 Cal. 103, 7 Pac 178; People v. Buck, 34 Cal. 661; Ga. Jackson v. State, 76 Ga. 551; Ky. Com. v. Turner, 71 Ky. (8Bush) 1; La. State v. Pratt, 10 La. Ann. 191; Me. State v. Gurney, 37 Me. 149; Mass. Com. V. Fenno, 125 Mass. 387; Mo. State v. Brister 90 Mo. 514, 2 SW 834; Neb. Denton v. State, 21 Neb. 448 32 N.W. 222; N.H. State v. Rust 35 N.H. 438; N.J. State v. Gibbons, 4 N.J. 438; N.Y. People v. Allen, 5 Den. 76, Philips v. People, 72 N.Y. 334; N.C. State v. Schuler, 19 S.C. 140; Tex. Kinney v. State 21 Tex. App. 348, 17 SW 423; Vt. State v. Hoover 58 Vt. 496. 4 ATL 226; Va. Com. v. Hampton, 3 Gratt, 590; Howell v. Com. 5 Gratt. 664; Fed. U.S. v. Lancaster, 2 Me. L.C.C. 431, Fed Cas. No. 15556; U.S. v. Pond, 2 curt. CC. 265, Fed. Cas. No. 16057; U.S. v. Andrews 2 Paine C.C. 451 Fed. Cas. No. 14455; Eng. Rex v. Ryan, 7 Car & P 854, 2 Moody 15, 32 Eng. C. L. 907. This we hold means the words of the statute and not some translation of the statute.

Further, in Section 271 of Wharton's Ibid, Sec. 271: "An indictment, when professing to recite a statute, is bad if the statute is not set forth correctly," - citing Com. v. Burke, 81 Mass. (15 Gray) 408; Com. v. Washburn, 128 Mass. 421; Butler v. State, 3 Me. (C. (SC)383; United States v. Goodwin, 207 Fed. 237.

In 27 Am. Jur., Sec. 100, we read: "Although early authorities are to be formed which imposed a strict rule that a statutory offense must be charged in the exact words of the statute"citing Hess v. State, 5 Ohio 5, 22 Am. Dec. 767. The exact words of the statute are not set out but only a translation. For purposes of the record we move that the Japanese statute be set out in Japanese together with the translation. No translation is exact and therefore the Japanese statute must be set out not in English translation.

Even if this law and these customs of war be the United States Military Law and U. S. customs of war that it is charged these Japanese violated, we hold this law and the customs of war should be set out verbatim in view of the fact that accused are on the face of the specification not subject to the jurisdiction of the United States courts having been members of the armed forces of Japan, all attached to the military installation of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, ... on or about September 18, 1944... The accused are all former officers and enlisted men of the Japanese army and still citizens of Japan, The law does not presume that any of these accused Japanese has knowledge of our statute law. We even maintain that there is a presumption that the common law such as we know it in the United States does not exist in Japan.

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So that the rule laid down in Underhill Criminal Section 45, page 58, to the effect: "Unless otherwise shown, the presumption exists that the law of another state is the same as that of the former state, though only as to the common law and not statutory laws." does not create a presumption that any of these Japanese accused know our common law. The presumption is that they did not know either our common law or our statutory law. Not a single one of these accused can speak or understand English.

We are at a loss to know what law it is then that these accused are charged with having violated. What does the judge advocate mean by, and how is the Commission to know, but far more important what does the accused understand by the words, "This in violation of the law and customs of war." This the accused must know before he can make a proper defense. Not to inform these accused is prejudicial to their substantive rights. It denies to these accused due process of law and the equal protection of the law because of the failure to state the evidentiary particulars of the offense which the law and customs of war make an offense.

The specifications are vague and indefinite as to what law and what customs of war are alleged to have been violated by these accused. See 27 Am. Jur. Sec. 111 Footnote 12, wherein the following cases are cited: Com. v. Sinclair, 195 Mass. 100, 80 N.E. 799 11 Amm. Cas. 217; Com. v. Suell, 189 Mass. 12, 75 N.E. 75, 3 LRA (NS) 1019; State v. Van Pelt, 136 N.C. 633; 49 S.E. 177, 68 LRA 760, 1 Ann Cas. 495.

It was Mr. Justice Rutledge in his dissenting opinion in the General Tomoyuki Yamashita, Petitioner case who said: "It is not in our tradition for anyone to be charged with crime which is defined after his conduct, alleged to be criminal has taken place; or in language not sufficient to inform him of the nature of the offense so to enable him to make defense."

Not only are these accused charged with a violation of the law of war but they are charged with having violated the customs of war. According to Section 5(d) on page 3 of Naval Courts and Boards there are seven principal conditions to be fulfilled in order to constitute a valid custom. We ask that the judge advocate be required to definitely state what these customs of war are that the accused are charged with having violated. How is the commission to know and how are the accused to know if the custom is: (1) long continued; (2) certain and uniform;(3) compulsory; (4) consistent; (5) general;(6) known(7) not in opposition to the terms and provisions of a statute or lawful regulation order.

Certainly the customs alleged to have been violated should be set forth. Not even the defense counsel know by reading the specifications what is meant by "this in violation of the law and customs of war." "Yamamoto, Kazuharu, then a first lieutenant, IJA, while officer in charge of the Sumida Unit personnel at the scene of the execution, and while senior officer present from the Sumida Unit at said scene of execution," unlawfully disregarded and failed to discharge his duty as officer in charge of personnel from said unit and as senior officer present from said unit to control the operations of members of said unit and persons subject to his control and supervision---'this in specification 3) and in specification 4 unlawfully disregard and fail to discharge his duty, to take such measures as were within his power and appropriate in the circumstances to protect as it was his duty to do."

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Section 105 of Naval Courts and Boards says: "A duty may be imposed by a law, regulation, order or custom of the service in force at the time of the commission of the offense."

In Specification 3 and 4 of Charge I it is alleged that Yamamoto, Kazuhera failed to discharge his duty....in violation of the law and customs of war. Since when have either the law or customs of war defined what the duties of the senior officer present from the Sumida Unit in time of war are and imposed a penalty upon the senior officer present from the Sumida Unit for failure to discharge his duty under battle conditions as alleged in these two specifications.

I quote again from the dissenting opinion of Mr. Justice Murphy in the Yamashita case: "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 responsibility 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 forms of conduct are then extremely unlikely to be used informing a judgment is an unfortunate but unescapable 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 judgement may be in a particular instance." Yamamoto wasn't even a commanding officer. He is only alleged to have been the senior officer present from the Sumida Unit. What law, regulation, order or custom of the service imposed on Yamamoto a duty as alleged and as Section 105 of Naval Courts and Boards says, it must have been in force at the time of the commission of the offense. And as Sec. 153 of Naval Courts and Boards says, the degree of negligence necessary to support criminal liability must be gross and culpable. These two specifications do not even set forth a crime and we move they be quashed.

Not only are specifications 3 and 4 of Charge I objected to on the grounds that these specifications are not the basis for a war crime but these specifications are objected to because these specifications are founded upon the same incidents as is the basis for the crime charged in specification 1 and 2 of Charge I and the specification of Charge II.

In C.M.O. 2-1932, p. 13, it was held that "negligence and willfulness are the opposites of each other. They indicate radically different mental states."

The same distinction between negligence and willfulness was made by the U.S. Circuit Court of Appeals, Seventh Circuit (64 Fed. 823) the court holding:

"Negligence is negative in its nature, implying the omission of duty, and excludes the idea of willfulness. Willfulness or intentional injury implies positive and aggressive conduct and not mere negligent omissions of duty."

See also 135 Fed. 74; 89 Ed. 374 Ed. 431.

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Section 53, Naval Courts and Boards says: "The degree of negligence necessary to support criminal liability must be gross and culpable."

In C.M.O. 1-1939 the Judge Advocate General said: "While there is no rule of law which prohibits making identical facts and circumstances the basis of more than one charge, it has long been the policy not to do this when the offense falls clearly within the definition of a specific article of the Articles for the Government of the Navy, and there are no aggravating circumstances to be set forth under one charge that will distinguish it from the other. (File: MM-Frey, Reinhold/ A17-20(390203), April (and 26-1939) citing C.M.O. 10-1926, p. 8; C.M.O. 8-1927, p. 6; C.M.O. 1-1937, p. 6 and Sec. 457, Naval Courts and Boards.

C.M.O. 10-1926, p. 8, holds: "As a matter of policy the use of two or more charges is not approved where the identical facts are made the basis of both, and where there are no aggravating circumstances set forth under one charge which distinguish it from the other."

In C.M.O. 8-1927, p. 6, the policy of the Navy Department is again reiterated and we read: "The Navy Department's instructions merely mean that as a matter of policy the rule which permits such duplication of charge is not available or when the offense falls quite clearly within the definition of a specific article, where there are no aggravating circumstances distinguishing it from the ordinary case contemplated by such article, and where there is no necessity to resort to multiplicity or plurality of charges."

Can the judge advocate show the necessity for this duplication?

So in specification 1 of Charge I Yamamoto is charged with willfully doing an act and in specifications 2 and 3 of Charge I he is charged with neglecting to do an act.

Since Charge I is the more serious charge, we move that in keeping with Navy Department policy that specifications 3 and 4 of Charge I be quashed.

Section D-13, Naval Courts and Board states: "In the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court-martial practice, and such specification should show on its face the circumstances conferring jurisdictions,..."Section 328 of Naval Courts and Boards states four conditions are necessary to the jurisdiction. (c) "There must be jurisdictions as regards (1) place, (2) time, (3) person, (4) offense."

We object to specifications 1 and 2 of Charge I on the grounds that on the face of the charges and specifications the murder having been alleged to have been committed September 18, 1944 and the charges and specifications are dated January 31, 1948, the offense charged is barred by the statute of limitations.

Murder as an offense is provided for as follows: Section 53, Naval Courts and Boards:

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"Murder. This is provided for in the 6th A.G.N. It must have been committed by a person belonging to a public vessel of the United States and outside the territorial jurisdiction thereof."

Section 336 Naval Courts and Boards reads as follows:

"The 6th A.G.N. provides that, "if any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction of any particular state or the District of Columbia thereof, he may be tried by the court martial taking jurisdiction of murder committed within the boundaries or territorial waters of any of the States of the United States or of the District of Columbia. If the crime is committed on the high seas or within a territory or possession of the United States, or within a foreign country, a court martial having assumed jurisdiction thereof may proceed to a final judgment."

Article 6, A.G.N., before it was amended read:

"Murder. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court martial and punished with death. (R.S. sec. 1624, Art. 6)"

This must be the law applicable because Article 6, A.G.N. was amended by Public Law 245 on December 4, 1945. "AlNav 420-45 - 1843 Amendment to Articles for the Government of the Navy, J.A.G. 8 December 1945.

The specifications of Charge II alleges the offense were committed September 18, 1944.

We hold that these accused cannot be punished for the offenses alleged under either Charge I or Charge II because of the limitations as to trials.

We ask that the Commission take judicial notice in accordance with Section 309 of Naval Courts and Boards of Article 61, Title 34, U.S.C., Section 1200, which reads as follows:

"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 manifest impediment he shall not have been amenable to justice within that period. "R.S., Section 1642, Article 61; February 25, 1895, c 12828 Stat. 680)"

The accused YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIKAWA, Zonzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HAYASHI, Umeji, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, SAGARA, MASASHIRO, and UCHIDA, Fumio object to the charges and specifications on the following grounds:

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All the specifications allege Yamamoto, Kazuharu, then a First Lieutenant, IJA, and each and every one of the twenty accused are so described with their rank or rate at the time of the incident. Under the second charge there is one specification. This specification alleges the offense charged is "in violation of effective law especially Article 199 of the Criminal Code of Japan." Yamamoto, Kazuharu and the other nineteen accused were still officers and enlisted men of the army at the time of the indident and after the termination of hostilities -- August 1945 -- all accused were regularly demobilized. Article D-13, page 490, Naval Courts and Boards, 1945, states "in the case of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court martial practice, and such specification should show on its face the circumstances conferring jurisdiction, as for example, that the offender was an inhabitant of a district under military government." Quite to the contrary the specifications show on the face a clear lack of jurisdiction. Especially is this true of the specification under Charge II because this specification allegest the offense as "in violation of effective law, especially Article 199 of the Criminal Code of Japan."

We will enter a plea to the jurisdiction of this commission to try all twenty of the accused at the proper time. But since Naval Courts and Boards Section D-13 requires that all specifications show on the face "the circumstances conferring jurisdiction" the accused object to them all and especially to the specification under Charge II.

Section D-14, Appendix D, Naval Courts and Boards requires that the record of this court be transmitted to the Judge Advocate General to be revised and recorded. The requirements of Section D-13 of Naval Courts and Boards should be complied with in this present case and the specifications should be amended to show jurisdiction as required by Naval Courts and Boards.

If the prosecution are relying on the precept to give them jurisdiction, where in law they have no jurisdiction, we still maintain Naval Courts and Boards should be complied with and the specifications show on the face "the circumstances conferring the jurisdiction."

If the function of pleading is to assure a fair and just prosecution of the case against the accused and give them a fair opportunity for their defense then the prosecution should follow the safeguards and the requirements set forth particularly under Section D-13 of Naval Courts and Boards. Surely it cannot be said that it is necessary to relax the rules for Naval Courts and Boards at this early stage of the trial, in fact before the trial is really underway. If so, in fairness to those accused, they should be so informed.

The specification of the second charge doesn't show jurisdiction over the offense. The offense alleges the crime of murder against ten persons, Spanish nationals, a Colombian national, a national of the United States of American and three persons residents of Yap Island.

This does not conform to the basic jurisdiction of military commissions or to the jurisdiction as set forth in the precept.

"J(14)"

0146

We are not questioning the jurisdiction of the Commission over the persons or over the offense, that will be questioned in our plea to the jurisdiction, but we are pointing out to the Commission how important it is for the Judge Advocate in framing the specifications to comply with Naval Courts and Boards particularly Article D-13, page 490, Naval Courts and Boards, which reads: "and such specification should show on its face the circumstances conferring jurisdiction. As for example, that the offender was an inhabitant of a district under military government." As we said before, the specifications show a lack of jurisdiction and it isn't enough that the judge advocate says at this time that he will in due course prove to the Commission that they have jurisdiction. We move that the specifications be corrected to comply with Section D-13, Naval Courts and Boards.

The twenty accused further object to the specification of Charge II because ten separate offenses are charged in one specification. We ask that this specification therefore be amended and ten specifications be drawn up, one for each offense. Under Section 199, Criminal Code of Japan, translated by William J. Sebald, this ruling is set forth: "Even when murder is committed as a result of one single resolution, as many cases of murder are formed as there are victims." 35 S.C. The Criminal Code of Japan, translated and annotated by William J. Sebald, LLB, International Lawyer, Kobe, Japan, 1936.

We further object to the specification of Charge II because it violates Article V of the Constitution of the United States of America which reads as follows: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or in public danger."

This Charge II is not by a Grand Jury; this shows clearly on its face and it is therefore objectionable. All twenty of these accused are now civilians; they are not, therefore, in actual service; they can only be made to answer for a capital offense, Murder, an offense set forth in the specification as an offense in violation of the Criminal Code of Japan.

We move, therefore, that this specification of Charge II be quashed as against these twenty accused.

We object to all the specifications on the ground that they do not show jurisdiction as is required by Section D-13, Naval Courts and Boards.

According to Wharton's Criminal Procedure, Vol. 1, Section 369, the indictment, in this case the charges and specifications, must show the offense within the statute of limitations or if excluded by statute should by strict practice allege facts of exception. I quote section 369: "Indictment should aver offenses within statute or if excluded by statute should, by strict practice aver facts of exception." Ordinarily, as we have seen, the offense must be laid in the indictment with the time fixed by the statute of limitations."

Section 179, Whartons, Ibid, reads:

"Time should be within limitation. Where a time is limited by general statute for prefering an indictment, the time laid should ordinarily appear

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to be within the time so limited, or aver that the case falls within statutory exceptions." - citing Wharton's Criminal Evidence, Sec. 105; Ala. Shelton v. State, 1 Stew. and P. 208; Ark. Gill v. State, 38 Ark. 524; Cal. People v. Miller 12 Cal. 291; Fla. Anderson v. State 20 Fla. 381; Ga. McLane v. State4 Ga. 335; Ill. Lamkin v. People 94 Ill. 101; Ind. State v. Rutt, 8 Black f. 195; Hatwood v. State, 18 Ind. 492; Me. State v. Hobbs, 39 Me. 212; Mich. People v. Gregory, 30 Mich. 371; N.H. State v. Robinson 29 N.H. (9 Fost.) 274; State v. Ingalls, 59 N.H. 88; Tex. Shoefercater v. State, 5 Tex. App. 207; Vt. State v. J.P. i Tyl. 283; Vaughn v. Congdon, 56 Vt. 115, 48 AmRep. 759; Wash. State v. Myebery, 56 Was. 386, 405 Pac. 624; Fed. Cas. Co. 16742 State v. Owen, 13 Sawy. 57, 32 Fed. 537; Eng. Rex v. Brown, M. _ M. 163 22 Eng. C.L. 495.

We make a motion to quash the pleading, i.e., all specifications of both Charge I and Charge II, particularly on the grounds of duplicity and misjoinder. We have pointed out the defects that are apparent on the face of the specifications.

In 27 American Jurisprudence, Sec. 148, page 704, the rule is laid down that:

"A motion to quash for misjoinder, either of parties or offenses, is addressed to the sound discretion of the court. (citing Culjak v. U.S. (CCA 9th) 53 F(3d) 554, 82 ALR 484). The guiding rule in the disposal of such a motion is that the court shall consider whether some of the defendants may be prejudiced by having evidence applicable to other of the defendants so involve them as to react to their prejudice with the jury, or imperiously effect their right to peremptory challenges. (citing 82 AIR 434.)

Sec. 151 of 27 American Jurisprudence, page 705, reads:

"It is a well established rule in many jurisdictions that where a person in custody charged with crime is compelled over his objection to give testimony before the grand jury, which is made the basis of an indictment against him, the indictment should be quashed, (13)...The same result follows where a witness is subpoenaed before a public officer, and compelled to incriminate himself, and a copy of the transcript of his examination, taken by a stenographer, is turned over to the grand jury, which thereupon find an indictment against the accused.18."

Footnote 13, State v. Ponce, 173 Ind. 99, 87 N.E. 488, 25 LRA (NS) 818, 25 LRA.(NS) 818, 140 Am. St. Rep. 240, 20 Ann. Cas. 1180; Siklek v. Comm. 133 Va. 789, 112 S.E. 605, 27 ALR (dictum) State v. Lloyd, 152 Visc. 24, 139 N.W. 514, Ann Cas. 1914 c 415 Armo; 27 ALR 148 28 LRA 318; 47 LRA (N.S. 1210, 1214, 6 Arm. Cas. 606; Arm Cas. 1914 c 418.

Footnote 18 State v. Rizon, 18 Minn. 573, 231 N.W. 217, 68 ALR 1501.

Particularly at this time do we make a motion on the part and in behalf of each and every one of the two accused individually and singly for a severance from the other nineteen accused on the grounds of misjoinder and for the reasons set forth in these objections to the charges and specifications.

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All of those accused while in custody were required to sign written statements which statements were made the basis of the charges and specifications against them and therefore according to the rule laid down in 27 American Jurisprudence, Indictments and Informations, Section 151, page 705, the charges and specifications should be quashed. Citing State v. Pierce 173 Ind. 99; Siklek v. Cowin 133 Va. 789; State v. Lloyd 152 Wisc. 24.

In view of the many objections which we have made to the charges and specifications the only practical thing to do is not to try to amend the specifications but to quash the specifications and the charges as against these accused and we so move.

We ask that the Commission not only rule on the charges and specifications as to whether they find them in due form and technically correct, but that the commission rule on our motions herein before stated.

Martin E. Carlson

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

16 February 1948.
Guam, Marianas Islands.

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SPECIAL PLEA IN BAR OF TRIAL ON BEHALF OF

ISHIYAMA, ZENZO

Delivered by

Commander Martin E. Carlson,
U. S. Naval Reserve.

Counsel for the Accused.

16 February 1948.

If it please the commission.

At this time on behalf of the accused ISHIYAMA, Zenzo we hereby make this plea in bar of trial for the arrest of further proceedings as to ISHIYAMA, Zenzo on the grounds that his mind is so impaired in function and so deranged as to induce deviations from normal conduct.

In December of 1944 he had typhus fever and since that time he has had a dull pain in his head and a ringing in his ears. When he was going back to Japan to be demobilized he became irrational and his conduct and behavior became such that he had to be confined as a mental patient on the ship.

When the ship arrived in Japan, ISHIYAMA, Zenzo was sent to a mental hospital and there confined and after some treatment as a mental patient he was demobilized. He remembers little or anything regarding this.

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

We pray, therefore, that the charges and specifications be quashed as to ISHIYAMA, Zenzo.

Respectfully,

Martin E Carlson

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

"K"

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SPECIAL PLEA IN BAR OF TRIAL ON BEHALF OF

FUJITANI, YOSHIO

Delivered by

Commander Martin E. Carlson,
U. S. Naval Reserve.

Counsel for the accused.

16 February 1948.

If it please the commission.

At this time on behalf of the accused FUJITANI, Yoshio we hereby make this plea in bar of trial for the arrest of further proceedings as to FUJITANI, Yoshio on the grounds that his mind is so impaired in function and so deranged as to induce deviation from normal conduct.

On or about January 28, 1948 while he was confined at the War Criminal Stockade, Guam, he tried to commit suicide. He has been depressed, anxious, and moody from time to time particularly since that date.

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

We pray, therefore, that the charges and specifications be quashed as against FUJITANI, Yoshio.

Respectfully,

Martin E. Carlson

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

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山本一治等の紀罪に対する裁判權の抗弁

昭和二十三年二月十六日

弁護人　鈸田日出夫

全被告は本件起訴罪状項目中に主張されてゐる紀罪の中には當軍法委員會の管轄に屬しないものがあるを考へるので茲に裁判權の抗弁を提出する次第である。

(1) スペイン人に対する紀罪に付て

當軍法委員会の如き米国の裁判所が日本人たる被告等を裁判し得るのは偏に日本が其の降伏に際してポツダム宣言を受諾したるに由るものである。同宣言第十項は其の一部に於て「吾等の俘虜を虐待せる者を含む一切の戰爭紀罪人に対しては厳重なる處罰を加へらるべし」を規定してゐる。此の規定こそは日本戰爭紀罪人處罰に関する根本法であり又最高法である。此の規定に基き降伏後に於ける米国初期の対日方針は其の第三部政治6.戰爭紀罪人の項に於て「最高司令官又は適當なる聯合国機関により戰爭紀罪人として告発せられたる者(聯合国俘虜又は其の国民を虐待せる廉により告発せられたる者を含む)は逮捕せられ裁判にかけられ有罪の判決ありたるときは處罰せらるべし、聯合国中の他の国より其の国民に対する紀罪を理由に要求せられたる者は最高司令官により裁判の爲又は証人として或は其の他の理由により必要とせられざる限り當該國に引渡し拘禁せらるべし」と述べてゐる。

戰爭紀罪人とは單に戰爭紀罪を犯した者の謂に外ならぬが、ポツダム宣言や米國の対日初期方針に於ては未だ戰爭

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犯罪の何たるやは明らかにせられてゐない。日本に対する戦争犯罪の範囲が法律上正式に明らかにせられたのは漸く1946年1月19日に發布された極東國際軍事裁判所條例を俟つてである。然し乍ら米國の初期の対日方針に於ても戦争犯罪の観念は或る程度迄之を窺知し得るのである。 全般的政策に関する

米國の初期の対日方針は降伏後の日本に対する初期の聲明であり、大統領の承認を経たものであつて、聯合國最高司令官及米國内関係各省及機関に対し指針として配布されたのであるから、日本占領政策に関する米國最高官憲の意図を表明したものであることを疑を容れる余地はない。同時にそれは総べての聯合国を代表する日本管理の基本方針でもある。

吾人は之に依つて米國最高官憲が日本の戦争犯罪人に付て如何なる考を懐いてゐたかを或る程度迄窺知し得るのである。即ち之に依つて窺知し得る所は、(1)戦争犯罪人は聯合國若しくは聯合国中の一國若しくはそれ以上の國の裁判に服すべきこと、及び(2)戦争犯罪とは聯合國の俘虜及び其の國民に対する犯罪であることである。此の結論は極めて自然である。何となればポツダム宣言第一項に「吾等合衆國大統領、中華民国政府主席及グレート、ブリテン國総理大臣は吾等数億の國民を代表して協議の上日本国に対し今次の戦争を終結するの機会を与ふることに意見一致せり」と述べられてゐる様に、ポツダム宣言は直接には米、英、支三國と日本との戦争を終結に導く為の條件或は終戦後に於ける其の間の関係を規律する根本法なのである。其の他の聯合國や其の属領は第二次世界戦争中米、英、支三国と行動を共にし之に

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協力したものであるから、ポツダム宣言は亦総べての聯合國と日本との関係にも拡張され得るであらう。然し乍らそれは第二次世界戦争中の中立國と日本との関係を規律する法では絶対にない。何となれば中立國はポツダム宣言に加入してゐないし、又加入し得べきものでもないからである。換言すれば、日本は中立國との関係に於てポツダム宣言に拘束される理由は微塵もないのである。米國政府が其の対日初期方針に於て日本の戦争犯罪人を前述の如く限定したのも亦此の理に因るものと思はれる。吾人は玆に繰返して云ふ戦争犯罪とは聯合國の俘虜及び其の国民に対して加へられた犯罪であると。然るにスペイン國は第二次世界戦争中終始中立を維持した僅かなる数国中の一國である。米國は聯合國中の如何なる一國にも代つて其の國の俘虜や國民に対して加へられた日本人の犯罪を裁判する権能を有するかも知れないが、中立國スペインに代つて其の國民に対して加へられた日本人の犯罪を裁判する権能はポツダム宣言からは導き出し得ない。吾人は又米國に斯かる権能を賦与した如何なる國際條約、協定等の一つをも知らぬ。若しあらば示して貰ひたい。又それを示すことは検察当局の義務でもあると思ふ。故に本件起訴中五人のスペイン人即ち Luis Blanco y Suarez, Mariano de la Hoz, Elias Fernandez Gonzalez, Francisco Hernandez y Escudero 及び Ebrilio Villa に対する犯罪は戦争犯罪ではないから、日本戦争犯罪人の審理を其の目的の一手とする本

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軍法委員会の裁判し得べき犯罪ではない。若し此等の犯罪をも本軍法委員会が裁判するとせば、實にポツダム宣言に違反するのみならず、対日初期方針中に表明せられた米國最高官憲の意図にも背馳することになるであらう。此の故にスペイン人に対する犯罪の公訴は裁判権欠缺の故を以て棄却せらるゝを相当と思料する。

(2) 第二起訴中に主張された犯罪に付て

極東國際軍事裁判所條例第五條第之項は戰爭犯罪の種類を掲げてゐる。即ち(1)平和に対する罪(2)通例の戰爭犯罪即ち戰爭法規又は戰爭慣例の違反(3)人道に対する罪が之である。之に依つて戰爭犯罪の範囲は法律上明確に規定されたのである。上記三種の外には戰爭犯罪はないのである。然るに第二起訴の犯罪は現行法特に日本刑法第199條に違反してゐると主張されてゐる。日本刑法違反の犯罪は前記戰爭犯罪の三種の中の何れにも該当しない。本軍法委員会の裁判し得る日本人は戰爭犯罪を犯した戰爭犯罪人に限るのである。されば戰爭犯罪に非ざる第二起訴の犯罪が当軍法委員会の管轄に属しないことは勿論明白である。

検事が此の自明の理を無視して日本刑法違反の犯罪を当軍法委員会に起訴したに付ては其相当の理由がなければならぬ。其故に吾人は起訴事実項目に対する異議に於て米國裁判所が日本の法律を適用するに当つては其の根據を示すべきことを要求したのであるが、検事は吾人の此の要求に対して何等答ふる所がなかつた。思ふに

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吾人は以上の議論に満足することなく更に進んで検事の起訴理由を探究しよう。

1907年ヘーグ陸戦の法規慣例に関する條約に附属する陸戦條規第43條は「國の權力が事実上占領者の手に移りたる上は占領者は絶対的の支障なき限り占領地の現行法律を尊重して成るべく公共の秩序及び生活を回復する為め施し得べき一切の手段を盡すべし」と規定してゐる。領土所属国政府の占領地に於ける従来の權限は立法、司法、行政の何れたるを問はず、敵軍に依る占領を其に一切終止するか、或は爾占領軍の認許に依つて(現在の日本の地位の如し)始めて継続することを得るのである。随て占領軍は占領地に於ける従来の法令を一切改廃して、自ら之れに代る法令を制定公布施行し得るのである。並し斯く従来の法令を改廃してそれに代る凡百の新法令を制定公布するには相当の時間を要するであろう。而も其の間占領地を無法状態に放置することは占領地の法律秩序を根柢的に破壊し、徒らに占領地住民の生活を混乱に陥れる結果となり、斯くては一日も速に占領地~~占領地~~の安寧秩序を回復し、占領地住民の公共の利益を計るべき占領の目的の一半を失ふに至るべきが故に、此の過渡的な非常事態に対応する為に、一面に於て占領地軍に認むるに一定の權力を以てすると同時に、其の占領地に於て能ふ限り公共の秩序及び生活の安寧を回復維持する為め、其の為し得べき所を盡すの義務を占領軍に課したのが、前記ヘーグ條約の規定

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である。

此の國際法の規定に基き、米國海軍大将 Chester W. Nimitz は米國太平洋艦隊及び太平洋地域の司令官、米國占領軍司令官兼に米國占領軍々政長官としての權限に依り南洋諸島の住民に對して布告を發した。其の布告第二号第五條には日本刑法違反に関し「余の指揮下の軍隊に依る占領以前に是等の諸島に於て有効であつた日本刑法の規定或は是等諸島の島民間に行はれた慣習法に違反する行爲を爲した者は軍政長官或は其の權限の下に行爲する者の裁量により、軍事裁判所の裁判にはせられ有罪と認定されれば、裁判所が命ずる所の刑罰を科せらるべし旨々」と規定されてゐる。

檢事が日本刑法違反の犯罪を本軍法會議に起訴したのは多分此の布告に基くものと思はれる。然し乍ら Winthrop も其の「軍事法及び其の先例」の中で「軍事法は遡及しない。犯人は軍事法が布告される以前に犯した犯罪に付き裁判され得ない」(Winthrop ibid, footnote 95 on page 837) と述べてゐる様に、軍司令官の布告は他の總べての法律と全様に決して遡及効を有するものではない。Nimitz 大将の上記布告も亦米軍の太平洋諸島占領後に犯された犯罪に付き、米國法の制定されるまでの間一時、日本刑法の規定を適用して処罰すべき旨宣言したものに外ならぬのである。此の解釈の正当なることは此の布告の根據法たる前記陸戰條規第43條の規定に照して毫も疑を容れぬ

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所である。

然るに本件犯罪の行はれたとされる1944年9月18日當時に於てはパラオ諸島バベルタップ島は未だ米軍の占領下に在つたのではなく、日本が依然として其所に主權を行使してゐたのである。されば Nimitz 大將の前記布告を理由として、本件の如き米軍の占領以前の犯罪に日本刑法を適用して之を處罰せんとするは、その布告に遡及効を認める結果となり、現代文明社會に廣く承認された刑法不遡及の原則に背馳し、甚の違法なることを論を俟たぬ所である。

檢事が米二起訴の犯罪を日本刑法第199條違反として起訴したことは明らかに誤謬であつて、それは本軍法會議の認識し得べき犯罪では絶對にないのである。故に當人は米二起訴事實については當然無罪の故に公訴棄却の判決をされる筈のものである。(終)

鍬田日出夫

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION OVER
THE OFFENSES OF YAMAMOTO, Kazuharu et al.

Delivered by

Mr. Kuwata, Hideo, Defense Counsel

May it please the Commission:

All the accused hereby enter this plea to the jurisdiction on the ground that some offenses alleged in the present charges and specifications are not cognizable by this military commission.

1. Concerning the offenses against the Spanish Nationals.

It is due to the fact that Japan at her surrender accepted the Potsdam Declaration that an American tribunal such as this Military Commission is enabled to try the defendants who are Japanese nationals. Paragraph 10 of the same Declaration reads in part: "...stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners." This provision is the basic and highest law in relation to the punishment of Japanese war criminals. In pursuance of this provision, the United States Initial Post Surrender Policy for Japan, Section III Political, Para. (b) War Criminals states: "Persons charged by the Supreme Commander or appropriate United Nations agencies with being war criminals, including those charged with having visited cruelty upon United Nations' prisoners or other nationals shall be arrested, tried, and if convicted, punished. Those wanted by another of the United Nations for offenses against its nationals shall, if not wanted for trial or as witness or otherwise by the Supreme Commander, be turned over to the custody of such other nations."

The term "war criminals" doubtlessly applies to persons who committed war crimes, but neither the Potsdam Declaration nor the United States Initial Post Surrender Policy for Japan defines clearly what constitutes a war crime. It is left for the Charter of the International Military Tribunal for the Far East, announced on 19 January 1946, to clarify officially the scope of war crimes. However, we are able to infer the concept of war crimes to a certain extent from the United States Initial Post Surrender Policy for Japan.

As the United States Initial Post Surrender Policy for Japan is a statement of general initial policy relating to Japan which has been approved by the President and distributed to the Supreme Commander for the Allied Powers and to appropriate United States Departments and Agencies for their guidance, there is no margin for doubt that it expressed the intentions of the highest United States Government officials with regard to the occupational policy of Japan. At the same time, it was the basic policy of Japanese occupation representing all the United Nations.

We can therefore infer to a certain degree what thoughts the highest American authorities had concerning Japanese war criminals. What we can infer is (a) that war criminals be tried by all of the nations of the Allied Powers in conjunction, or by one or more nations of the Allied Powers (b) that by war crimes were meant crimes perpetrated against prisoners of war and citizens of the United Nations.

This is an extremely natural conclusion. Because as stated in the first paragraph of the Potsdam Declaration, "We, the President of the Uni-

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ted States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agreed that Japan shall be given an opportunity to end this war", the Declaration sets forth the conditions for the realization of cessation of hostilities between the United States, United Kingdom, China and Japan, and is the basic law stipulating the relations between these countries after the Surrender. As the other Allied countries and their dependencies acted in unison and cooperated with the three Powers -- United States, Great Britain and China -- during World War II, the Potsdam Declaration may also be extended to the relations between all the Allied Powers and Japan. However it is absolutely not a law regulating the relations between Japan and nations which maintained neutrality throughout World War II, because the neutral nations did not participate in the Potsdam Declaration and were not in a position to participate in the same. In other words, Japan has not the slightest reason whatsoever to be bound by the Potsdam Declaration in her relation with neutral countries. We believe that the United States Government placed limitations on war criminals as above stated, in the Initial Post Surrender Policy for this same reason. I, here, repeat that war crimes are crimes committed against prisoners of war and the citizens of the Allied Powers. Spain, however, is one of the few countries which maintained neutrality through the last world war. The United States may possess the right to try crimes committ ed by Japanese against prisoners of war or citizens of any Allied Powers in place of them, but it does not follow from the Potsdam Declaration that the United States has the authority to try in place of a neutral country, Spain, crimes committed by Japanese against Spanish nationals. I do not know of the existence of any international treaty or convention vesting the United States with such authority and right. If there is, I should like to be shown it. Moreover, it is the duty of the prosecution to acquaint us with them. Therefore, as the crimes against the five Spanish nationals, namely Luis Blanco Y Sumrez, Marino de la Hoz, Elias Fernandez Gonzales, Francisco Hornandez Y Escudero and Emilio Villar in the present charge, are not war crimes, we contend that these crimes are not triable by this Military Commission whose objective is in part to try Japanese War Criminals.

If this Military Commission exercises jurisdiction over these crimes, it would not only be violating the Potsdam Declaration, but also be acting contrary to the intentions of the highest American authorities expressed in the Inital Post Surrender Policy for Japan. Therefore, we requrest that the trial for the crimes against the Spanish Nationals be dismissed on the ground of lack of jurisdiction.

2. Concerning the offense alleged in Charge II.

The Charter of the International Military Tribunal for the Far East enumerates war crimes in Section II, Article 5 thereof as follows: (a) Crimes against Peace, (B) Conventional War Crimes, namely, violations of the laws or customs of war, and (c) Crimes against Humanity. According to the above provisions, the purview of war crimes is legally made clear. There do not exist any other war crimes besides the above-mentioned three types. Notwithstanding this fact, the offenses in Charge II are alleged to have violated the effective law, especially Article 199 of the Criminal Code of Japan, does not correspond to any of the above enumerated three types of war crimes. The Japanese nationals triable by this Military Commission are limited to war criminals who have committed war crimes. Therefore, it is only too obvious that the offense alleged in Charge II does not come under the jurisdiction of this Military Commission.

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The Judge Advocate must have reasonable grounds for disregarding this obvious fact and indicting offenses of violation of the Criminal Code of Japan, before this Military Commission. We requested, therefore, in our objections to the charges and specifications, that the authority by which such an American court as this military commission is able to use Japanese law in its trial/be shown. The Judge Advocate, however, made no reply to this request of ours. Let us not be satisfied with the above argument but advance further and scrutinize the judge advocate's reasons for this indictment.

Article 43 of the Hague Convention of 1907 concerning the Laws and Customs of War provides as follows: "The authority of the power of the State having passed de facto into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country." The powers formerly exercised over the occupied territory by the government having possession of the said territory, whether they be legislative, judicial or administrative, ceases altogether with the occupation of the invader, or may continue in force to a small degree only by permission of the invader (as for example the present status of Japan). Therefore the occupants may alter or suspend any existing laws in the occupied territory, or promulgate and enforce new ones in place of them, considerable length of time is required. To leave the occupied territory in a lawless state during this period would fundamentally destroy the legal order in the occupied territory resulting in the life of the inhabitants of the occupied territory to fall into a chaotic situation and finally failing to achieve in part the objective of occupation to restore expeditiously peace and order of the occupied territory and to promote public welfare of the inhabitants; so in order to meet with this transitory exigency the provision of the above-mention Hauge Convention recognized certain powers to be exercised by the occupation forces, and at the same time imposed upon them the duty to restore and ensure, as far as possible, public order and safety in the occupied territories."

Based upon the provisions of the above international law, Chester W. Nimitz, Admiral, U. S. Navy, pursuant to and by his authority as Commander-in-Chief of the United States Pacific Fleet and Pacific Ocean Area and Military Governor of the territories occupied by the United States Forces of Occupation, issued a Proclamation to the inhabitants of the South Seas Area. Proclamation No. 2, Article IV, reads, with regard to violation of the Criminal Code of Japan, as follows, "Any person who commits any acts which violate any provision of Japanese Penal Code in effect in these islands prior to the occupation by the Forces under my command, or the provisions of native law customary in the island, may, at the discretion of the Military Governor, or under his authority, be brought to trial before Military Court and on conviction, shall suffer such punishment as the Court may direct...."

It is believed that the Judge Advocate upon this proclamation had probably based his indictment of the offense in violation of the Criminal Code of Japan before this Military Commission. However, as Winthrop states in "Military Law and Precedents," "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed," (Winthrop, Ibid, footnote 95, p. 837), so the proclamation of a military commander is never retrospective, as the case is with all other laws.

"N(3)"

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The above-stated proclamation issued by Admiral Nimitz is only meant to declare that, with regard to offenses committed after the United States Forces had occupied the South Seas Area, punishment would be meted out by temporarily applying the Criminal Code of Japan until American laws were established. In view of the Article 43 of the Hague Convention concerning land warfare, which is the legal source of the said proclamation, there is no doubt that the above interpretation is justified.

On September 18, 1944, at the time when the offenses are alleged to have been committed, Babelthuap Island, Palau Islands, was not as yet under the occupation by the American Forces, but Japan still exercised sovereignty over that territory. Needless to say, it would be illegal and contrary to the principle of non-retrospectivity of criminal law universally recognized in all the modern civilized society, to apply the Criminal Code of Japan, because of the above cited Nimitz Proclamation, to an offense, as in the present case, committed prior to the occupation of American forces, resulting in recognizing of the said proclamation to have retrospective effect.

The Judge Advocate is obviously in error to have indicted the offense in Charge II as violation of Article 199 of the Criminal Code of Japan, Those offenses are absolutely not to be cognizable by this Commission. We therefore request that a decision for the trial to be dismissed be passed, on the ground of lack of jurisdiction with regard to Charge II.

Respectfully,

/s/ Kuwata, Hideo.
Counsel for the accused.

I hereby certify the foregoing, consisting of four (4) typewritten pages, to be a true and complete translation of the original Japanese document, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

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PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY

YAMAMOTO, Kasuharu, former captain, Imperial Japanese Army,
ICHIKAWA, Yokichi, former second lieutenant, Imperial Japanese Army,
ISHIYAMA, Zenzo, former sergeant major, Imperial Japanese Army,
SUGIMOTO, Takeji, former sergeant major, Imperial Japanese Army,
ICHIMIYA, Masao, former sergeant, Imperial Japanese Army,
OZAKI, Katsutoshi, former sergeant, Imperial Japanese Army,
TAMAMOTO, Tadashi, former sergeant, Imperial Japanese Army,
YOKOYAMA, Kyohisa, former sergeant, Imperial Japanese Army,
EZURE, Shigeru, former leading private, Imperial Japanese Army,
FUJITANI, Yoshio, former leading private, Imperial Japanese Army,
KAWAGUCHI, Wahei, former leading private, Imperial Japanese Army,
ANDO, Fukuichi, former superior private, Imperial Japanese Army,
HAYASHI, Umeji, former superior private, Imperial Japanese Army,
HIDAKA, Kinnosuke, former superior private, Imperial Japanese Army,
ITO, Mitsuyuki, former superior private, Imperial Japanese Army,
IWAMOTO, Harukichi, former superior private, Imperial Japanese Army,
NAKAMURA, Jiro, former superior private, Imperial Japanese Army,
OKAMURA, Gintaro, former superior private, Imperial Japanese Army,
SAGARA, Masashiro, former superior private, Imperial Japanese Army,
and
UCHIDA, Fumio, former private first class, Imperial Japanese Army.

Delivered by

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

16 February 1948.

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

This plea to the jurisdiction is made on the grounds that these twenty accused, namely, YAMAMOTO, Kasuharu; ICHIKAWA, Yokichi; ISHIYAMA, Zenzo; SUGIMOTO, Takeji; ICHIMIYA, Masao; OZAKI, Katsutoshi; TAMAMOTO, Tadashi; YOKOYAMA, Kyohisa; EZURE, Shigeru; FUJITANI, Yoshio; KAWAGUCHI, Wahei; ANDO, Fukuichi; HAYASHI, Umeji; HIDAKA, Kinnosuke; ITO, Mitsuyuki; IWAMOTO, Harukichi; NAKAMURA, Jiro; OKAMURA, Gintaro; SAGARA, Masashiro, and UCHIDA, Fumio are not subject to the court's jurisdiction and that the offense is not one cognizable by this military commission.

All twenty accused were 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 all twenty accused are not legally brought here for trial.

YAMAMOTO was demobilized on 25 December 1945. ICHIKAWA on January 10, 1946, ISHIYAMA on January 13, 1946, SUGIMOTO on February 25, 1946, ICHIMIYA on January 15, 1946, OZAKI on February 25, 1946, TAMAMOTO on February 24, 1946, YOKOYAMA on January 10, 1946, EZURE on January 6, 1946, FUJITANI on January 5, 1946, KAWAGUCHI on December 28, 1945, ANDO on January 9, 1946, HAYASHI on January 10, 1946, HIDAKA on January 4, 1946, OKAMURA on November 20, 1945, SAGARA on December 28, 1945 and UCHIDA on December 28, 1945. Not until February 2, 1948 were they served with charges and specifications for murder and neglect of duty as a Japanese army officer said to have occurred September 18, 1944.

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Now martial law is not retrospective which only means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's Military Law and Precedents page 837, wherein he cites footnote 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 offendor 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.

We further hold that the jurisdiction of this military commission is limited by the period and territorial extent of the Military Occupation of the Palau Islands by the American Naval Forces. In September of 1944, Japan was still in possession of an exercised sovereignty over the Palau Islands. So the offenses charged were committed long before the United States Navy occupied Palau or declared martial law or military law on the Palau Islands. See Winthrop page 837, Ibid, and foot note 95.

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." 88 citing Finlason, 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 specially empowered by statute) will have no jurisdiction of offenses committed there. 89 citing Clode, M.L. 189"

Thus, in September of 1944 the United States of America had no jurisdiction in the Palau Islands. Babelthuap Island and the Palau Islands were not within the field of command of the convening authority, The Commander Marianas Area, of this Military Commission. Babelthuap was without his area of command on September 18, 1944 and Martial law is not retrospective.

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

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The necessity for maintaining law and order by the United States in the Palau Island only commences on the date of occupation. It does not go back to September 18, 1944. On that date, Japan exercised sovereignty in the Palau Islands. There was no relinquishment or transfer of power until after August 14, 1945, and until the date when United States forces occupied the Palau Islands.

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

There can be no jurisdiction by this military commission over Japanese nationals long ago demobilized and now civilian citizens of Japan for offenses said to have been committed in the Palau Islands in September of 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 matter, 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 a case of American Banana Co, v. United Fruit Co., decided in 1909, the Supreme Court of the United States refused to enforce the Sherman "nti-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, "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 such controversy. Acts of the alien not directly injurious to the state or to its citizens may be excluded from consideration."

The acts of these aliens, all Japanese nationals was not directly injurious to the United States for the offenses committed against any of the six civilian victims named in specifications, 2, 3, and 4 or in the specification of Charge II. There can be no jurisdiction then to punish these twenty accused for the alleged offenses against these six civilian victims.

There is no jurisdiction in this commission to try these twenty accused for the alleged crime against the other four victims because we in the United States follow the traditions of 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 on September 18, 1944, they cannot be tried by this commission. We again cite Fenwick, Ibid, p. 240:

".....Great Britain and the U. S. following the traditions of the 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."

"O (3)"

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 relied on by the prosecution to convict these accused of offenses lays down the principle that there is no jurisdiction until occupation and since there was no occupation until after August 14, 1945, there was no jurisdiction on September 18, 1944 and there cannot, therefore, be any jurisdiction now.

If this Commission is to take judicial notice of the Hague Convention they should read all the articles of the Hague Convention. If they are to be bound by one article they should be bound by all articles in this Hague Convention.

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

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

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

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

There is the case of Alexandre Kemeny, C'Etat serbo-croate-slovene holding 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 Volume VI Page 387.

In the case of Naoum et autres c. Min. Public et Colonie de l'Afrique occidentale francaise the French court of Cassation, Criminal Chambers in 1919 held, "That territory under military occupation cannot be held to be part of the National Territory." Annual Digest, 1919-22, Case No. 312; Gazette du Palais, 1920, 1 62. (See Hackworth, Ibid, Volume VI, page 388.)

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In a case decided on November 17, 1924, the German Reichsgericht 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. 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 YAMAMOTO, Kazuharu for an offense committed by him September 18, 1944 or for neglect of duty as a Japanese army officer. It has no jurisdiction over any of the twenty accused for offenses committed September 18, 1944.

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

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

We hold that Commander Marianas cannot legally assume jurisdiction because the Palaus were not within the field of command of the convening authority at the time the offense was committed. The precept, serial 20971, dated 8 November 1947, states: "Pursuant to the authority vested in me by virtue of my office as the Commander Marianas Area and by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt Serial 0558 of 8 March 1946, Commander Marianas despatch 292362 September 1947; CincPacFlt despatch 020103Z October 1947; SecNav despatch 081946Z October 1947; CincPacFlt despatch 092353Z October 1947.") The specifications of both charges - one and two - allege the crimes were committed September 18, 1944. On this date Commander Marianas did not have jurisdiction of Palau 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, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt serial 0558 of 8 March 1946....") But the confidential serial 0558 is dated 8 March 1946 and the offenses were committed September 18, 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 Palau Islands on September 18, 1944. Neither did Commander in Chief, U. S. Pacific Fleet and Pacific legally have jurisdiction of the Palau Islands on this date. Neither did the Secretary of the United States Navy have jurisdiction on this date.

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

We deny the right of this military commission to try YAMAMOTO, Kazuharu and the nineteen other accused becsuse they were illegally brought within the jurisdiction of the Commander Marianas Area from Japan. All of these twenty accused were regularly returned to Japan by the United States Navy Department and were then regularly demobilized. How they came back into custody of the U. S. Navy Department and the Commander Marianas Area is highly irregular.

YAMAMOTO, Kazuharu after having been regularly demobilized on December 25, 1945 returned to his civilian way of living. He owned and ran a small store and lacquer shop at Tokyo. On September 25, 1947 he was arrested by a Japanese policeman from Tokyo without any warrant and immediately incarcerated in Sugamo Prison. He left Sugamo Prison on January 1, 1948 and he was taken to Guam by ship arriving here January 21, 1948. He was put in solitary confinement here at Guam and not until February 2, 1948 was he served with charges and specifications more than four months after he was arrested.

ICHIKAWA, Yokichi was regularly demobilized on January 10, 1946. Then he farmed. He was arrested on August 29, 1947 by Yamato Village police and taken to Tomioka Police Station and stayed overnight. No warrant. Next day two policemen took him to Nagoya Police Section, Prefectural Government where he was three days. Three Nagoya policemen took him direct to Sugamo Prison and he was confined there on September 3, 1947 without any warrant or charges being preferred against him. On October 3, 1947 he left Tokyo by plane for Guam where he arrived that night and was immediately placed in solitary confinement. Not until February 2, 1948 was he ever served with a copy of the charges and specifications.

ISHIYAMA, Zenzo went back to Japan on an American ship. He became a mental patient while on the ship and so when the ship arrived in Japan he was sent to a Japanese hospital as a mental patient. However, he was regularly demobilized on January 13, 1946. He was unable to work because of his mental condition and although he had formerly been a policeman he couldn't get his old job back. He became a newspaper distributor but because of his mental condition couldn't make a go of it.

On August 30, 1947 he was arrested by Kyoto police and was in Kyoto police station for two days and two nights. There was no warrant so he thought he was only being questioned about his neighbors having been a former policeman himself. He knew there should be a warrant but couldn't object because they told him he was wanted in Tokyo where he was sent under guard of two policemen on September 1, 1947. He was immediately sent to Sugamo Prison without a warrant or any charges. He was kept confined at Sugamo Prison until January 1, 1948 without any charges being preferred against him. He was put aboard ship and came to Guam on January 21, 1948 and was immediately put into solitary confinement. It was not until February 2, 1948 he was for the first time served with charges and specifications.

SUGIMOTO, Takeji was demobilized February 25, 1946. He worked as a clerk at Hitachi Works. He was arrested without warrant on February 20, 1947 by Yokosuka police and told to report at Public Safety Section of the Home Ministry. He reported there February 21, 1947 and taken to the Meiji Building and there interrogated and about 4:30 p.m., that day taken to Sugamo Prison and confined without warrant and without being served with charges. He was confined at Sugamo until January 1, 1948

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and was taken with fifteen other persons aboard an American ship at Yokosuka and arrived on Guam January 21, 1948 where he was immediately placed in solitary confinement. It was not until February 2, 1948 that he was served with charges and specifications and then after that for the first time he was allowed to see counsel.

ICHIMIYA, Masao was demobilized on January 15, 1946 and worked as an electrician in a Hokkaido mine. He was arrested without a warrant on February 23, 1947 by two policemen from Tokikawa Police Station and kept in confinement there for two days. Tokikawa Policemen - two of which accompanied him to Sugamo Prison, Tokyo, Japan, and there he was confined on February 26, 1947 without a warrant or ever shown any charges. He was kept in Sugamo Prison for nearly a year until January 1, 1948 when with fifteen others he was put on an American ship and arrived on Guam January 21, 1948 where he was put in solitary confinement. Not until February 2, 1948 was he served with the charges and specifications and allowed to see counsel.

OZAKI, Katsutoshi was demobilized on February 25, 1946. He worked as cook in Hiroo hospital and then as guard at Teiko Company in Hokkaido. On the 22nd of October 1947 a Hokkaido policeman came to his home and without a warrant held him in Sapporo jail for four days. With three policemen, handcuffed to a person charged with burglary he and the burglar arrived in Tokyo on October 28, 1947. Two policemen then took the burglar, and the one policeman took him to Sugamo Prison and there he was placed in confinement without warrant of arrest or without being shown any charges. On January 2, 1948 he was put on a plane and arrived on Guam January 3, 1948 where he was put in solitary confinement. Not until February 2, 1948 was he served with the charges and specifications.

TAMAMOTO, Tadashi was demobilized on February 24, 1946. He worked as a farmer in Hiroshima Prefecture in Tadanomi Village. On March 25, 1947 the village policemen arrested him without warrant. Early the next morning after all day and night in the village jail he was taken to Tokyo by two policemen. He was taken to Sugamo Prison and again confined without warrant or ever shown any charges. There he was kept until January 1, 1948 nearly eight months when he was put on an American ship and arrived on Guam January 20, 1948. Not until February 2, 1948 was he served with charges and given benefit of counsel.

YOKOYAMA, Kyohisa was demobilized January 10, 1946. He is a farmer. On April 22, 1947 he was arrested by a Kannonji Village Policeman who told him he had violated black market law and told to come along and took him to the police station, without warrant. There he was kept in jail for five days and questioned about his war service. Then the policeman took him to Takamatsu Marine police station and then two policemen took him to Sugamo Prison April 27, 1947, where he was confined without warrant or ever served with charges. He was there until January 1, 1948 and with fifteen others was sent to Guam where he arrived January 21, 1948 . On February 2, 1948 for the first time was served with charges and specifications and allowed the benefit of counsel.

EZURE, Shigeru was demobilized on January 6, 1946. Went into business as a fruit dealer. On December 26, 1947 a policeman from Utsunomiya Police Station came and told him to come along with him to Utsunomiya Police Station and he didn't have a warrant but he said SCAP wanted him. For three days he was kept in this jail and never questioned. Then on December 29, 1947 two policemen took him to Sugamo Prison and confined him there without warrant or charges. On January 1, 1948 he was put on an American ship at Yokosuka and sent to Guam where he arrived on January 21, 1948. He was then put in solitary confinement and not until February 2, 1948 was he served with charges and specifications and allowed to see counsel.

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FUJITANI, Yoshio was demobilized January 5, 1946. He worked at Ashio Machine Works. He was arrested on September 26, 1947 by Ashio Village Police and taken to Haniu Police Station for one night then [illegible] next night to Tokyo Police Station and next day, September 29, 1947, to Sugamo Prison in Tokyo, Japan. There was never any warrant for his confinement there either. He was confined at Sugamo until January 1, 1948. Then he was put on an American ship and sent to Guam where he arrived on January 21, 1948 and put into solitary confinement. Not until February 2, 1948 was he ever served with a copy of the charges.

KAWAGUCHI, Wahei was demobilized on December 28, 1945. He was working as a printer at the Government Printing Office at Sakawamachi, Kanagawa Prefecture. He was arrested without warrant at his home in Kanagawa Prefecture, Ashigarashimo-gun, Shimofu-Nakazato on January 15, 1948 by police from Odawara City. On the same day he was sent to Sugamo Prison under guard of the two policemen from Odawara Police Station. While there he was never shown any charges or specifications. He left Tokyo January 28, 1948 for Guam aboard a plane and arrived that night. On February 2, 1948 he was for the first time served with the charges and specifications and allowed to see counsel.

ANDO, Fukuichi was demobilized on January 9, 1946. He worked as a plasterer at Karuizawa and while there lost the sight of his right eye due to a piece of steel lodging in his eye. Japanese doctor left steel in his eye and he now is blind in the right eye. On September 26, 1947 a policeman from Annaka District Police Station came and arrested him without any warrant so Ando thought he would only be held for questioning. But he was kept at the Anna-ka Police Station overnight and the next morning two policemen took him to Sugamo Prison, Tokyo, Japan, and there he was confined until January 1, 1948 when he was put on an American ship and sent to Guam arriving there January 21, 1948. He was put in solitary confinement and held incommunicado until February 2, 1948 when for the first time he was served with the charges and specifications and allowed benefit of counsel.

HAYASHI, Umeji was demobilized on January 10, 1946 and engaged in agriculture. On January 21, 1948 a policeman from Tsukiyono Police Detachment at Numata Police Station arrested him without a warrant. He was told that SCAP wanted him so the next morning one policeman took him to Sugamo Prison along with another person. Both were handcuffed. Without a warrant and without being shown any charges he was confined in Sugamo Prison from January 22, 1948, to January 30, 1948 when he was sent to Guam by plane. He was immediately placed in solitary confinement and then on February 2, 1948 he was for the first time served with the charges and specifications and allowed to see counsel.

HIDAKA, Kinnosuke was demobilized on January 4, 1946. He is a farmer from Tochigi-Ken, shinotsuga-gun, Oyama-machi. He was arrested on January 14th, 1948 at his home by a policeman from Oyama-machi without a warrant. He was in the Oyama jail two nights. On January 16, 1948 a policeman took him to Sugamo Prison where he was confined without warrent; nor was he shown any charges or specifications. On Jan. 28, 1948 he was sent to Guam by plane arriving that night. Not until February 2, 1948 was he served with charges and specifications and allowed to see counsel.

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ITO, Mitsuyuki was demobilized on December 28, 1945. He then worked as a farmer. On December 28, 1947 he was arrested without a warrant by a policeman from Ibaraki Prefecture. Instead of taking him to jail he was so sick that he went to a hospital for an operation and a guard went to the hospital and stayed with him. He was there until January 29, 1948 and then went to Sugamo Prison. He left Sugamo Prison the next day and arrived at Guam on the same night. He was taken off the plane and sent to the Navy Hospital where he has been until February 14, 1948 when he was transferred to the Marine Dispensary in anticipation of his trial commencing today. He was served with the charges and specifications at the Navy Hospital,Guam, on February 2, 1948.

IWAMOTO, Harukichi was demobilized January 5, 1946 and then went to work in a coal mine. On September 11, 1947 and again on December 8, 1947 he was questioned at the Meiji Building, Tokyo, Japan. Then on December 10, 1947 he was sent to Guam as a prosecution witness and put in the witness camp. On January 28, 1948 he was put in solitary confinement but was never told why. For the first time on February 2, 1948 he was notified he was an accused and was served with the charges and specifications. He came to Guam as a prosecution witness.

NAKAMURA, Jiro was regularly demobilized on January 9, 1946 and went to farming. On September 27, 1947 the village policeman from Furusato together with a policeman from Nagano came and questioned him about his military experience. When he told them he had been an assistant Kempei they told him to come along to Nagano where he was questioned by the Chief of the Nagano Police and one other policeman. Since he had done nothing he wanted the questioning over with so that night at 10:30 p.m. went into Tokyo on the train. He was taken to a building and questioned and then sent to Sugamo Prison. Here he was kept without any charges being preferred against him for three months and five days until January 1, 1948 when he was put on an American ship with fifteen other prisoners. It was not until January 21, 1948 that the ship arrived in Guam after stopping at Tsingtao, Shanghai and Manila. On Guam he was immediately placed in solitary confinement. It was not until February 2, 1948 that he was served with charges and specifications and accused of murder.

His arrest without warrant, confinement for many months 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 charges and specifications was he allowed the benefit of counsel.

OKAMURA, Gintaro was demobilized on November 26, 1945. He was a farmer at Gumma-Ken, Oura-Gun, Watarase-mura. He was arrested on September 5, 1947 by a policeman from Tatabayashi Police Station in Gumma-Ken without a warrant. When he arrived at the police station he was shown a piece of paper and told it was a warrant for his arrest. After one night at this police station a liaison officer from Gumma-Ken took him to Sugamo Prison and he was put into a cell. Here he stayed until October 27, 1947 when he was sent to Guam and placed in solitary confinement. Not until February 2, 1948 was he served with the charges and specifications and allowed to see counsel.

SAGARA, Masahiro was demobilized on December 28, 1945. He worked as a farmer and then in March 1946 he started to work at the Food Distributing Office, Ibaragi-Ken, Sashima-Gun, Sakai-machi. On January 21, 1948 the police called him on the phone and told him to come to Sakai-machi ~~Police~~

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Police Station. He was told to be ready to go to the Home Ministry Office in Tokyo the following day. On January 22, 1948 a policeman from the village came and took him to Tokyo, Japan. There was some confusion regarding his name but he was sent to Sugamo Prison and there confined without warrant or being shown any charges. He came to Guam by plane on January 29, 1948 and was put in solitary confinement. On February 2, 1948 he was served with the charges and specifications and then for the first time allowed to see counsel.

UCHIDA, Fumio was demobilized on December 28, 1945 and went to farming. On December 26, 1947 a policeman from Asao Police Station came to his home at Ibaragi Prefecture, Namegata-Gun, Takata-Mura and arrested him without a warrant. He was held in the Asao jail for two days and nites and then two policemen took him to Sugamo Prison, Tokyo, Japan. He was held in Sugamo Prison until January 1, 1948 when he was put on an American ship with fifteen others and sent to Guam. When he arrived at Guam he was put in solitary confinement. Not until February 2, 1948 was he served with charges and specifications and allowed the benefit of counsel.

So we see that at the time they were arrested they were never furnished with a copy of the charges; all during the time they were confined at Sugamo Prison, Tokyo, Japan they were never furnished a copy of the charges and even during a certain period of time when in solitary confinement here on Guam they were not furnished a copy of the charges.

It was not until February 2, 1948 that any of these twenty accused were furnished with a true copy of the charges and specifications.

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

"It 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."

Citing United States v. Smith., 197 U. S. 386, 49 L. ed. 801, 258, 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. Dominques v. State, 90 Tex. Crim. Rep. 92, 234, S. W. 79, 18 A.L.R. 503.

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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 forceably, and against the will of the accused and without any warrent, requisition, or other legal process conveyed the accused out of the state of Kansas into Nebraska. Holding that the Nebraska court was without jurisdiction, the court said, "In principle there is no difference between the case at bar and where a person is held for an offense other than the one he was extradited for. In either case it is an abuse of judicial process, which the law does not allow. Ample provisions are made for the arrest and return of a person accused of crime, who has fled into a sister state, by extradition warrants issued by the executives of these states. There is no excuse for a citizen or officer arresting, without authority of law, a fugitive, and taking him forcibly and against his will into the jurisdiction of the state for the purpose of prosecution. We cannot sanction the method adopted to bring the petitioner into the jurisdiction of this state. He did not come into the state voluntarily, but because he could not avoid it. The district court, therefore, did not acquire jurisdiction of the person of the petitioner, and his dentention is unlawful."

IWAMOTO, Horukichi came to Guam as an involuntary witness and then without any legal process whatsoever was placed in solitary confinement and then on February 2, 1948 served with the charges and specifications and finds himself in court charged with murder. He objects to the jurisdiction of this commission to try him.

The nineteen other accused, also object to the jurisdiction of this commission on the grounds that they were illegally extredited from Japan.

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

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

Each of these twenty accused persons states that no warrent was ever served upon them. They were told by the Japanese police to come along with them; then were taken to a Japanese Police Station and from there taken to the United States Army Prison, Sugamo, Tokyo, Japan. One came to Guam as a prosecution witness and here was put in solitary confinement.

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

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In this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these twenty accused persons that they decide the validity of the extradition proceedings by which the twenty accused were removed from Japan to Guam. To do so it is necessary that the Judge Advocate produce the extradition papers in the case of these twenty persons. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of these twenty accused and is an admission that there are no extradition papers or that such papers as there are are not in good order

In Vol. XXII, American Jurisprudence page 245: "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision citing Valentine v. U.S. 299, US 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; U. S. 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. U.S. 299 U.S. 5, 81, Led 5, S. Ct. 100. See also Factor v. Laubenheimer, 290, U. S. 276, 78 Led. 315, 54 S. Ct. 191.

In footnote 9 page 249 of Volume XXII of American Jurisprudence "Extraditio 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. XXII of American Jurisprudence we read: "The persons against whom extradition proceedings are directed must, of course, be fugitives from justice. "Citing Jones v. Tobin, 240 U.S. 127, 60 Led. 562, 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 Lee v. Brown, 156 Tenn. 669, 645 W. (2d) 841, 91 A.F.R. 1246, writ of certiorari denied in 292 U.S. 638, 78 L. ed. 1491, 54 S. Ct. 717; Ex parte McDaniel, 76, Tex. Crim. Rep. 184, 173 S.W. 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.

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

"O (12)"

0174

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

Can it be said that any of these twenty persons were personally present within the United States or the territories over which the United States claimed jurisdiction at the time the crime was committed, September 18, 1944? This seems to be one of the requirements of the Federal Statute.

It is a universal rule that a person to be extradicted must be charged with a crime against the law of the state from whose justice he is alleged to have fled. These twenty persons did not flee; they were demobilized after having been turned over as released prisoners of war to the Japanese authorities. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war.

Page 265, Volume 22, American Jurisprudence:

"It is the universal rule that it must appear to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged." citing many cases such as: Marbles v. Creecy, 215 U.S. 63, 54 Led 92, 30 S. Ct. 32; Compton v. Alabama, 214 US 1, 53 Led 92, 30 S. Ct. 32; Pierce v. Creecy, 210 US 387, 52 Led 1113, 288 S. Ct 714 (rule recognized); Illinois ex rel McNichols v. Pease, 207 US 100, 52 Led 121, 28 S. Ct 58 (dictum); Appleyard v. Mass, 203 US 222, 51 Led 161, 27 S. Ct. 122, 7 Ann. Cas. 1073. Annotation: 81 A.L.R. 555; 1. IRA 801; 11 IRA (N.S.) 426.

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

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

EXTRADITION

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

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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 LED 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 one in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. 2 (Cite: "See 1 Moore, Extradition, p. 310, 208; 4 Moore, International Law Digest, p. 332, 604.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. 3 (Cite: "Annotation: 12 Am. St. Rep. 126") According 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 heated blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited, 4 (Cite: "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 political crime. 5. (Cite: "Ornelas v. Ruiz 161 US 502, 40 Led 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 purpose of the preliminary examination unless palpably erroneous in law. 6 (Cite: Ibid.)"

Since these twenty persons are charged with political crimes and extradition is expressly forbiddon of persons charged with political crimes we maintain their extradition is illegal and therefore this commission has no jurisdiction of these twenty persons. Since we object to the jurisdiction on these grounds we insist that the judge advocate produce the extradition papers. Unless such extradition papers and warrants are produced by the judge advocate for our inspection we hold that the burden of proof is upon the judge advocate to prove that these twenty persons are legally before this commission.

We have pointed out to the commission and the judge advocates have alleged it in the specifications that these twenty persons were in the Palau Islands on September 18, 1944, and that the Japanese Government still held control of Palau Islands on that date. These twenty persons were not within the United States when the crimes were committed and this commission should discharge these twenty persons.

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

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

"O (14)"

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

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

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

We move that the commission take judicial notice that the Palau Islands was a possession of Japan in 1944 and the military and naval forces of Japan were in full possession and control of the Palau Islands notwithstanding our many bombings all during the time of these crimes were alleged to have been committed that is September 18, 1944, and that the United States did not take over or assume any jurisdiction as to Palau until after August 14, 1945, and that Palau was not actually surrendered to the United States until after August 14, 1945.

The commission can, therefore, have no jurisdiction of any of these accused for crimes committed on Palau Islands September 18, 1944.

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

Since there are no common law offenses against the United States the crime of murder must be statutory murder. In 14 Am. Jur. 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 (citing Donnelly v. US 276 US 505, 72 Led 676, 48 S. Ct. 400; U.S. v. Gradwell, 243 U.S. 476, 61 Led 857, 37 Sect. 407. Annotation: Ann. Cas. 1918 , 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 US 677, 36 Led 581, 13 S. Ct. 764; U.S. v. Brewster 139 US 240, 35 Led 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 statues of the United States enacted in pursuance of the Constitution. Re. Kollock, 165 US 526, 41 Led 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 U.S. v. Reese, 92, US. 214, 23 Led 563."

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

"O (15)"

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

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

As to Specifications 3 and 4 of Charge I, we hold that neglect of duty is no crime.

In 14 American Jurisprudence Criminal Law, Section 14, page 764, we find the rule that "In some states no act is to be regarded as a crime unless it is so declared by statute." Citing Bradley v. State, 79, Fla. 651; Soper v. State, 169 Ind. 177; Steward v. Jessup 51 Ind. 413; State v. Campbell 217 Iowa 848; State v. Koontz, 124 Kansas 216; State v. Shaw, 79, Kan. 396; Kennan v. State, 86 Neb. 234; People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001, write of certiorari denied in 289 U.S. 709, 77, Led 1464, 53 S. Ct. 786; People v. Knapp 206 NY 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; Annotation: Ann. Cas. 1913 E. 1252; Ann. Cas. 1918 A, 998.

In this same footnote we find the rule:

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

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

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

There were dissenting opinions by two members of the Supreme Court of the United States in the YAMASHITA case, application of YAMASHITA, 66 S. Ct. 340.

My Justice Rutledge said of the YAMASHITA case:

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

Mr. Justice MURPHY of the U. S. Supreme Court in his dissenting opinion said:

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, varying according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations.

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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 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 standards objective standards of conduct."

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

Respectfully,

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

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PLEA IN BAR OF TRIAL

of

YAMAMOTO, Kazuharu
ICHIKAWA, Yokichi
ISHIYAMA, Zenzo
SUGIMOTO, Takeji
ICHIMIYA, Masao
OZAKI, Katsutoshi
TAMAMOTO, Tadashi
YOKOYAMA, Kyohisa
EZURE, Shigeru
FUJITANI, Yoshio
KAWAGUCHI, Wahei
ANDO, Fukuichi
HAYASHI, Umeji
HIDAKA, Kinnosuke
ITO, Mitsuyuki
IWAMOTO, Harukichi
NAKAMURA, Jiro
OKAMURA, Gintaro
SAGARA, Masashiro
UCHIDA, Fumio.

Delivered by Commander MARTIN E. CARLSON, U. S. Naval Reserve, at Guam, Marianas Islands, on 17 February 1948.

May it please the commission:

The above mentioned twenty accused, make this plea in bar of trial on the grounds of the statute of limitations.

The offense is alleged to have been committed on September 18, 1944. The charges and specifications are dated January 31, 1948, more than three years after the offense was committed.

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

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

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

"p (1)"

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.

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

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

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

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

The criminal charge in this case was not made until the formal written accusation was made on February 2, 1948 of charges and specifications dated 31 January 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 U. S. v. Patterson, 150 U. S. 65, 37 L. ed. 999, 14 S. Ct. 20." 14 American Jurisprudence Criminal Law, sec. 4, page 758.)

This statute of limitation is like all other statutes of limitation regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense (citing Wheeler v. Caster 11 N. D. 347, 92 N. W. 381, 61 L.R.A. 746, Miller & Co. v. Malone 11 Okla. 241, 67, P. 479 56, L.R.A. 620.) And is one to which, in proper circumstances, all men are entitled as a right. (citing Anaconda Mon. Co. v. Sailo, 16 Mont. 8, 39, P. 909, 50 Am. St. Rep. 472; Carter v. Collins, 174 Okla., & 50 p. (2d) 203 34 Am. Jur. p. 23 also states:

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"The Defense is not technical (citing U. S. v. Oregon Lumber Co. 260 U. S. 290, 67, L. Ed. 261, 43 S. Ct. 100) but is deemed to be legitimate (citing O'Malley v. Sums, 51 Ariz. 155, 75 P. (2d) 50, 115, A.L.R. 634) substantial, and moritorious." (citing Guaranty Trust Co. v. U.S., 304 U. S. 126, 82 L. Ed. 1224, 58 S. Ct. 785; Dupreee v. Mansur, 214, U. S. 161, 53 L. Ed. 950, 29 S. Ct, 548; McClany v. Silliman, 3 Pot (US) 270, 7 L. Ed. 676; Lilly-Brackett Co. v. Sonnemann, 157, Cal., 192, 106 P. 715, 21 Am. Cas. 1279; Wheratt v. Worth, 108 Wisc., 291, 84, N. W. 441, 81 Am. St. Rep. 899.

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

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

A judgment for the defendant on a plea of the statute is necessarily an acquittal of the charge, and not a mere abatement of the action. Therefore, it has been universally classed as a plea in bar and not in abatement (citing U. S. v. Oppenheuner 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. 6.. 209.

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

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

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scantily and grudingly 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 Plunkett of which it is said by Lord Broughmen (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 moving 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 grudingly applied, but of right and wise reason, and, therefore, to be generously dispensed. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p. 952.

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

In U. S. Code Annotated Title 18 Sec. 582, page 138 in note 6, the case of U. S. v. Watkins (cc Dist. Col. 1829) Fed. 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, judgment will be rendered for defendant."

These twenty accused plead the statutes of limitations as a bar to their trial for the offense committed September 18, 1944 and charged under date of January 31, 1948.

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

"P (4)"

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All the accused interpose 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 these twenty accused.

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 pray that Article 60 Geneva Convention of 1929 be complied with before this trial proceeds and before issue is joined.

Respectfully.

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

0184

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 1290

31 JAN 1948

From: The Commander Marianas Area.
To : Lieutenant Commander Joseph A. REGAN, USN, and/or
Lieutenant James F. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charges and Specifications in the case of:

YAMAMOTO, Kazuharu
ICHIKAWA, Yokichi
ISHIYAMA, Zenzo
SUGIMOTO, Takeji
ICHIMIYA, Masao
OZAKI, Katsutoshi
TAMAMOTO, Tadashi
YOKOYAMA, Kyohisa
EZURE, Shigeru
FUJITANI, Yoshio
KAWAGUCHI, Wahei
ANDO, Fukuichi
HAYASHI, Umeji
HIDAKA, Kinnosuke
ITO, Mitsuyuki
IWAMOTO, Harukichi
NAKAMURA, Jiro
OKAMURA, Gintaro
SAGARA, ~~Seishiro~~ Masaaki JAR
UCHIDA, Fumio

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

CHARGE I

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, ~~Seishiro~~ Masaaki, then a superior private, IJA, JAR

"Q (1)"

0185

Received true and correct copies, both in English and Japanese, of Charges I and II, and specifications thereunder, on the 2nd day of February, 1948.

山本一治	市川與吉	石山善藏
YAMAMOTO, Kazuharu	ICHIKAWA, Yokichi	ISHIYAMA, Zenzo
杉本武治	一宮正雄	尾崎建敏
SUGIMOTO, Takeji	ICHIMIYA, Masao	OZAKI, Katsutoshi
玉本忠	横山匡壽	江連茂
TAMAMOTO, Tadashi	YOKOYAMA, Kyohisa	EZURE, Shigeru
藤谷義男	川口和平	安藤福五千
FUJITANI, Yoshio	KAWAGUCHI, Wahei	ANDO, Fukuichi
林梅治	日高金之助	伊藤光之
HAYASHI, Umeji	HIDAKA, Kinnosuke	ITO, Mitsuyuki
岩本春吉	中村治郎	岡村銀太郎
IWAMOTO, Harukichi	NAKAMURA, Jiro	OKAMURA, Gintaro
相良政四郎	内田文雄	
SAGARA, Masashiro	UCHIDA, Fumio	

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

Eugene E. Kerrick Jr

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

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UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, one Agapito C. HONDONERO, a national of The United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, ~~Seishiro~~ Kagetaro, then a superior private, IJA, Jak. UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, six civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, and Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, this in violation of the law and customs of war.

"Q (2)"

0187

Specification 3

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty as officer in charge of personnel from said unit and as senior officer present from said unit, to control the operations of members of said unit and persons subject to his control and supervision, namely, KAWAGUCHI, Wahei, then a leading private, IJA, NAMEKAWA, Genzo, deceased, then a superior private, IJA, and other members of said unit, names to the relator unknown, all members of the armed forces of Japan, as it was his duty to do, permitting them the aforesaid persons, on or about September 18, 1944, at Babelthuap Island, Palau Islands, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, seven civilians, then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, this in violation of the law and customs of war.

Specification 4

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthuap Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, seven civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, in that he permitted the unlawful killing of said persons by shooting with firearms, exact description to the relator unknown, by members of the armed forces of Japan, this in violation of the law and customs of war.

"Q (3)"

0188

CHARGE II

MURDER

Specification

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, ~~Seishiro~~ Tanaka, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, at Babelthuap Island, Palau Islands, on or about September 18, 1944, unlawfully kill and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, ten persons, namely, Luis BLANCO Y SUAREZ, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Colombian national, resident of Yap Island, Marino DE LA HOZ, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALEZ, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Spanish national, resident of Yap Island, Emilio VILLAR, Spanish national, resident of Koror Island, Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, Filimina Untalan HONDONERO, wife of the said Agapito C. HONDONERO, resident of Yap Island, Baltazar Untalan HONDONERO, son of the said Agapito and Filimina HONDONERO, resident of Yap Island, and Caroline Untalan HONDONERO, daughter of the said Agapito and Filimina HONDONERO, resident of Yap Island, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

C. A. Pownall

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

"Q (4)"

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YAMAMOTO, KAZUHARU et al. (16 FEB 1948)

(163117)
PART 2 OF 6

発　アメリカ合衆国太平洋艦隊
　　マリアナ方面司令官

宛　マリアナ方面司令官
　　アメリカ合衆国海軍少佐　ジョセフ　エリーガン
　　アメリカ合衆国海軍大尉　ジェームズ　ピ　ケニー

記

山本一治
市川與吉
石山善蔵
杉本武治
一宮正雄
尾崎俊敏
玉本忠
横山匡壽
江連茂
藤谷義男
川口和平
安藤福五千
林梅治
日高金之助
伊藤光之
岩本春吉
中村治郎
国村銀太郎
相良政四郎
内田文雄

の裁判に於ける起訴及罪状項目

(一)

一、前記の人々は貴官が検察官たる軍法会
員会に於て左記の起訴及罪状項目につき裁
判されるであらう　よつて貴官はその旨を軍
法委員長に通告し裁判の日時を被告に
通知し検事側及弁護側の全証人を召喚
せよ

第一起訴
戦争法規並に慣習の違反

罪状項目一
パラオ諸島の日本帝国陸軍軍事施設に配属
されてゐた当時陸軍中尉山本一治当時陸軍少尉
市川與吉当時陸軍曹長石山善蔵当時陸軍
曹長杉本武治当時陸軍軍曹一宮正雄当時陸
軍軍曹尾崎健敏当時陸軍軍曹玉本忠心当時
陸軍軍曹横山医壽当時陸軍兵長江連茂当
時陸軍兵長藤谷義男当時陸軍兵長川口和平
当時陸軍上等兵安藤福五千当時陸軍上等兵
林梅治当時陸軍上等兵日高金之助当時陸軍上等
兵伊藤光之当時陸軍上等兵岩本春吉当時陸
軍上等兵中村治郎当時陸軍上等兵風村銀太
郎当時陸軍上等兵相良政四郎当時陸軍一等
兵内田文雄及び其の他の当局には姓名不詳の日本
陸軍の人々は同軍事施設に於て勤務中当時陸
軍中佐故宮崎有恒と共同して各個又は同時にア
メリカ合衆国連合諸国及其の属領が日本帝国
と戦争状態に在つた昭和十九年九月十八日頃パラオ
諸島バベルタップ島に於て意思的に違法的に企
図と悪意とを以て正当な理由なく同時同処に於
て日本軍隊に抑留されてゐた一名のアメリカ人アガピト
シ ホンドネロを当局には詳細不詳の犬畜の射殺

により襲撃し攻撃し殺し殺させた之は戦争法規並
に慣習に違反してゐる

罪状項目二

パラオ諸島の日本帝国陸軍軍事施設に配属されて
ゐた当時陸軍中尉山本一治当時陸軍少尉市川與
吉当時陸軍曹長石山善蔵当時陸軍曹長杉本
武治当時陸軍曹長雄当時陸軍曹長尾
崎康敏当時陸軍軍曹玉本忠当時陸軍軍曹
横山匡壽当時陸軍兵長江連茂当時陸軍
兵長勝谷義男当時陸軍兵長川口和平当時
陸軍上等兵安藤福五千当時陸軍上等兵林
梅治当時陸軍上等兵日高金之助当時陸軍上
等兵伊勝光之当時陸軍上等兵岩本春吉当時
陸軍上等兵中村治郎当時陸軍上等兵園村銀
太郎当時陸軍上等兵相良政四郎当時陸軍一等
兵池田文雄及び其の他の当局は姓名不詳の日本
陸軍の人々は同軍事施設内に於て勤務中当時陸
軍中佐故宮崎有恒と共同して各個又は同時にア
メリカ合衆国連合諸国及其の属領が日本帝国と
戦争状態に立つた昭和十九年九月十八日頃パラオ諸
島バベルタップ島に於て意思的に違法的に企図
と悪意とを以て正当な理由もなく同時同処に於て
日本軍隊に抑留されてゐた六名の民間人即ちヤップ
島居住のスペイン人旧教宣教師ルイス・ブランコイ
スアレズ ヤップ島居住のコロンビヤ人旧教宣教師
ベルナルド・デラ・エスプリエラ・コロール島居住の
細教宣教師マリノ・デラ・ホーズ コロール島居住の
スペイン人旧教宣教師エリアス・ゼルナンデズ ゴンザレズ
ヤップ島居住のスペイン人旧教団員フランシス・ヘルナンデズ
イエスクデロ コロール島居住のスペイン人旧教団員エミ
リオ・ブイラーを当局に拘禁し拷問し殺害し殺させ
より襲撃し攻撃し殺し殺させた之は戦争法規
並に慣習に違反してゐる

罪狀項目三

パラオ諸島の日本帝國陸軍軍事施設に配屬されて
ゐた當時陸軍中尉山本一治は日軍事施設に於
て勤務中アメリカ合衆國連合諸國竝其の屬領
が日本帝國と戰爭狀態に在つた昭和十九年九月
十八日頃パラオ諸島バベルタップ島に於て彼が處刑
現場に於ける住田部隊の隊員の指揮官であり且
住田部隊より出席せる最先任將校である時に彼の
部隊の隊員及彼の抑制監督下にあつた人々即ち
當時陸軍矢長川口和平當時陸軍上等兵藤清
川源三及び當局は姓名不詳の其他の同部隊の
人々の行動を抑制すべき同部隊より出席せる最先任將校と
指揮官及同部隊より出席せる最先任將校と
の彼の職務を違法的に無視し遂行せず前記
の人々が昭和十九年九月十八日頃パラオ諸島バベル
タップ島に於て同時同處に於て日本軍隊に抑
留されてゐた七名の民間人即ちヤップ島居住のスペ
イン人當敎師ルイスブランコイスプレズヤップ島居
住のコロンビヤ人當敎師ベルナルドデラエスプリエラ
コロール島居住のスペイン人旧敎宣敎師マリノデ
ラホーズコロール島居住のスペイン人旧敎宣敎師
エリアスゼルナンデスゴンザレズヤップ島居住のスペ
イン人旧敎團員フランシスコヘルナンデスイエスクデロ
コロール島居住のスペイン人旧敎團員エミリオゴイ
ラー及びアメリカ人アガピトレンホンドネロを前記の
人々が當局は詳細不詳の犬器んより違法的ん
殺し殺させることを許可したことは戰爭法規
並ん慣習ん違反してゐる

(四)

■(4)■

罪狀項目四

パラオ諸島の日本帝国陸軍軍事施設に配属されて当時陸軍中尉一治は同軍事施設に於て勤務中アメリカ合衆国連合諸国及其の属領が日本帝国と戦争状態に在った昭和十九年九月十八日頃パラオ諸島ペベルタップ島に於て彼が処刑現場に於ける住田部隊の隊員の指揮官であり且住田部隊よりも先任将校で多くの時に自己の職務を違法的に無視し遂行せず同時同処に於て日本軍隊に抑留されて居た七名の民間人即ちヤップ島居住のスペイン人旧教宣教師ルイス ブランコ イスアレズヤップ島居住のスペイン人旧教宣教師ベルナルド デラエスプリエラコロール島居住のスペイン人旧教宣教師マリノ デラ ホーズ コロール島居住のスペイン人旧教宣教師エリアス フェルナンデスゴンザレス ヤップ島居住のスペイン人旧教団員フランレスコ ヘルナンデス イエスラデロ コロール島居住のスペイン人旧教団員エミリオブイラー及びアメリカ人アガピト シホンデネロを自己の職務上保護し彼の権限内にて且当時の状況下適当な処置を講ずべきであったにも拘らず之等細不明の大勢の射殺により日本軍隊の人々が前記の人々を違法的に殺すことを許可した 之は戦争法規並に慣習に違反してゐる

第二起訴

殺人

罪狀項目

パラオ諸島の日本帝国陸軍軍事施設に配属されたる当時陸軍中尉一治山本一治当時陸軍中尉山本一治当時陸軍曹長石山善藏当時陸軍曹長杉本武治当時陸軍曹長正雄当時陸軍

(五)

軍軍曹尾崎俊敏当時陸軍軍曹玉本中心当時
陸軍軍曹横山匡吉当時陸軍兵長江連茂当
時陸軍兵長藤吉義男当時陸軍兵長川口和平
当時陸軍上等兵安藤稲三千当時陸軍兵長
林梅治当時陸軍上等兵高金七助当時陸軍上
等兵伊藤光之当時陸軍上等兵岩本春吉当時陸
軍上等兵中村治郎当時陸軍上等兵国村銀太郎
当時陸軍上等兵相良政四郎当時陸軍一等兵
吹田文雄及び憲兵隊は姓名不詳の日本陸軍の人々
は同軍事施設に於て勤務中当時陸軍中佐故
宮崎有恒と共同して各個又は同時にアメリカ合衆
国連合諸国及其の属領が日本帝国と戦争状態
に在つた昭和十九年九月十八日頃パラオ諸島バベルタ
プ島に於て十名の人々即ちヤップ島居住のスペイン
人旧教宣教師ルイス ブランコ イスアレズ ヤップ島
居住のコロンビア人旧教宣教師 ベルナルド デラ エス
プリエラコロール島居住のスペイン人旧教宣教師
マリノ デラ ホーズ コロール島居住のスペイン人旧教宣
教師 エリアス フェルナンデス ゴンザレス ヤップ島居住の
スペイン人旧教団員 フランレスコ ヘルナンデス イエスク
デロ コロール島居住のスペイン人旧教団員 エミリオ
ブイラー ヤップ島居住のアメリカ人 アガピト レホンデネロ
ヤップ島居住の前記アガピトの妻 フィリ
ミナ ウンタラン ホンデネロ ヤップ島居住 前記アガピテ 及
及フィリミナ ホンデネロの息子 バルタザー ウンタラン ホンデネロ
ホンデネロ 及びヤップ島居住の前記アガピテ 及
フィリミナ ホンデネロの娘 カロリン ウンタラン ホンデネロ
を当局は詳細不明の犬番の射殺により不法に
殺し又不法に殺せた、右行為は現行法特に
日本刑法中一九九條に違反してゐる 同條文の謄
本左の如し「人を殺したるものは死刑無期若くは
三年以上の禁錮に処す」

懲役

レ エ ポーネル
アメリカ合衆国海軍少将
マリアナ方面司令官

(大)

(6)

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, February 16, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Private First Class Albert E. Neidhart, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Stewart R. Smith, yeoman first class, U. S. Navy, and Robert Oldham, yeoman third class, U. S. Navy, as reporters, and they were duly sworn.

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

Each of the accused requested that Commander Martin E. Carlson, U. S. Naval Reserve; Mr. Sanagi, Sadamu; Mr. Karasawa, Takami and Mr. Kuwata, Hideo act as his counsel. Commander Carlson, Mr. Sanagi, Mr. Karasawa and Mr. Kuwata took seat as counsel for the accused.

The judge advocate read the precept and modifications thereof, copies prefixed marked "A," "B," "C," "D" and "E."

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate requested that the commission approve the procedure wherein classified dispatches are referred to during the course of the proceedings of this commission, reference only to the content and substance of these dispatches would be made in open court. No reference to the date time group, or other means of identification of classified matter would be made, but defense counsel represented by Commander Martin E. Carlson, U. S. Naval Reserve, would be given full opportunity to verify the accuracy and the authenticity of any statement regarding the content of such dispatches. The reason for this procedure is primarily one of cryptographic and communication security.

The commission announced that the above procedure was approved.

The judge advocate did not object to any member.

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Commander Martin E. Carlson, a counsel for the accused, made an objection to Lieutenant Commander Edwin M. Koos, U. S. Navy, as follows:

All twenty of these accused challenge Lieutenant Commander Edwin M. Koos, U. S. Navy, on the ground that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands, on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial, the offense is similar in nature and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore be said to be interlocking offenses.

The judge advocate made the following statement:

The judge advocate does not feel that the challenge is well founded. However, before the challenged member replies, we respectfully call the commission's attention to two dispatches concerning this matter, one from Commander Marianas to the Secretary of the Navy, Judge Advocate General, requesting permission to relax in these war crimes trials the rule stated in Section 388(e) of Naval Courts and Boards, and the second is the affirmative from the Judge Advocate General.

Certified copies of the two dispatches were presented to Commander Carlson, counsel for the accused, and to the commission.

The challenged member replied as follows:

I, Lieutenant Commander Edwin M. Koos, can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases and my own conscience.

The commission was cleared. The challenged member withdrawing.

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

Commander Martin E. Carlson, a counsel for the accused, made an objection to Major Donald B. Cooley, junior, U. S. Marine Corps, as follows:

All twenty of these accused challenge Major Donald B. Cooley, junior, U. S. Marine Corps, on the grounds that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands,

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on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial the offense is similar in nature and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore be said to be interlocking offenses.

The challenged member replied as follows:

I, Donald B. Cooley, junior, admit that I sat as a member of the commission which tried persons named by counsel for the accused. However, I can truthfully state that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases and my own conscience.

The commission announced that in view of the fact that the reasons for this challenge were identical with the objection to Lieutenant Commander Edwin M. Koos, U. S. Navy, the objection was likewise not sustained.

Commander Martin E. Carlson, a counsel for the accused, made an objection to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, as follows:

All twenty of these accused challenge Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, on the grounds that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands, on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial, the offense is similar in nature and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore be said to be interlocking offenses.

The accused further object to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, because he sat as a member of the commission which tried Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. The commission held there was jurisdiction of the commission to try Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. Although that case was not an identical case the facts are similar and the cases can be said to be interlocking. Lieutenant Commander Lee has formed a definite opinion as to the jurisdiction of this commission to try these accused for a violation of Article 199 of the Criminal Code of Japan.

The challenged member replied as follows:

I, Bradner W. Lee, junior, lieutenant commander, U. S. Naval Reserve, state that I have not formed a positive or definite opinion as to the guilt or innocence of any of the accused and that I can truthfully state that I can

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truly try without prejudice or partiality the case now depending according to the evidence which shall come before this commission, the rules of evidence prescribed for the trial, the customs of war in like cases and my own conscience.

The commission announced that in view of the fact that the reasons for this challenge were identical with the objection to the other members, the objection was likewise not sustained.

Commander Martin E. Carlson, a counsel for the accused, made an objection to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, as follows:

All twenty of these accused challenge Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U. S. Army, on the grounds that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands, on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial, the offense is similar in nature, and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore be said to be interlocking offenses.

The accused further object to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U. S. Army, because he sat as a member of the commission which tried Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. The commission held there was jurisdiction of the commission to try Furuki, Hidesaku and Inoue, Fumio, for violation of Article 199 of the Criminal Code of Japan. Although that case was not an identical case the facts are similar and the cases can be said to be interlocking. Lieutenant Colonel Garbarino has formed a definite opinion as to the jurisdiction of this commission to try these accused for a violation of Article 199 of the Criminal Code of Japan.

The challenged member replied as follows:

It is true that I sat as a member of the commission which has heard cases involving the members of the Kempeitai at Babelthuap Island. However, I wish to assure all parties to this trial that I can truly try without prejudice or partiality the case now pending according to the evidence which shall come before this commission, the rules of evidence prescribed for the trial, the customs of war in like cases and my own conscience.

The commission announced that in view of the fact that the reasons for this challenge were identical with the objection to the other members, the objection was likewise not sustained.

Commander Martin E. Carlson, a counsel for the accused, made an objection to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army, as follows:

All twenty of these accused challenge Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, U. S. Army, on the ground that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands, on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial, the offense is similar in nature, and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore, said to be interlocking offenses.

The accused further object to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, U. S. Army, because he sat as a member of the commission which tried Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. The commission held there was jurisdiction of the commission to try Furuki, Hidesaku and Inoue, Fumio, for violation of Article 199 of the Criminal Code of Japan. Although that case was not an identical case the facts are similar and the cases can be said to be interlocking. Lieutenant Colonel Roscoe has formed a definite opinion as to the jurisdiction of this commission to try these accused for a violation of Article 199 of the Criminal Code of Japan.

The challenged member replied as follows:

I, Henry K. Roscoe, acknowledge having participated as a member of the military commission which tried the case cited by defense counsel. I can, however, truly try without prejudice or partiality the case now pending according to the evidence that may come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases and my own conscience.

The commission announced that in view of the fact that the reasons for this challenge were identical with the objection to the other members, the objection was likewise not sustained.

Commander Martin E. Carlson, a counsel for the accused, made an objection to Rear Admiral Arthur G. Robinson, U. S. Navy, as follows:

All twenty of these accused challenge Rear Admiral Arthur G. Robinson, U. S. Navy, on the ground that he is prejudiced against these accused, former members of the Kempeitai, the Japanese Military Police, Babelthuap Island, Palau Islands, or assigned duty with the Kempeitai, Palau Islands, and that he has formed a positive and definite opinion as to the guilt of each and every one of these accused because he sat as a member of the commission which tried Nakamura, Kazuo and Kokubo, Chihiro, acting with Miyazaki, Aritsune, deceased, then a lieutenant colonel, IJA, at Babelthuap Island, Palau Islands, on or about September 4, 1944. Although Nakamura and Kokubo were not tried upon charges based on the same transaction concerning which these accused are here on trial, the offense is similar in nature, and is said to have been performed by certain members of the Kempeitai, Palau Islands, acting together with Miyazaki, the commanding officer of the Kempeitai, and can therefore, said to be interlocking.

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The accused further object to Rear Admiral Arthur G. Robinson, U. S. Navy, because he sat as a member of the commission which tried Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. The commission held there was jurisdiction of the commission to try Furuki, Hidesaku and Inoue, Fumio for violation of Article 199 of the Criminal Code of Japan. Although that case was not an identical case the facts are similar and the cases can be said to be interlocking. Rear Admiral Robinson has formed a definite opinion as to the jurisdiction of this commission to try these accused for a violation of Article 199 of the Criminal Code of Japan.

The challenged member replied as follows:

It is true that I sat in the previous trial mentioned by defense counsel but I should like to say at this time that I have formed no opinion as to the guilt or innocence of these accused nor am I prejudiced against them. Furthermore I would like to assure all parties to the 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 in view of the fact that the reasons for this challenge were identical with the objection to the other members, the objection was likewise not sustained.

The judge advocates and each member were duly sworn.

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

The judge advocate replied.

The commission announced that the motion was not sustained.

Each of the accused stated that he had received a copy of the charges and specifications preferred against him, both in English and in Japanese, on February 2, 1948.

The judge advocate read a letter from the convening authority, prefixed marked "G," 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 of the Japanese and English in the possession of each of the accused.

The judge advocate asked the accused if they had any objections to make to the charges and specifications.

The accused replied in the affirmative. Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to the charges and specifications, prefixed marked "H."

An interpreter read an English translation of Mr. Kuwata's objection, prefixed marked "I."

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Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, read a further written objection to the charges and specifications, prefixed marked "J."

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

The judge advocate replied.

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

The commission was cleared.

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

The commission made the following ruling:

The commission rules that the various motions contained in the objections to the charges and specifications, and the objections to the charges and specifications are not sustained. The commission finds the charges and specifications sufficient, in due form and technically correct.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

Commander Martin E. Carlson, a counsel for the accused, read a written plea in bar of trial of Ishiyama, Zenzo on the ground of insanity, prefixed marked "K."

Commander Martin E. Carlson, a counsel for the accused, read a written plea in bar of trial of Fujitani, Yoshio, on the ground of insanity, prefixed marked "L."

The accused waived the reading of a Japanese translation of the defense counsel's pleas in bar of trial in open court.

The judge advocate informed the commission that, prior to trial and at the request of defense counsel, the accused Ishiyama and Fujitani had been examined by the psychiatrist of the United States Naval Hospital, Guam, and the reports of the examinations indicated that both accused were sane; however, if the commission so desired the psychiatrist would be called to testify.

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

The commission directed the judge advocate to produce the psychiatrist.

A witness in behalf of the prosecution entered and was duly sworn.

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Examined by the judge advocate:

1. Q. State your name, rank and present duty station.
A. Robert E. Switzer, lieutenant, Medical Corps, United States Navy, stationed at the United States Naval Hospital, Guam, Marianas Islands.

2. Q. If you recognize any of these accused, state as whom.
A. I have examined three of these men. I am not sure that I can pick them out from that group with the correct names. I see Fujitani there in the second row -- this man back here in the white shirt (indicating accused Fujitani, Yoshio) and that one (indicating accused Hidaka, Kinnosuke).

3. Q. Doctor, are you the psychiatrist in attendance at the United States Naval Hospital, Guam?
A. Yes, sir.

4. Q. At the request of Commander Marianas and on direction of the medical officer in command of the United States Naval Hospital, did you examine two of the accused in this present case, namely, Fujitani, Yoshio and Ishiyama, Zenzo?
A. Yes, sir.

5. Q. Will you please inform the commission just what you did in connection with examihing these two accused?
A. These two men were both interviewed and given a physical and neurological examination at the War Criminal Stockade on the afternoon of the ninth of February, this year.

6. Q. As a result of this examination of the accused Ishiyama, Zenzo did you reach a conclusion as to his sanity?
A. It was my opinion that the accused was not psychotic and was able to cooperate in his own defense in any legal action brought against him. I did find some physical defects which are being followed up by his own medical officer.

7. Q. In your opinion, is the accused Ishiyama, Zenzo sane?
A. Yes.

8. Q. Doctor, I show you a one page report and ask you if that report was prepared by you, signed by you and contains the history received from Ishiyama, Zenzo, your findings on examination and your conclusions?
A. Yes, sir.

The report identified by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

There being no objection, it was so received and appended, marked "Exhibit 1."

9. Q. As a result of your examination of the accused Fujitani, Yoshio, did you reach a conclusion as to his sanity?
A. It was my opinion that he was not psychotic -- to use the legal term -- insane. It was evident that he had a period of reactive depression but I found no evidence of suicidal tendencies at the time I examined him.

10. Q. Then, in your opinion, is the accused Fujitani, Yoshio sane?
A. Yes, sir.

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11. Q. Doctor, I show you a one page report and ask you if that report was prepared by you, signed by you and contains the history received from Fujitani, Yoshio, your findings on examination and your conclusions?
A. Yes, sir.

The report identified by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

There being no objection, it was so received, and appended, marked "Exhibit 2."

12. Q. Will you please read "Exhibit 1"?

The witness read "Exhibit 1."

An interpreter read a Japanese translation of "Exhibit 1."

13. Q. Will you please read "Exhibit 2"?

The witness read "Exhibit 2."

An interpreter read a Japanese translation of "Exhibit 2."

Cross-examined by the accused:

14. Q. Doctor, you stated that you examined Ishiyama and Fujitani on the afternoon of February ninth. Is this the only time that you examined Ishiyama?
A. Yes.

15. Q. And there were no clinical and laboratory examinations made of any of these two persons, were there?
A. There were no laboratory examinations.

16. Q. Did you recommend any further examinations in the case of Ishiyama?
A. Yes. I said in the report I recommend that he have some x-rays made, particularly of the skull and talked it over with the doctor later, and that he should also have a lumbar puncture in attempt to run down these physical findings.

17. Q. In your report on Fujitani you stated that the subject, Fujitani, tried to hang himself on January 28, 1948. In your opinion was this normal?
A. I think it was a logical response on his part. We certainly can't say that everyone who makes an attempt on his life is psychotic. That is a question that has been argued for centuries. That is something very difficult for us to understand because of the cultural barrier here.

Examined by the commission:

18. Q. Does the commission understand, doctor, from your testimony that these further examinations that you recommend are confined entirely to the physical aspects of your report rather than a mental examination?

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A. It would be important to know from at least the medical standpoint what his spinal fluid was. Whether it was negative or positive. It wouldn't really make any other change.

19. Q. In other words, doctor, it would not make any change in your findings as to his sanity?
A. No. The only way it would make some change would be if there was some clinical change to go along with the findings.

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

The witness made the following statement:

On this one particular finding - the swaying on the Romberg test - that is the standing on the heels and the toes and closing the eyes was not verified by any neurological findings. If the spinal fluid would verify the suspicions, the opinion as to the mental status would not change unless the clinical findings changed.

The witness was duly warned and withdrew.

The commission announced that the pleas in bar of trial were not sustained.

Mr. Kuwata, Hideo, a counsel for the accused, read a plea to the jurisdiction, prefixed marked "M."

An interpreter read an English translation of the plea of Mr. Kuwata, to the jurisdiction, prefixed marked "N."

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

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a written plea to the jurisdiction of the commission over the accused, prefixed marked "O."

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

The judge advocate replied. In his reply the judge advocate pointed out that the Convening Authority in paragraph three of the precept convening this commission (Prefix "A") had specifically conferred jurisdiction of these accused and the alleged offenses. The judge advocate presented certified copies of this dispatch and the affirmative reply thereto from the Secretary of the Navy to Commander Carlson, counsel for the accused, and to the commission.

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

Commander Martin E. Carlson, a counsel for the accused, made an objection to the commission taking notice of the confidential dispatch which the judge advocate referred to in his reply and made available to the commission, without such dispatch first being offered in evidence.

The commission announced that the objection was not sustained.

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 plea as to jurisdiction of the commission is not sustained.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Tuesday, February 17, 1948.

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SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, February 17, 1948.

The commission met at 9:23 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a plea in bar of trial on the ground of the statute of limitations, prefixed marked "P."

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

The judge advocate replied.

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

The commission announced that the plea was not sustained.

Each of the accused stated that he was ready for trial.

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

An interpreter read the charges and specifications in Japanese, prefixed marked "R."

The judge advocate arraigned the accused as follows:

Q. Yamamoto, Kazuharu, you have heard the charges and specifications preferred against you; how say you to the first specification of the first

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charge, guilty or not guilty?
A. Not guilty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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, their counsel and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The prosecution began.

The judge advocate read his written opening statement, appended marked "S."

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

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

1. That during the year 1944 a state of war existed between the Imperial Japanese Empire and the United States, its allies and dependencies.

2. That Babelthuap Island, Palau Islands, is located in the Western Caroline Islands and is part of the Commander Marianas Area.

3. That the League of Nations on December 17, 1920 granted to Japan a Class "C" mandate over "all the former German Islands situated in the Pacific Ocean and lying north of the equator" and of the fact that Babelthuap Island was one of the islands of the designated group.

4. That under an ordinance (No. 26) for the Treatment of Judicial Affairs in the South Sea Islands, enacted in 1923 and revised in 1933, the local criminal law effective in the mandated islands at the time of the commission of the alleged crimes was the Criminal Code of Japan (Civil Affairs Handbook, West Caroline Islands, OPNAV 50E-7, Chapter 225 - a publication of the Office of the Chief of Naval Operations, Navy Department, 1 April 1944.)

5. The Criminal Code of Japan as applicable to the Caroline Islands, particularly Article 199 which reads in tenor as follows:

"Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

6. That on or about September 15, 1944 the Palau Islands were occupied by the armed forces of the United States and Military Government was established by C. W. Nimitz, Fleet Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas.

7. That Military Government continued in existence in the Caroline Islands from the date of occupation until July 18, 1945 when such Military Government was terminated by Executive Order of the President of the United States and a civil administration of this and other former Japanese mandated islands was instituted under the responsibility of the Secretary of the Navy.

8. The Trusteeship Agreement for the former Japanese mandated islands established under the Charter of the United Nations, approved by the Security Council of the United Nations on April 2, 1947 and by the United States Government on July 18, 1947, in particular Article 2 of this agreement wherein the United States of America is designated as the administering authority of the Trust Territory, comprising the islands of the Marshall, Caroline and Marianas groups.

9. Proclamations No. 1, 2 and 3 to the People of the Caroline Islands, issued by and under the authority of C. W. Nimitz, Fleet Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, and Military Governor of the Caroline Islands; in particular Article IV of Proclamation No. 2 which states:

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"Any person who commits an act which violates any provision of Japanese Penal Law in effect in these islands prior to occupation by the forces under my command, or the provisions of native law customary in the islands, may, at the discretion of the Military Governor or under his authority, be brought to trial before an Exceptional Military Court....."; and Section 3 Article II of Proclamation No. 3 which states that such, Exceptional Military Courts shall have jurisdiction over:

"(a) All offenses against the laws and usages of war;
"(b) All offenses under any proclamation, order or regulation issued under authority of my Military Government;
"(c) Any offense under the local laws of the West Caroline Islands occupied by the United States Forces....."

10. Proclamation No. 1 to the People of the Trust Territory of the Pacific Islands, issued by and under the authority of L. E. Denfield, Admiral, United States Navy, Commander in Chief, Pacific and United States Pacific Fleet, and High Commissioner of the Trust Territory by designation of the President of the United States; in particular Article II thereof which by its terms continue in force and effect: "All proclamations, regulations, ordinances and orders of the former Military Government."

11. The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, as far as practicable to interned civilians.

12. The Hague Convention of October 18, 1907.

The judge advocate stated that authentic copies of all documents referred to in his request for judicial notice were available in the office of the Director of War Crimes, Pacific Fleet, at Commander Marianas, Guam, for the use of the commission.

An interpreter read a Japanese translation of this request.

Commander Martin E. Carlson, a counsel for the accused, requested a recess until 2 p.m. in order to allow the defense counsel adequate time to prepare their objections to the commission taking judicial notice of those items requested by the judge advocate.

The commission announced that this request was granted.

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

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

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

No witnesses not otherwise connected with the trial were present.

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Mr. Karasawa, Takami, 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."

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, read a further written objection to the request of the judge advocate on judicial notice, appended marked "V."

The accused waived the reading of the objection to the request for judicial notice in Japanese in open court.

The judge advocate replied.

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

The commission made the following ruling:

The commission will take judicial notice of all items requested by the judge advocate; however, item 6 will be reworded to read as follows:

6. That on or about September 15, 1944 a portion of the Palau Islands was occupied by the armed forces of the United States and Military Government was proclaimed by C. W. Nimitz, Fleet Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, and Military Governor of the West Caroline Area.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Former Kempeitai Captain Nakamura, Kazuo.

2. Q. If you recognize these accused tell us their names and ranks?
A. Captain Yamamoto, Kazuharu; First Lieutenant Ichikawa, Yokichi; Kempei Sergeant Major Ishiyama, Zenzo; Kempei Warrant Officer Sugimoto, Takeji; Kempei Sergeant Major Ichimiya; Kempei Sergeant Ozaki; Kempei Sergeant Tamamoto; Kempei Sergeant Yokoyama; Army Corporal Esure; Army Leading Private Fujitani; Army Superior Private Kawaguchi; Army Superior Private Ando, Fukuichi; Army Superior Private Hayashi; Army Superior Private Hidaka; Army Superior Private Ito; Army Superior Private Iwamoto; Army Superior Private Nakamura; Army Superior Private Okamura; Army Superior Private Sagara; Army Private First Class Uchida.

3. Q. Did you ever have duty with the Japanese armed forces in the Palau Islands?
A. Yes.

4. Q. Between what dates did you serve there?
A. I served there from March 10, 1944 to December 26, 1945.

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5. Q. In September of 1944, where were you stationed?
A. I was stationed at the South Seas Kempeitai. It was located on Babelthuap Island, Palau Islands.

(Translator's Note: "Kempeitai" means Japanese Military Police Force; a "Kempei" is a member of the Japanese Military Police Force.)

6. Q. What were your duties in September, 1944?
A. I was the head of the First Detachment of the South Seas Kempeitai.

7. Q. In September, 1944, did you have a conversation with anyone concerning missionaries?
A. Yes, I did.

8. Q. With whom did you have this conversation?
A. With the commanding officer, Miyazaki.

9. Q. Where did you have this conversation?
A. I had this conversation at the commanding officer's office, located at Misuzu Bridge in Gasupan on Babelthuap Island, Palau Islands.

10. Q. Were there any other persons present while you had this conversation?
A. Yes, there were.

11. Q. Who were present?
A. First Lieutenant Ichikawa and First Lieutenant Sano were there.

12. Q. What was said at this conversation? What did you say and what was said to you?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Commanding Officer Miyazaki gave the following orders: "The Japanese at Saipan have almost lost. They have lost at Peleliu and all the other islands have been annihilated. Recently the bombing on Palau has become very severe. The landing of the American forces may be imminent today or tomorrow; therefore the missionaries who are suspected of spying will be executed by orders of Division Headquarters. Adjutant Ichikawa will prepare ammunition for the rifles and shovels and two trucks." To this Adjutant Ichikawa said: "The men ordinarily have ammunition with them, and in regard to the trucks it is very hard to borrow them, therefore, I wish the commanding officer would make a request to the commanding officer of the Sumida Unit to borrow these trucks." To this the commanding officer said that division orders will be issued to the Sumida Unit to borrow these trucks.

13. Q. What else was said?
A. I then said, "Wouldn't it be better not to go through with this execution of the missionaries?" Sano also stated something to the same

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effect but the commanding officer said, "Since this was the orders of Division Headquarters and, moreover, if the American troops made their landings these missionaries will run to the enemy and so in view of safeguarding them from spying we must execute them." This was a very firm decision. So I returned to my quarters. Then presently one of my subordinates, Nakamura, who was a warrant officer, came to my quarters. He told me that a little while ago the adjutant ordered to go into action and that preparations were being made. So I told what I heard from the commanding officer to him.

The accused moved that the words "He told me that a little while ago the adjutant ordered to go into action and that preparations were being made. So I told what I heard from the commanding officer to him" be stricken from the record on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion was denied.

14. Q. What, precisely, did Nakamura tell you?
A. I don't remember the exact words but as I have just stated he said that as he was ordered by the adjutant they were making preparations to go into action.

15. Q. I show you a statement and ask you if this statement is in your own handwriting?
A. Yes.

16. Q. I refer you to a specific section of this statement and ask you if it refreshes your recollection?
A. Yes.

17. Q. Now that your recollection has been refreshed, will you tell us exactly what Nakamura said to you?
A. He said they were making preparations to start the execution of the missionaries.

18. Q. Do you know how many missionaries there were?
A. I do.

19. Q. How many were there?
A. Six.

20. Q. On that day you had this conversation with Miyazaki, did you know where the missionaries were?
A. As I did not see the missionaries at that time I did not know where they were.

21. Q. Were they at the Kempeitai?
A. No.

22. Q. What happened after you had this conversation with Warrant Officer Nakamura?
A. After that, just when I was eating my supper, the commanding officer came along the road which was right beside my quarters and said to me, "We will start now, so come out."

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23. Q. About what time of the day was this?
A. I do not recollect exactly but it was in the afternoon, about five o'clock or a little after five.

24. Q. And what happened after Miyazaki told you to come out?
A. From there I went out from the Kempeitai and went out to the road. There Commanding Officer Miyazaki, Adjutant Ichikawa, First Lieutenant Sano and the non-commissioned officers of the Kempeitai and assistant Kempeis and Captain Yamamoto of the Sumida Unit and four or five other men of the Sumida Unit were on this road.

25. Q. What happened then?
A. Then commanding officer said, "from now, in accordance with the orders of Division Headquarters, the missionaries and the people who are with them will be executed. So Warrant Officer Nakamura and auxiliary Kempeis will get on one truck and start ahead."

26. Q. Were there some trucks there?
A. There were two trucks on the road.

27. Q. Whose trucks were they - do you know?
A. They were trucks belonging to the Sumida Unit.

28. Q. These men you saw in the road that day - were they armed?
A. Yes.

29. Q. What did they have?
A. The non-commissioned officers of the Kempeitai had pistols, the auxiliary Kempeis had rifles and the men from the Sumida Unit had rifles with them.

30. Q. Other than rifles and pistols, were any of these men carrying anything else?
A. They had shovels with them.

31. Q. Anything else?
A. The commanding officer, Miyazaki, had a pistol with him.

32. Q. Where did they get the shovels - do you know?
A. I do not know where they got them but when the auxiliary Kempeis were getting aboard the truck Adjutant Ichikawa handed them over to the auxiliary Kempeis.

(Translator's Note: An auxiliary Kempei may also be translated as assistant Kempei or deputy Kempei.)

33. Q. What happened then?
A. Then all the remaining persons were told to get on the second truck; so the remaining persons got on the second truck and started off.

34. Q. Where did they go?
A. On the way there was an air raid so the first truck stopped and the truck that came later caught up with the first truck, then the first truck started off again, then the second truck started. The rear truck stopped and Commanding Officer Miyazaki and the officers who were with him and a few non-commissioned officers and part of the auxiliary Kempeis, it might

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have been just one or two, but they were all led by the commanding officer and went to where the missionaries were living.

35. Q. Which truck were you on?
A. The second truck.

36. Q. Can you give us the names of the officers and the men who got into these trucks?
A. I don't recall the names of the enlisted men but all the officers got on the second truck.

37. Q. What officers?
A. The commanding officer, Adjutant Ichikawa, First Lieutenant Sano, myself and Captain Yamamoto got on the second truck.

38. Q. Where were the missionaries living?
A. They were living in a farmer's house belonging to the South Seas Development Company which was in Gasupan.

39. Q. About how far was this house from the Kempeitai?
A. It was about 1500 or 2000 meters away.

40. Q. How many missionaries were living in that house?
A. There were six missionaries, an interpreter and wife and two children.

41. Q. Do you know the names of any of the missionaries?
A. I do not know.

42. Q. Do you know their nationality?
A. I do not know but I have heard from Commanding Officer Miyazaki or it might have been Sano that they were Spanish nationals.

The accused moved that this answer be stricken on the ground that it was hearsay.

The commission directed that the answer be stricken out.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, February 18, 1948.

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THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, February 18, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, their counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Nakamura, Kazuo, 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.

(Examination continued.)

43. Q. Did you accompany Miyazaki in this group that went to the house of the missionaries?
A. Yes, I did.

44. Q. When you got to this house what did you find there?
A. I did not see anything in particular, but Commanding Officer Miyazaki talked to the missionaries in a foreign tongue.

45. Q. Do you know in what language he spoke to them?
A. I do not know any foreign language but as it was said that Commanding Officer Miyazaki was very good in Spanish I believe it was Spanish.

The accused moved that this answer be stricken on the ground that it was hearsay and the opinion of the witness.

The commission directed that the answer be stricken out.

46. Q. When you got to this house how many people did you find in it?
A. Do you mean foreigners or Kempeis?

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47. Q. How many foreigners were in it?
A. I did not count but I believe they were all there.

48. Q. How many is all?
A. All the persons that were executed.

49. Q. How many persons were executed?
A. Including the children, I believe it was ten.

50. Q. You know there were ten, don't you?
A. As I did not count I do not know but I presume there were.

51. Q. How many missionaries were there?

This question was objected to by the accused unless the judge advocate could qualify this witness as to what he means by missionaries.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I think there were six.

52. Q. Besides the six missionaries, how many other foreigners were there?
A. Other than these six there were a man and a woman and two children who looked like natives at a glance.

53. Q. Did you know the name of the man and woman?
A. No, I do not.

54. Q. Was this man known by any particular name?
A. I do not know.

55. Q. What was he called -- do you know?
A. I do not know his name and never heard him being called.

56. Q. After Miyazaki spoke to them in this foreign language, what happened then?
A. They all came out and we all, including the commanding officer, got on the trucks.

57. Q. Where did you go on the trucks?
A. We went to a high point on the hill -- the Gasupan Daijo.

58. Q. Did the trucks stop there?
A. Yes.

59. Q. What happened after the trucks stopped?
A. The commanding officer ordered everybody to get off, so we all got off.

60. Q. What happened then?
A. Commanding Officer Miyazaki had the assistant Kempeis and a part of the Kempeis form groups or teams of one each. Then First Lieutenant Sano asked Commanding Officer Miyazaki and Commanding Officer Miyazaki said: "The interpreter and the children will also be executed. The interpreter is more

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dangerous than the others. As there is no one to take care of their children they will be executed also. This is an order of Division Headquarters so it can not be helped."

61. Q. How many groups were formed?
A. I do not recall clearly but I believe there were seven or eight groups.

62. Q. Approximately how many men were in each group?
A. Approximately there were, I believe, two to each group but there might have been one or two groups with three persons. I do not recall clearly.

63. Q. Was each group made up of an officer and an auxiliary Kempei?

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

The judge advocate withdrew the question.

64. Q. What were the respective ranks of the enlisted men who made up these teams?
A. I do not understand the question very clearly.

65. Q. Was each team made up of non-commissioned officers?
A. At that time the assistant Kempeis were not non-commissioned officers. There were non-commissioned officers, Kempeis and assistant Kempeis.

66. Q. After the missionaries got off the trucks what was done with them, if anything?
A. The commanding officer, in a foreign tongue which might have been Spanish, talked to these missionaries. Probably he told them that the execution will be carried out. Then the commanding officer ordered the Kempeis and assistant Kempeis as follows: "Tie them with the ropes you usually carry." At this time I do not think they tied the children and the aged man. Then it was said that it would be better to blindfold them so they were blindfolded.

The accused moved that the words "Probably he told them that the execution will be carried out" be stricken on the ground that it was the opinion of the witness.

The commission directed that these words be stricken out.

67. Q. Who were tied up?
A. The missionaries and the male interpreter.

68. Q. Who is this interpreter?
A. I do not know who he was but at a glance he looked like a native.

69. Q. When you say interpreter you mean the man that was brought from the house along with the missionaries, do you not?
A. Yes.

70. Q. Were the children tied up?
A. I recall that the children were not tied.

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71. Q. Was the woman tied?
A. I recall that the woman was not tied.

72. Q. How many of these people were blindfolded?
A. I do not recall how many were blindfolded.

73. Q. Were all the missionaries blindfolded?
A. I think there were two or three missionaries who were not blindfolded.

74. Q. Were the children blindfolded?
A. I think they were not blindfolded. I do not know for sure.

75. Q. These children -- about how old would you say they were?
A. I do not know for sure but by looking at them the older one was about five or six years of age and younger about three or four years of age.

76. Q. After these people were tied, what happened then?
A. Then by orders of the commanding officer we started to enter the jungle. At the entrance of the jungle the commanding officer ordered us to separate into two groups so we separated into two groups and with Warrant Officer Nakamura at the head we went into the jungle. The two groups came together at the place where the hole was dug.

77. Q. What hole was this?
A. This hole was the place where the execution took place.

78. Q. Do you know when this grave was prepared?
A. I do not know but I feel that it was the same hole where the prisoners were executed before.

79. Q. Isn't it a fact that this grave was prepared by your orders?
A. It was a long while before that I received an order from Commanding Officer Miyazaki when he was still at Koror to dig the hole. I ordered Warrant Officer Nakamura to dig a hole and I think this might be the same hole for Warrant Officer Nakamura led the way.

80. Q. Did the blindfolded missionaries go by themselves?
A. No, the teams of two led them.

81. Q. Teams of two what?
A. The pair made up by Kempeis and assistant Kempeis. That group which I stated before.

82. Q. After these two groups got to the grave, what happened then?
A. Then First Lieutenant Ichikawa gave some candles to Commanding Officer Miyazaki and Lieutenant Sano and one or two others and the candles were lighted and then Miyazaki ordered to have them line up in front of the hole, so the teams had them line up in front of the hole. Then Commanding Officer Miyazaki said to First Lieutenant Yamamoto, "I will turn over the right half to the Sumida Unit so have them shoot."

83. Q. When you say he had them line up in front of the hole, whom do you mean -- the candle holders or the missionaries?
A. The missionaries and the persons who seemed to be their interpreters.

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84. Q. How about the woman and the two children?
A. I recall that the children and woman were also lined up.

85. Q. After they got these ten individuals lined up, what happened then?
A. Soon after Commanding Officer Miyazaki said this, First Lieutenant Ichikawa told Yamamoto as follows: "I ask you to take care of the four from the right." He relayed this to Yamamoto. Commanding Officer Miyazaki showed them where to shoot by pointing his finger at the back of the head of the missionaries and said, "Here."

86. Q. What happened then?
A. Commanding Officer Miyazaki gave his pistol to First Lieutenant Yamamoto saying, "Here, do it with this." First Lieutenant Ichikawa received this pistol and gave it to Warrant Officer Nakamura or Sergeant Yokoyama and at this time he said the same thing as the commanding officer, "Here, do it with this!" Then the commanding officer ordered to untie them, so all of them were untied. Then the commanding officer ordered, "All right, start from the right in order." So each group shot, starting from the right. One or two persons did not shoot and the child was not shot. At this time the commanding officer said, "Well, what are you hesitating about? Hurry up and do it!" Commanding Officer Miyazaki, as soon as he got off the truck, had said many times to hurry up and at this time he also said, "Shoot the ones who are left right away!" I do not know who shot them. The four from the right were shot by the Sumida Unit.

87. Q. After the shooting was over, what was done with the bodies?
A. They were put in the hole and buried.

88. Q. Give us the names of all the men who you remember were present that night at the scene of the execution.
A. First Lieutenant Yamamoto, Second Lieutenant Ichikawa, First Lieutenant Sano, Warrant Officer Nakamura, Sergeant Major [illegible]shiyama, Sergeant Major Sugimoto, Sergeant Ichimiya, Sergeant Tamamoto, Sergeant Yokoyama, Leading Private Esure, Superior Private Fujitani, Leading Private Kawaguchi, and Superior Private Okamura.

89. Q. Can you tell us what any of these individuals did at this scene?
A. I do not recall other than what I have already said, but I saw Sergeant Yokoyama shoot.

90. Q. Can you give us the names of any of these men who were actually members of one of the teams?
A. I do not recall.

91. Q. What became of the bodies of these ten people?
A. After the war, by orders of Commanding Officer Miyazaki, on the request from Division Headquarters, they were going to return the ashes to the victorious country, so they were cremated and they were brought back. But when they were brought back Division Headquarters changed its mind and said that we will say that they were sent to the Philippine Islands, so we will not need them anymore. So they were put into a wooden box and buried with the ashes of Smith and the three prisoners of war.

92. Q. Do you know the actual rank of Yamamoto at the time of this incident in September 1944?
A. I recall that he was a first lieutenant.

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93. Q. How about Ichikawa?
A. He was a second lieutenant.

94. Q. How about Ishiyama?
A. Sergeant Major.

95. Q. Sugimoto?
A. Sergeant Major.

96. Q. Ichimiya?
A. I recall he was a sergeant.

97. Q. Ozaki?
A. Ozaki was also a sergeant.

98. Q. Tamamoto?
A. Sergeant.

99. Q. Yokoyama?
A. He was also a sergeant.

100. Q. Ezure?
A. I do not recall clearly whether he was a leading private or a superior private.

101. Q. Fujitani?
A. I believe he was a superior private.

102. Q. Kawaguchi?
A. As Kawaguchi was not my subordinate I do not know.

103. Q. Ando?
A. He was a superior private.

104. Q. Hayashi?
A. Superior private.

105. Q. Hidaka?
A. Superior private.

106. Q. Ito?
A. Superior private.

107. Q. Iwamoto?
A. I am not sure but I believe he was a superior private.

108. Q. Nakamura?
A. I think he was a superior private.

109. Q. Okamura?
A. I believe he was a superior private.

110. Q. Sagara?
A. I am not sure but I believe he was a superior private.

111. Q. Uchida?
A. I think he was a private first class.

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The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the accused:

112. Q. You have identified all of the accused. Now tell us what unit they belonged to and what their duties were about the middle of September, 1944?
A. First Lieutenant Ichikawa was the adjutant of the South Seas Kempeitai. Sergeant Major Ishiyama belonged to the First Detachment. Sergeant Major Sugimoto belonged to the Kempeitai Headquarters, General Affairs Section. Sergeant Ichimiya belonged to the M.P. Detachment. Sergeant Ozaki belonged to the First Detachment. Sergeant Tamamoto belonged to the Special Higher Section of the M.P. Unit. Sergeant Yokoyama belonged to the Kempeitai, General Affairs Section. Corporal Ezure belonged to the Kempeitai Headquarters. Superior Private Fujitani belonged to the Kempeitai Headquarters. Superior Private Kawaguchi belonged to the Sumida Unit. Superior Private Ando belonged to the M.P. Detachment. Superior Private Hayashi belonged to the Kempeitai Detachment. Superior Private Hidaka, I don't recall clearly but I believe he belonged to the Kempeitai Headquarters. Superior Private Ito belonged to the Kempeitai Detachment. Superior Private Iwamoto belonged to the Kempeitai Detachment. Superior Private Nakamura belonged to the Kempeitai Detachment. Superior Private Okamura belonged to the Kempeitai Detachment. Superior Private Sagara belonged to the Kempeitai Detachment. Private First Class Uchida belonged to the Kempeitai Detachment. Captain Yamamoto was the adjutant of the Sumida Unit.

113. Q. What kind of a unit was this Sumida Unit?
A. I do not know clearly but what I heard was that it was the transportation unit of Division Headquarters.

114. Q. In your testimony you have frequently mentioned Kempeis and assistant Kempeis. Now at this time please show us who were the Kempeis and who were the assistant Kempeis.
A. The following were the Kempeis: First Lieutenant Ichikawa, Sergeant Major Ishiyama, Sergeant Major Sugimoto, Sergeant Ichimiya, Sergeant Ozaki, Sergeant Tamamoto, and Sergeant Yokoyama. The following were the assistant Kempeis: Leading Private Ezure, Leading Private Fujitani, Superior Private Ando, Superior Private Hayashi, Superior Private Hidaka, Superior Private Ito, Superior Private Iwamoto, Superior Private Nakamura, Superior Private Okamura, Superior Private Sagara and Private First Class Uchida.

115. Q. Wasn't Kawaguchi an assistant Kempei?
A. No, he was not.

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116. Q. What was this Kawaguchi?
A. Before this time, Kawaguchi came to the Kempeitai as a driver but I recall at this time he went back to the Sumida Unit.

117. Q. Wasn't Kawaguchi the driver of the car for the First Detachment commander and was he not on duty at the Kempeitai at the time of this incident?

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

The accused withdrew the question.

118. Q. Wasn't Kawaguchi a driver of the personal car of First Detachment Commander, Nakamura?
A. There was a time that he was but from my memory I recall that he was back at his own unit at this time.

119. Q. When were the assistant Kempeis assigned to the South Seas Kempeitai?
A. I believe it was around June 1944.

120. Q. Were these assistant Kempeis schooled as Kempeis before they took the duty as the assistant Kempeis at the South Seas Kempeitai?

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. They were not schooled as Kempeis but I recall that there were some who were schooled as assistant Kempeis.

121. Q. What time did you talk to Commanding Officer Miyazaki in regard to the missionaries?
A. It was in the evening of one day in September 1944.

122. Q. Was it the evening of the day of the incident?
A. Yes.

123. Q. Please tell us around what time it was?
A. I do not have a clear recollection but I think it was around four or five or five thirty in the afternoon.

124. Q. Wasn't it in the morning of the day of the incident that you talked with Lieutenant Colonel Miyazaki?
A. It was not very long after Commanding Officer Miyazaki gave the orders, so I think it was a little past four o'clock in the afternoon.

125. Q. You have testified that the commanding officer relayed to you about war conditions of the American landing on Peleliu and the air raids were very furious, but what was your judgment to war conditions?
A. The air raids were very furious and we were always in the air raid shelter. We only came out for a little while to eat but even at these times we were raided, so most of the time we were in the air raid shelter. I heard from Commanding Officer Miyazaki that the forces on other islands were completely wiped out so as Commanding Officer Miyazaki said I felt that the American forces would land here in the near future.

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126. Q. Did not Lieutenant Colonel Miyazaki assign special duties to each officer who assembled at the quarters of Lieutenant Colonel Miyazaki in regard to carrying out the execution?
A. He did.

127. Q. What kind of an assignment did you receive?
A. I was told to go along to the scene and help the commanding officer command the execution.

128. Q. Were you not told to command the firing squad at the scene of the execution?
A. What the commanding officer said is what I have said before.

129. Q. Did First Lieutenant Sano receive any assignment?
A. He said to First Lieutenant Sano to come along to the scene and do what I order you to do at the scene.

130. Q. Were you told the method of the execution at this meeting?
A. I recall that he said it will be done by shooting.

131. Q. Was it decided who was to do the shooting?
A. The commanding officer did not say who was to shoot.

132. Q. Then who was to decide who was going to shoot?
A. The commanding officer assigned them at the scene by gathering the persons that were present by indicating with his hand where they were to go.

133. Q. By the word "scene," where do you mean?
A. After we got off the truck and where we made the teams.

134. Q. Wasn't it decided, when Miyazaki gathered the officers who assembled, who was to shoot?
A. When the officers first gathered -- no steps were taken to decide who were to shoot.

135. Q. You have testified that when Commanding Officer Miyazaki said that the missionaries were to be executed that you and Sano objected to this. Didn't Ichikawa also object to this?
A. As I have said before, Ichikawa said what he did in regard to the trucks but I recall that he did not mention anything in regard to this.

136. Q. When Lieutenant Colonel Miyazaki stated that the missionaries were to be executed, did he specifically mention only the missionaries?
A. First, when the officers met in the commanding officer's quarters, he mentioned only the missionaries and no one thought of the interpreter. When we were on the truck he said that the interpreter was to be executed also, and after getting off the truck Sano asked the commanding officer and he said the interpreter was also to be executed and they are more dangerous than the missionaries; and as for the children -- as there was no one to take care of them -- they will also be executed.

137. Q. Yesterday you testified that these missionaries were going to be executed because they were spy suspects. If you know any specific facts in regard to this, please state it at this time?
A. I was not in charge so I do not know the details. Sano does. But on the

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truck Commanding Officer Miyazaki said as follows: "There is information that the missionaries, at the time of the air raids by the American planes, had made signals by reflection and communicated with the American planes and led them to the place to bomb. There was other information that the missionaries had said to their neighbors that when the Americans landed they would escape to the American side so the division headquarters, from the standpoint of sabotage, considered it very important that they be executed, so they will be executed. There is no courts-martial here but if there were one they would naturally be executed so do not worry." This is what I recall him saying.

The judge advocate moved that this entire answer be stricken out on the ground that it was irrelevant, immaterial and hearsay.

The accused replied.

The commission directed that the answer be stricken out.

138.Q. You testified that Ichikawa told Lieutenant Colonel Miyazaki for he, himself, to request the truck from the Sumida Unit. At this time did not Lieutenant Colonel Miyazaki, himself, telephone the Sumida Unit in regard to the truck?
A. I did not see, so I do not know.

139. Q. You testified that the Division Headquarters was given orders concerning the vehicle at this time. Did he only say about this order? Did he say anything else? Did he mention only the vehicle?
A. I recall only that it was the vehicle.

140. Q. Do you not recall that other to the vehicle there was anything mentioned about several guards?
A. As this order was not said to me I do not know everything. I only recall what I have said before.

141. Q. After you received the orders for the execution of the missionaries from Miyazaki, in what way did you relay this to the First Detachment?
A. As I testified before, I went back to my room and then Warrant Officer Nakamura came. The rest is as I have stated before.

142. Q. What position did Warrant Officer Nakamura hold in the First Detachment?
A. Squad leader.

143. Q. Was he next in command to you in the First Detachment?
A. Yes.

144. Q. Among the persons who were at the scene of the execution there were many persons from the First Detachment. Did they go to the scene of the execution because they were ordered by you to go?
A. Yes.

145. Q. When did you order your subordinates to go?
A. When Warrant Officer Nakamura came to my room I relayed the orders from the adjutant of the headquarters and he said that the preparations are being made and it is about time the preparations were completed. This is what he said to me. At this time I told him what I was told by the commanding officer.

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The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Thursday, February 19, 1948.

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FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, February 19, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

146. Q. You quoted Warrant Officer Nakamura as having said that preparations had been completed. What did you mean by that?
A. He said that preparations for the execution of the missionaries had been completed.

147. Q. Were all the soldiers of the Sumida Unit that you saw in front of the road of the Kempeitai quarters armed?
A. I remember the majority of them carried rifles.

148. Q. Was it not usual under the war conditions then prevailing for soldiers to carry rifles whenever assigned duties outside their quarters?
A. There were occasions when they did carry rifles and other occasions when they did not.

149. Q. Give the names of those who accompanied you to the house of the missionaries?
A. Commanding Officer Miyazaki, First Lieutenant Ichikawa, First Lieutenant Sano, Captain Yamamoto, myself, several non-commissioned officers and auxiliary Kempeis, but I do not recall the names of the latter.

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150. Q. Who spoke to the interpreter at that time?
A. I do not know who spoke to the interpreter.

151. Q. For what languages was this man an interpreter?
A. I do not know what languages this man interpreted. I only heard that he was an interpreter attached to the missionaries.

152. Q. Do you know the nationality of this interpreter?
A. I do not know.

153. Q. Describe the appearance and outline of this interpreter?
A. His face was not different from those of the natives in any respect. His clothes were somewhat dirty. This may have been due to the fact that he was going in and out of the air raid shelter.

154. Q. Describe the appearance of his wife?
A. Her age seemed to be between thirty or forty. There were no peculiarities as to her appearances which were noticeable.

155. Q. What was her color?
A. She seemed to be darker than a Japanese.

156. Q. Was this wife a native of the Palaus?
A. I do not know.

157. Q. What was the color of the children?
A. As I did not see them clearly, I do not remember.

158. Q. You testified that the Kempeis and auxiliary Kempeis formed teams at the place where the missionaries alighted from the truck. Were soldiers of the Sumida Unit included in those teams?
A. I do not recall how it was.

159. Q. Who was in command at the scene of the execution?
A. Commanding Officer Miyazaki was in charge.

160. Q. Where was Commanding Officer Miyazaki stationed at the scene of the execution?
A. He was always on the move so I do not think he had any fixed station.

161. Q. When, as you testified, Commanding Officer Miyazaki handed the pistol to Lieutenant Ichikawa, whereabouts was he stationed in relation to the hole?
A. He was three or four meters removed from the hole.

162. Q. Where were you at this time?
A. A meter or two away from the commanding officer.

163. Q. Where was First Lieutenant Yamamoto when the execution took place?
A. As I did not have a candle I do not have a clear recollection.

164. Q. Was it planned that soldiers of the Sumida Unit were to participate in the firing prior to departure from the Kempeitai Headquarters?
A. I do not know.

165. Q. As far as you know do you mean to say that it was first decided at the scene of the execution that soldiers of the Sumida Unit would participate in the firing?
A. All I knew was what I heard at the scene of the execution.

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166. Q. You said, yesterday, that Miyazaki himself told Yamamoto to have soldiers of the Sumida Unit fire and later Ichikawa reiterated the same request to Yamamoto. Is it not a fact that Ichikawa did not say this to Yamamoto?
A. I heard Ichikawa telling this to Captain Yamamoto.

167. Q. Was a part of the Kempeis relieved from firing because it was decided that soldiers of the Sumida Unit were to fire?
A. I have no recollection.

168. Q. You testified, yesterday, that one or two persons did not fire. Do you remember who they were?
A. I do not recall the names of the persons.

169. Q. Where was Warrant Officer Nakamura stationed when the shooting took place?
A. I can not state definitely where he was stationed because he had no fixed station and he kept moving about, but I have a vague recollection that he was on the left.

170. Q. What do you mean by the left? The left of what?
A. To the left facing the hole.

171. Q. Where was Sergeant Yokoyama?
A. I think a little to the left of the center.

172. Q. You testified that Miyazaki handed his pistol to Ichikawa who then passed it on to Warrant Officer Nakamura or Sergeant Yokoyama. Is it not the truth that Miyazaki handed his pistol direct to Warrant Officer Nakamura?
A. I saw him pass it on.

173. Q. Pass it on to whom?
A. I can not remember exactly whether it was Warrant Officer Nakamura or Sergeant Yokoyama.

174. Q. What was your position relative to the hole at that time?
A. I think I was slightly to the left of the center facing the hole.

175. Q. Were there any persons above the rank of warrant officer and above who fired at the scene of the execution?
A. I did not see.

176. Q. Did Ishiyama go to the scene of the execution?
A. I do not remember.

177. Q. Did you not see Commanding Officer Miyazaki fire?
A. I did not see.

178. Q. Did Sergeant Ozaki go to the scene of the execution?
A. I have no recollection.

179. Q. Did Leading Private Ando remain at the quarters on that day?
A. I have no recollection.

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180. Q. What about Leading Private Hayashi?
A. As I remember it Hayashi had stepped on a nail and was not able to move about at the time.

The judge advocate moved to strike out this answer on the ground that it was not responsive.

The commission directed that the answer be stricken out.

181. Q. Will the witness answer my question? Did Hayashi remain at the barracks?
A. I have no recollection.

182. Q. How about Hidaka?
A. I have no recollection.

183. Q. Leading Private Ito?
A. I have no recollection.

184. Q. Leading Private Iwamoto?
A. I have no recollection.

185. Q. Leading Private Nakamura?
A. I have no recollection.

186. Q. Sagara?
A. I have no recollection.

187. Q. Superior Private Uchida?
A. I have no recollection.

188. Q. When, as on the day of the execution, a large number of personnel left the barracks, were there duties and special assignments for personnel remaining at the barracks?
A. Non-commissioned officers of the day. Men on duty for the day. Air raid wardens. I do not remember exactly but I think I ordered some auxiliary Kempeis to remain at my quarters.

189. Q. How many persons were on duty for the day?
A. I have no clear recollection as to how many persons were assigned.

190. Q. About how many?
A. I think about two persons.

191. Q. How many air raid wardens?

This question was objected to by the judge advocate on the ground that it was vague as to time.

The accused replied.

The commission announced that the objection was not sustained.

A. There is only one lookout standing at a time. Although my memory is not certain I think there were two persons relieving each other all the time.

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192. Q. Do you remember who were assigned duties as non-commissioned officer or men of the day and air raid wardens who remained at the barracks at the time of the execution?
A. Of the Kempeis and auxiliary Kempeis that remained on duty I remember definitely only Sergeant Nakagawa. I believe Hayashi was also remaining at the barracks.

193. Q. On what duty did Sergeant Nakagawa remain in the barracks?
A. He had hurt his foot and could not move about.

The commission directed the witness to answer the question.

The question was repeated.

A. (Continued.) I have no recollection. I do not remember.

194. Q. Then you do not have a clear recollection of who was on day duty and air raid lookout at the time of the execution?
A. I have no recollection.

195. Q. You mentioned Hayashi just now. Do you mean the Hayashi who is among the defendants in this courtroom?
A. Yes.

196. Q. If you have any reasons for believing that Hayashi did not go, please say them?

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 not sustained.

A. Hayashi had some time previously stepped on a nail when working and it was during this while he was nursing his foot that this incident occurred; therefore, I took it he did not go to the scene but I can not say definitely that he did not go.

197. Q. Were there any members in the First Detachment who were unfit for work on the day of the execution besides Hayashi?

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

The accused withdrew the question.

198. Q. Do you have any recollection of Iwamoto having been assigned special duty outside the barracks at the time of the execution?
A. I have no recollection.

199. Q. What about Sagara?
A. I do not remember.

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200. Q. Do you believe that Colonel Miyazaki is dead?

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.

201. Q. Do you know whether Miyazaki is dead or not?
A. At my trial a document was read that Miyazaki was dead, so I know he is dead.

202. Q. What was Commanding Officer Miyazaki's rank at the time of the execution?
A. Lieutenant colonel.

203. Q. What was your rank at that time?
A. First lieutenant.

204. Q. Colonel Miyazaki was in command at the scene of the execution, was he not?
A. Yes.

205. Q. And you were second in command at the scene of the execution?
A. I do not grasp the exact meaning of "second in command" but in rank I was second to Colonel Miyazaki in the Kempeitai.

206. Q. Not only in the Kempeitai but also at the scene of the execution you were the second in command, isn't that true?
A. I think First Lieutenant Yamamoto was senior to me at the scene.

207. Q. What makes you think that?
A. I do not remember exactly from whom I heard, but I heard that he had longer service than myself.

208. Q. Do you also remember when the conference was planned that Miyazaki ordered you to go along and assist him? Isn't that true?
A. There was no conference to plan the execution.

209. Q. You said that the missionaries were suspected of spying. Who suspected them of spying?

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 who suspected the missionaries of being spies but I heard the commanding officer say so on the truck.

210. Q. Why did you object to the execution when Miyazaki ordered the execution at the morning conference or whenever you got together to decide the execution?

0239

A. The commanding officer gathered the officers and gave the orders. At the time I objected because I thought that if it were possible for the Kempeitai not to execute the prisoners it would be better. This conference was not convened to plan the execution. It was merely a conference to pass on the orders from above. However, officers were allowed to express opinions on orders. That is why I spoke up.

211. Q. Was Warrant Officer Nakamura at this conference?
A. I think Warrant Officer Nakamura was not present.

The commission then, at 10:12 a.m., took a recess until 10:30 a.m., at which time it reconvened.

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Nakamura, Kazuo, 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.)

212. Q. You said that you didn't think that Warrant Officer Nakamura was present at this time when Miyazaki talked about this execution and you objected to it - is that true?
A. Yes, that is true.

213. Q. So that Warrant Officer Nakamura found out about this execution because you gave him orders to prepare and assemble the men?
A. No.

214. Q. How did he find out about it then?
A. I don't know how he found this out, but he was saying it was relayed to him from Adjutant Ichikawa.

215. Q. At the time you talked to him about this, what time of the day was this? How long after this conference with Miyazaki?
A. I do not have a definite recollection but it was about five or ten minutes before starting off.

216. Q. At that time did you tell Warrant Officer Nakamura that you objected to the execution?
A. I told him that I had objected to the commanding officer, but that the commanding officer forced this to be carried.

217. Q. When you say that there were four or five men from the Sumida Unit out there with the trucks, do you mean they were the truck drivers and the assistant truck drivers?
A. As I recall, other than these four or five men there were drivers and assistant drivers in the trucks already.

218. Q. Then do you mean that there were more than four or five from the Sumida Unit that were armed with rifles?

0240

A. I do not recall the exact number because I did not count them, but from what I saw there were four or five men there.

219. Q. In this group of four or five, do you include Kawaguchi?
A. At the time I do not recall Kawaguchi being there. I recall seeing him at the scene.

220. Q. The reason that he was at the scene was because you ordered him to go. Isn't that true?
A. I did not directly say to the enlisted men.

221. Q. You mean you didn't say directly to Kawaguchi, "You come along to to the scene and take my pistol"?
A. I didn't say that.

222. Q. How is it that he carried your pistol to the scene then?
A. I did not carry my pistol.

223. Q. But Kawaguchi carried your pistol to the scene, didn't he?
A. No, I didn't have him take my pistol to the scene.

224. Q. Didn't he act as your messenger at the scene?
A. I have no recollection.

225. Q. Hadn't Kawaguchi been the driver of your sedan for about six months prior to this time and was still the driver of your sedan?
A. He was not my driver for six months. He was my driver for about one or two months.

226. Q. If Kawaguchi wasn't your orderly that night, who was?
A. At that time the orderlies were always changing so I do not have a definite recollection as to exactly who it was, but it was Ando, Uchida or Hayashi.

227. Q. But Hayashi had stepped on a nail so he wasn't there. Isn't that true?

This question was objected to by the judge advocate on the ground that counsel was misquoting the evidence.

The accused withdrew the question.

228. Q. You know that Hayashi wasn't your orderly because you testified that he had stepped on a nail?
A. Yes, I know that he was not my orderly then.

229. Q. Although Kawaguchi was from the Sumida Unit you said that he had been assigned as a driver for one or two months. Isn't it true that you were the only one that could give him orders there at the Kempeitai?
A. Even if I did not directly order him, the set up of the Kempeitai was such that the headquarters and the detachment were together, so the adjutant could relay the orders of the commanding officer to all of the men and as a matter of fact such practice was prevalent. The members of the detachment could not say that they would not obey the orders of the adjutant who was relaying the orders of the commanding officer. They had to obey him and as a matter of fact this was the usual practice.

0241

230. Q. But the adjutant didn't interfere and give orders to your driver, Kawaguchi, or Miyazaki's driver, so as to take him away from his primary duty?

This question was objected to by the judge advocate on the ground that counsel was misquoting the evidence.

The accused replied.

The commission announced that the objection was sustained.

231. Q. When you testified that the trucks belonged to the Sumida Unit you meant that there were two trucks there that night - one truck had been assigned previously to the Kempeitai and one truck had been officially requested for this special occasion. Isn't that true?
A. I don't know what the set up was, but I just saw that there were two trucks that had come there.

232. Q. When you say that Adjutant Ichikawa handed shovels to the assistant Kempeis, whom did he hand these shovels to?
A. They were auxiliary Kempeis but I do not recall their names.

233. Q. Do you recall whether they did anything else except use the shovels after the execution?
A. Do you mean with the shovels?

234. Q. Yes.
A. No, I do not know.

235. Q. Do you know whether the same people who executed these persons had to bury them?
A. I don't know how it was exactly.

236. Q. You know that the people didn't carry a rifle and also a shovel?
A. I do not recall these things in detail.

237. Q. You mentioned five officers who got in the second truck. Is that all the officers that were at the scene of the execution?
A. Yes.

238. Q. And in this second truck Lieutenant Yamamoto was riding?
A. The assistant Kempeis and Warrant Officer Nakamura were riding on the first truck, so on the second truck all the other persons got on.

239. Q. So Lieutenant Yamamoto must have been on the second truck. Don't you remember that Lieutenant Yamamoto was riding on the seat alongside the driver on the second truck?
A. I have no recollection.

240. Q. Where were you and Lieutenant Colonel Miyazaki riding?
A. In the back of the truck.

241. Q. When the truck stopped at the missionaries' house you and Colonel Miyazaki got out and went inside. Is that true?
A. Yes.

0242

242. Q. And Lieutenant Yamamoto didn't get off the truck and go in with you. Isn't that true?
A. I have the recollection that all the officers went.

243. Q. That all the officers went into the house with you?
A. No, they didn't go into the house.

244. Q. Did Lieutenant Sano go into the house with you?
A. I seem to recall that Sano did not go into the house with me.

245. Q. What do you mean when you say you recall that all the officers went?
A. When the commanding officer said, "All of you get off and come with me," everybody got off. But then he said that all of the non-commissioned officers needn't come, so only the officers went along with him and the officers waited outside in front of the house while the commanding officer went to the entrance.

246. Q. So that only you and Colonel Miyazaki went inside the house and talked to the missionaries?
A. We did not go in. We all were outside and the commanding officer only went up to the entrance.

247. Q. How is it then that the missionaries came out of the house?
A. I do not know why they came out but the commanding officer was talking to them.

248. Q. And nobody went in the house to get them out?
A. As I recall nobody went inside the house.

249. Q. What did these missionaries and the interpreter bring with them when they came out of the house and got into the truck?
A. They had with them suitcases.

250. Q. So they didn't think they were going to their execution, did they? Is that right?

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

The accused withdrew the question.

251. Q. Do you know why they carried their suitcases to their execution?
A. I do not know.

252. Q. Did you hear Colonel Miyazaki order them to bring their personal belongings with them?
A. As the commanding officer was speaking in a foreign tongue I couldn't understand him.

253. Q. Was the interpreter and his family in the same house with these missionaries?
A. As I recall they came out from the same house.

0243

254. Q. Did they also come out with their belongings?
A. I do not recall how it was.

255. Q. In what truck were these men from the Sumida Unit that you say had rifles?
A. I do not recall.

256. Q. Do you recall whether these men of the Sumida Unit were part of these groups that were formed?
A. I have no recollection.

257. Q. Up to the time that you all went to the missionaries' home were these missionaries prisoners?
A. As for myself, I think they were not prisoners.

258. Q. You mean you don't know whether there was a guard placed over this house before you came there?
A. I was told by the commanding officer to place one or two auxiliary Kempeis, but under the prevailing circumstances at that time there were many things to do, so I told Warrant Officer Nakamura to just have some men go out to make an inspection. This was only done in the afternoon and nobody went over there in the evening. But after that the air raids became very severe so that it was impossible to go over there so I told the commanding officer about this and the commanding officer said that we need not go anymore.

259. Q. So that when you said on direct examination you didn't know how many missionaries there were, that isn't true at all because you had the job of placing a guard over them?
A. What did I say that I did not know?

260. Q. You were asked on direct examination how many there were and there was some question about it and finally you did admit that there were six. You knew all along that there were six, isn't that true?

This question was objected to by the judge advocate on the ground that counsel was misquoting the evidence.

The accused withdrew the question.

261. Q. But you knew when six missionaries came out of the house that you had all the missionaries that you had come to get - isn't that right?
A. I didn't pay any attention to such extent.

262. Q. You said that when the truck stopped Colonel Miyazaki ordered everyone to get off. Do you mean he gave such detailed instructions himself or did you give the orders to get off when the truck stopped?
A. Miyazaki was a person who always did things up to the mimute details. He would go ahead of us and do things.

263. Q. Then it was Miyazaki who said it was better to blindfold them?
A. Yes.

264. Q. How close to the children were you when you looked at them when they, the children and the rest, got out of the truck?
A. I have no recollection.

0244

265. Q. You said that you received orders to dig a hole from Colonel Miyazaki when he was at Koror. Were you with Colonel Miyazaki at Koror when he gave you these orders?
A. No.

266. Q. How, then, did you get the message from Colonel Miyazaki?
A. It came by letter.

267. Q. How long before this execution did this happen?
A. It was more than a month and a half before the execution.

268. Q. So that you and Miyazaki planned the execution more than a month and a half before this?
A. No.

269. Q. For what purpose was the hole dug, then?
A. The purpose of this hole was not written on this letter so I do not know.

270. Q. Could you see all ten victims as they were lined up at this hole?
A. As there was no light I recall I could not see all of them.

271. Q. Even with the candle that you were carrying you couldn't see all of them?
A. I did not have any candle.

272. Q. Then you don't know who shot these ten victims?
A. I do not know all of them.

273. Q. Do you know of anybody from the Sumida Unit who shot them?
A. I do not know their names.

274. Q. Are any of them from the Sumida Unit who shot here as accused today?
A. Kawaguchi, at that time I have a recollection that he had already gone back to the Sumida Unit, so if he had gone back there - well, I have a recollection of Kawaguchi as one of the Sumida Unit personnel.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Nakamura, Kazuo, 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.

0245

(Cross-examination continued.)

275. Q. Did you see Kawaguchi shoot at the execution?
A. I did not see him.

276. Q. You testified that you saw Yokoyama shoot. Who ordered him to shoot?
A. The commanding officer gave the order.

277. Q. By commanding officer, do you mean Miyazaki?
A. Yes.

278. Q. Was Yokoyama a member of the First Company - your detachment?
A. No, he was not of the detachment.

279. Q. Was he a member of the Kempeitai?
A. Yes.

280. Q. Since you recall the rates of all these accused and ranks, do you mean they were all members of the Kempeitai?
A. There were some who were members of the Kempeitai and others who were not members of the Kempeitai.

281. Q. Can you name those who were not members of the Kempeitai?
A. Captain Yamamoto. Kawaguchi, I think at the time was back at his unit. The other auxiliary Kempeis were not members of the Kempeitai but were assigned to the Kempeitai.

282. Q. Did you see Yamamoto shoot?
A. I do not know.

283. Q. Do you mean by that that you didn't see him shoot?
A. I did not see whether he shot or not.

284. Q. Those are the only two accused that were of the Sumida Unit and you didn't see either one of them shoot, did you?
A. I was not well acquainted with Captain Yamamoto or the other members of the Sumida Unit, but I remember four victims were shot by members of the Sumida Unit.

285. Q. Who ordered these members of the Sumida Unit to shoot?
A. I do not remember.

286. Q. Did Miyazaki order them to shoot?
A. Commanding Officer Miyazaki gave the order.

287. Q. When you were first told about this execution, didn't Miyazaki tell you it was an emergency measure due to the fact that the Americans were bombing and expected to land at Palau?
A. He said that orders had been given by Division Headquarters because the landing of the American forces was imminent.

288. Q. Did he also tell you about their spy activities?

0246

This question was objected to by the judge advocate on the ground that counsel was misquoting the evidence.

The accused replied.

The commission announced that the objection was not sustained.

A. The commanding officer said that he had information that the missionaries by signals were contacting Americans planes and guided them to their targets. Further, according to conversations with their neighbors they had let out that in the event of an American landing they would escape to the American side. He said that if a court martial could be held it would doubtlessly find them guilty, therefore, there was no need for them to worry.

289. Q. The judge advocate asked you, "Besides six missionaries how many foreigners were there?" and you answered, "Other than these six there was a man and a woman and two children who looked like natives at a glance." Now do you mean that the man and the woman and the two children were foreigners?
A. I did not think them to be foreigners.

290. Q. You thought them to be natives of the island, is that right?
A. I thought that they might be natives.

291. Q. What do you mean by your testimony that First Lieutenant Sano asked Colonel Miyazaki and Colonel Miyazaki said that the interpreter and the children will also be executed. Do you mean that Lieutenant Sano asked Colonel Miyazaki if the interpreter and the children were to be executed?
A. Yes.

292. Q. When did he ask him this?
A. First Lieutenant Sano said this either when boarding the truck or when alighting from the truck.

293. Q. Was that before the teams were formed to execute these people?
A. I think it was previous to the formation of the teams.

294. Q. Then Miyazaki didn't personally form these teams to execute these people, did he? Who was it that detailed these teams?
A. Lieutenant Colonel Miyazaki.

295. Q. When you said that Commanding Officer Miyazaki talked to them in a foreign tongue which might have been Spanish, that is just your imagination because some one told you they might be Spanish. If somebody told you they might be German missionaries then you would have answered he might have been speaking German, wouldn't you?

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

The accused made no reply.

The commission announced that the objection was sustained.

296. Q. Are you sure that these missionaries weren't German missionaries?
A. I do not know for certain but I had heard from the commanding officer that they were Spanish missionaries.

297. Q. Did you see who killed the two children?
A. I do not know.

0247

298. Q. You said that Ichikawa gave candles to Miyazaki and Sano. Did he also give you a candle?
A. I did not receive a candle.

299. Q. How is it that Colonel Miyazaki who was in charge had a candle and you who were second in command didn't have a candle. Do you mean that you were wandering around in the dark of night?
A. Although I did not have a candle it can not be said I was in complete darkness. I was in proximity to those who had candles.

300. Q. You were in proximity to who that had candles?
A. I do not remember.

301. Q. These trucks that you came to the scene of the execution in, didn't the drivers stay with the trucks?
A. I do not remember how it was.

302. Q. You remembered though that the trucks were at least five hundred meters away from the scene of the execution, didn't you?
A. Yes, there was some distance between the trucks and the scene of the execution but I did not know whether it was five hundred meters or not. I do not remember the distance. They were somewhat separated.

303. Q. You couldn't see the trucks from the scene of the execution, could you?
A. No, they could not be seen.

304. Q. Did you say there was an air raid while the execution was taking place or on the way to the scene of the execution?
A. Yes, I said so.

305. Q. When did the air raid occur?
A. As I remember it the drone of the engines was heard and the first truck switched off its headlights. The second truck merely moved on at a slower pace.

306. Q. Were you the only person who wasn't armed at the scene of the execution?
A. I did not know definitely of the others but I think the majority of them were armed. I, myself, carried a sword.

307. Q. How many pistols did Colonel Miyazaki have with him that night?
A. I do not know how many he carried but I saw him take out one pistol.

308. Q. You testified that he said to Yamamoto, "Here do it with this," and gave the pistol to Yamamoto and you also testified that First Lieutenant Ichikawa received the pistol. Whom do you mean he gave it to? Do you mean he gave it to Ichikawa or to Yamamoto?
A. That is in error. I did not say that the commanding officer gave the pistol to Yamamoto. I said that he gave it to Ichikawa who later handed it to Warrant Officer Nakamura or Sergeant Yokoyama.

309. Q. To whom did he say, "Here do it with this," to, Yamamoto or Ichikawa?
A. I do not know for certain whom he addressed but Ichikawa received the pistol and gave it to either Warrant Officer Nakamura or to Sergeant Yokoyama.

0248

310. Q. So that your testimony -- that he gave it to Yamamoto -- is in error and you want to correct that. Is that right?
A. I did not say it was given to Yamamoto.

311. Q. So Ichikawa who had been ordered to do it with Miyazaki's pistol didn't do it but gave it to someone else. Is that what happened?
A. I am not certain on this point whether the commanding officer wished to hand the pistol to Warrant Officer Nakamura or Sergeant Yokoyama and Lieutenant Ichikawa passed it on or whether the commanding officer gave it to the adjutant to do the execution and the adjutant handed the pistol over to Warrant Officer Nakamura or Sergeant Yokoyama. I am not certain on that point.

312. Q. This statement the judge advocate refreshed your memory with, why did you write that statement?

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.

313. Q. Did you see Lieutenant Yamamoto do a single overt act at the scene of the execution?

This question was objected to by the judge advocate on the ground that it called for a conclusion on the part of the witness.

The accused withdrew the question.

314. Q. Did you see Lieutenant Yamamoto do anything at the scene of the execution?
A. I do not remember.

315. Q. Did you see Kawaguchi do anything at the scene of the execution?
A. I have no recollection.

316. Q. Do you know this man Namekawa, Genzo?
A. I do not know.

317. Q. From the time that the men assembled to go to the scene of the execution until they returned, how long an interval of time was there until they returned from the execution?
A. I do not know anything definite but I think it was from two to two and a half hours.

318. Q. Do you remember about what time the men assembled?
A. I did not notice the time. I think it was in the evening.

319. Q. Who mustered the men of the First Detachment to go to the scene of the execution?
A. There was no roll call.

320. Q. How do you know that there was no roll call?
A. I say that because I did not recall such a thing happening.

0249

321. Q. How many men were in your detachment at that time?
A. There were approximately eight Kempeis and approximately ten auxiliary Kempeis.

322. Q. Do you know how many men assembled?
A. I do not remember.

323. Q. Is there anyone who knows how many men assembled?
A. I can not tell.

324. Q. Not even Warrant Officer Nakamura?

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.

Reexamined by the judge advocate:

325. Q. About how many men were actually at the scene of the execution - if you remember?
A. I have no recollection as to numbers.

326. Q. Do you know whether or not they all had a duty to perform at this execution?
A. I think some were assigned to duties and others not. I do not remember definitely for certain.

327. Q. This air raid that you told us about, when did that take place? On the way to the missionaries' house or after you left the missionaries' house?
A. I think it was previous to our arrival at the missionaries' house.

328. Q. Now when did you have this conversation with Miyazaki? When did you hear him say that if there was a court martial the missionaries no doubt would be found guilty?
A. I remember it took place on the truck.

329. Q. Were the missionaries on the truck at this time?
A. I think it took place before we arrived at the missionaries' house.

330. Q. Do you know how long the missionaries had been in this house, approximately?
A. I have no clear recollection. I think it was one month or two months. I think it was two months.

331. Q. Now on the night of that execution how many day men remained behind and didn't attend the execution?
A. I do not remember.

332. Q. Can you tell us approximately how many men - one or two?
A. To give an approximation there were two regular men on duty for the day; besides that there were air raid lookouts and one lookout on the road.
Whether these men were taken from their duty station to go to the scene of the execution I do not know.

0250

333. Q. Was it customary to have an air raid warden during the night?
A. I think they were on duty until around ten o'clock in the evening.

334. Q. Was it customary to have a lookout on the road during the night?
A. Yes.

335. Q. Do you know the duties of this road lookout?
A. His duty was to watch the general road traffic and report the number of vehicles which passed the roads.

336. Q. Was Takahashi on duty that night?
A. I do not remember.

Recross-examined by the accused:

337. Q. How many road lookouts were assigned?
A. I think one person.

338. Q. Were the persons for day duty, the air raid lookouts and the road lookouts taken from the detachment or from the headquarters?
A. I do not remember clearly but I think the air raid lookout and the road lookouts were taken from the detachment.

339. Q. Does not the detachment commander decide whether the air raid lookouts and the road lookout be relieved of duty?
A. The detachment commander is not in a position to determine that by himself. The commanding officer decides this.

340. Q. What sort of order did you receive from the commanding officer concerning the withdrawal or relieving of those lookouts at the time of the execution?
A. I do not remember.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 3:05 p.m., took a recess until 3:20 p.m., at which time it reconvened.

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

0251

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Yajima, Toshihiko, former lieutenant colonel, IJA.

2. Q. If you recognize any of these accused state their names and ranks.
A. The person in the front row on the left is Captain Yamamoto; the person next to him is First Lieutenant Ichikawa of the Kempeitai Unit and the person in the last row on the extreme left is Superior Private Iwamoto. I recognize two or three others by face but I do not know their names.

3. Q. Did you ever have duty in the Palau Islands?
A. Yes.

4. Q. Between what dates did you serve there?
A. I had duty from the early part of May, 1944, until the end of the war.

5. Q. What were your duties in September, 1944?
A. I was the staff officer of the 14th Division.

6. Q. What particular function did you have on the staff?
A. I was particularly in charge of intelligence.

7. Q. Did you ever see any reports concerning missionaries in the Palau Islands? GK
A. I did.

8. Q. What became of these reports?
A. After the end of the war they were burned.

9. Q. Whom were these reports from?
A. This was from Lieutenant Colonel Miyazaki, the commanding officer of the South Seas Kempeitai, and was addressed to Lieutenant General Inoue, Commander of the 14th Division.

10. Q. And what did the report say?

This question was objected to by the accused on the ground that it called for hearsay, was irrelevant and immaterial. GK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The report said that the execution of the missionaries and other foreigners was carried out at the Kempeitai.

The accused moved that this answer be stricken on the ground that it was not competent evidence.

The judge advocate replied.

The commission announced that the motion was not sustained .

11. Q. Was there any date on this report?
A. Yes, I recall that it was dated the middle of September, 1944.

0252

12. Q. Was this the first time that you had ever seen any reports on these missionaries?
A. No.

13. Q. What previous reports had you seen concerning them?
A. A roster of foreigners was submitted by the Kempeitai Unit to Lieutenant General Inoue. This roster was submitted around the end of July, 1944, or it was the beginning of August, 1944.

14. Q. Do you know what has become of that roster?
A. This was burned after the end of the war.

15. Q. What was on that roster concerning these missionaries?
A. The names, the nationalities, the age and the sex. Also the residence was written with regard to the missionaries.

16. Q. Do you remember the names that were given?
A. I do not recall the names.

17. Q. Do you recall the nationalities that were given?
A. I do.

18. Q. What were they?
A. Do you mean just in regard to the missionaries?

19. Q. I want the nationalities of anyone you remember on that report.

(The witness produced a memorandum from his pocket to refresh his memory.)

The accused objected to this witness testifying with the aid of the memorandum unless such memorandum was introduced in evidence.

The judge advocate replied.

The commission ruled that the witness could refer to the memorandum to refresh his recollection but could not testify or read from it.

A. The nationalities that were on the list were one Englishman, two Germans, five Spaniards, one Filipino and his family of three and one Colombian. The total thirteen in all.

The accused moved that this answer be stricken on the ground that it was incompetent evidence.

The judge advocate replied.

The commission announced that the motion was not sustained.

20. Q. Did this list indicate which of these people were the missionaries?
A. Yes, it did.

21. Q. Which ones were the missionaries and what were their nationalities?
A. The five Spaniards and the Colombian - they were the missionaries.

0253

The accused objected to all the testimony of this witness in regard to this report on the ground that it was hearsay.

The commission announced that the objection was not sustained.

22. Q. Getting back for the moment to this first report - the one from Miyazaki to Inoue advising that the missionaries had been executed - did this report have anything to say in regard to the Filipino and his family being executed?
A. I have a recollection that they were attached to the missionaries.

23. Q. Did this report say anything about their execution?
A. No.

24. Q. Do you know on what island the missionaries were at the time they were executed?
A. Around the end of July of 1944 all the foreigners on Yap and the Japanese persons who were not military were evacuated to Palau and in this group were included the missionaries.

25. Q. On what island were the missionaries in September 1944 ?
A. Around September, 1944, they were moved to Babelthuap Island.

26. Q. Where were they moved from?
A. They were moved from Koror Island, Palau Islands.

The accused moved that this answer be stricken on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

27. Q. Do you know whether or not these missionaries were in custody when they were on Koror Island?
A. I do.

28. Q. Were they?
A. As I did not see the actual situation I do not know but I received a report that they were living collectively under the protection of the South Seas Kempeitai.

The accused moved that this answer be stricken on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

29. Q. From whom was this report received?
A. This report was also from Lieutenant Colonel Miyazaki addressed to Lieutenant General Inoue.

30. Q. Do you know what became of that report?
A. This, too, was burned after the end of the war.

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The accused objected to the entire line of questioning on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

31. Q. Do you know whether or not these missionaries were in custody when they were on Babelthuap Island?
A. I know by reports.

32. Q. Whom was the report from?
A. The report was submitted by Lieutenant Colonel Miyazaki to Lieutenant General Inoue.

33. Q. What became of the report - if you know?
A. This was burned after the end of the war.

34. Q. What did the report have to say as to whether or not the missionaries were in custody on Babelthuap Island?
A. When these foreigners came from Yap they were transferred from the South Seas administrative section to the administration of the South Seas Kempeitai and were made to live collectively. In regard to this, as I was in charge of provisions at that time, the commander of the South Seas Kempeitai requested some special provisions to be supplied for these foreigners so I know about it.

The accused moved that this answer be stricken on the ground that it was not responsive.

The judge advocate replied.

The commission directed that the answer be stricken out.

A. (Continued.) In this report it was written that since the conditions around Palau became very tense all the foreigners would be placed under the surveillance of the Kempeitai in order to protect them.

35. Q. And was this while they were on Babelthuap Island?
A. Yes.

Cross-examined by the accused:

36. Q. You testified that in this roster of foreigners the items in regard to their nationality and name and age and sex were set down. How could you tell that the Spaniards were missionaries?
A. This was written down in the column where it said, "Remarks."

37. Q. Besides stating that they were missionaries in this column for "Remarks" did it say anything else?
A. Also it set down that the Filipino and his family were living together with the missionaries, and it also said that the wife of the Englishman was a native.

38. Q. Where was the Filipino and his family living together?

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A. It may be that the words living together are not appropriate. Rather they were employees. It was written down as employees.

39. Q. By employees do you mean that they were servants or maids - in that sense?
A. That is how I understood.

40. Q. In the roster of these thirteen foreigners, what is your recollection with regard to their ages?
A. I have a recollection that the majority of these foreigners were very aged persons and that in the family of the Filipino there were two children who were very small.

41. Q. With regard to sex, what did it say?
A. One German was a woman; the wife of the Filipino was a woman; I do not recall the sex of the children of the Filipino; all the rest were men.

42. Q. You said that the members of the Filipino family were employees. Was this woman a wife or an employee?
A. What I meant was that she was the wife of the Filipino.

43. Q. Were the names set forth in this report concerning the execution and the names set forth in the roster identical?
A. I recall they were the same.

44. Q. On what grounds do you say this?
A. I said that they were the same because the nationality of the five Spaniards and one Colombian were the same.

45. Q. Then according to your memory the fact that they were the same is based upon one point, that their nationality was the same. Is that correct?
A. Yes.

46. Q. Please explain in more detail the report which Miyazaki submitted to Inoue with regard to the execution of the missionaries and others?
A. On the top were written the names and the nationality of the persons who were executed and it was written that in the middle of September, 1944, these persons were executed. And this was a regular report that was submitted by the Kempeitai.

47. Q. Why were they executed?
A. With regard to that point - I do not know.

48. Q. By whose order was this execution done?
A. I do not know.

49. Q. When you saw this report regarding the execution, who did you understand carried this execution out?
A. I understood that this execution was carried out by the Kempeitai.

50. Q. Was an affair relating to the Kempeitai ordinarily reported each time to Division Headquarters?
A. This problem was very important so it was only proper that the Kempeitai should submit their report to Division Headquarters.

51. Q. Isn't it a fact that Division Headquarters gave an order to the Kempeitai to do this execution and the result of this execution was reported, isn't that true?

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A. Lieutenant General Inoue had no command authority with regard to affairs relating to the Kempeitai so I believe there was no order issued by Division Headquarters. If there had been an order issued by Division Headquarters I would have known it prior to the incident.

52. Q. Was the duty regarding the intelligence of the foreigners your chief duty?
A. No.

53. Q. Who was the staff officer chiefly in charge of the foreigners?
A. At that time I was the staff officer chiefly in charge of the intelligence. But, with regard to civil administration, Chief of Staff Tada did not allow any of us staff officers to interfere with the matter and Tada definitely stated that Lieutenant Colonel Miyazaki was his staff officer with regard to civil administration. Therefore, not only concerning the foreigners but also all the Japanese persons who were not military we could not enforce our duty upon them.

54. Q. You previously testified that Division Headquarters did not have any authority to give orders to the Kempeitai, but you just stated that Miyazaki was the staff officer of Chief of Staff, Colonel Tada. What do you mean by this?
A. As you know, the South Seas Kempeitai was a Kempeitai assigned by Imperial ordinance. This South Seas Kempeitai had already been on Palau when we arrived on Palau, therefore, Lieutenant Colonel Miyazaki was far more familiar with the civil administration than we were. Therefore, Chief of Staff Tada said that he would treat Lieutenant Colonel Miyazaki as one of his staff.

55. Q. Then Miyazaki would receive orders from Tada within the scope in which he was treated as a staff officer?
A. We just went by what Tada had told us and whether Tada had authority to order Miyazaki within this scope or not I do not know.

56. Q. As a matter of fact, isn't it true that in regard to civil administration Miyazaki was receiving orders from Tada and merely executed them?
A. Yes, that is how I think it to be.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Friday, February 20, 1948.

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FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, February 20, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

57. Q. You have seen in all three reports concerning the missionaries and the foreigners. Is that correct?
A. Yes.

58. Q. In what order did you see these three reports?
A. The first report was the roster of foreigners. The second was a request for food for these in protective custody at Babelthuap and the third was the report on the incident.

59. Q. When did you see the second report?
A. I recall that it was the early part of August, 1944.

60. Q. How many days after seeing the roster of foreigners was it when you received the second report?
A. I do not remember exactly but I think I saw it almost immediately afterward.

61. Q. Besides these three reports, did you see any reports concerning the missionaries or the foreigners?
A. Yes, there were.

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62. Q. What sort of report?
A. I received the report that while under supervision the two Germans and the Englishman had been sent to their respective homes; that the Englishman's wife and children had fled to the Chamorro tribe on Babelthuap; and that the Englishman had been killed. I think that is all the reports I have seen.

63. Q. Did you receive any reports concerning the missionaries besides those mentioned?
A. I do not remember any other documentary reports.

64. Q. If not in the form of documents, in any other form did you receive any reports?
A. Yes.

65. Q. Please state what they were.
A. I met Lieutenant Colonel Miyazaki at the Arukoku field command post and there he told me of the execution of the missionaries. And further, Second Lieutenant Sano, who was almost daily coming to my quarters for the purpose of liaison, told me the same story.

66. Q. What did Commanding Officer Miyazaki tell you when you met and conversed with him?
A. Lieutenant Colonel Miyazaki told me that it was a fact that the missionaries and other foreigners had been killed and that he, Miyazaki, had reported directly to the chief of staff.

67. Q. What did Second Lieutenant Sano tell you?
A. Much the same as what the commanding officer of the Kempeitai told me.

68. Q. Did your meeting with Miyazaki take place before you saw the report concerning the execution or after?
A. According to my memory I saw the report after meeting with Lieutenant Colonel Miyazaki.

69. Q. Was it not because the instructions had been issued from Division Headquarters that reports were made concerning the execution to Headquarters?
A. At that time I did not know the circumstances. One day after the surrender Lieutenant Colonel Miyazaki very excitedly told me that Colonel Tada, Chief of Staff, despite the fact that he had issued instructions concerning the execution, was now attempting to evade all responsibility and that was a cowardly attitude on his, Tada's, part.

70. Q. You testified yesterday that the missionaries had been taken into protective custody at the Kempeitai in the name of protection. But what were the circumstances surrounding this measure?
A. The circumstances are not clear to me.

71. Q. Did the circumstances around that time make it necessary for the Kempeitai to place these missionaries in protective custody?

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

The accused withdrew the question.

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72. Q. Did not this series of reports to Division Headquarters signify that Division Headquarters was using the Kempeitai as an organ for holding the missionaries in custody?
A. I do not know of the exact circumstances about this point but military government was not in force on Palau at the time. Conditions in Palau at the time were very tense and I know definitely for a fact that the governor of the South Seas Civil Administration had repeatedly stated that he could not cope with the situation and had asked Division Headquarters for assistance in the matter.

73. Q. What measures did Division Headquarters take in response to this request from the governor of the South Seas Civil Administration?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I am not clear on this point.

74. Q. The only reason you knew the nationalities of these missionaries and other foreigners was because they were written in this report -- is that correct?
A. Yes.

75. Q. Did you personally meet these missionaries?
A. No.

76. Q. You testified that these reports, all written by a third party, Colonel Miyazaki, to a third party, General Inoue, were burned. Did you burn these reports?
A. They were burned by my subordinates under my supervision, but it was at the orders of General Inoue.

77. Q. But did you yourself actually see them burn?
A. Yes, I saw them burn but I myself did not light the papers.

78. Q. You were there when they were burned?
A. Yes.

79. Q. When you say that these persons were in the custody of the South Seas Kempeitai at Koror do you mean that they were in the custody of Colonel Miyazaki?
A. I do not think I said in custody on Koror but on Babelthuap.

80. Q. But you only know this from having read the reports -- is that right?
A. Yes.

81. Q. When you said that military government wasn't enforced, do you mean that civil government was still in force on September 18, 1944, when the Americans were constantly bombing Babelthuap and an American landing was imminent -- that there was still civil government enforced?
A. Military government was not enforced right up to the surrender.

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82. Q. You stated that these reports showed the age of these foreigners. Do you remember what the report stated to be the age of this Filipino?
A. I do not remember clearly.

83. Q. Do you remember the age of any of these foreigners?
A. No, I do not remember any of them.

84. Q. As to the Filipino, did the report state when he had come to Yap?
A. Do you mean from Yap?

85. Q. No. When did he originally come to Yap?
A. No, it was not recorded.

86. Q. Was it recorded where he was born?
A. No.

87. Q. You stated that you had never interviewed these foreigners -- the missionaries and the Filipino and his family -- then all that you can testify regarding them is what you read in the report. Is that correct?
A. Yes, that is correct.

88. Q. Do you know where Colonel Miyazaki got his information to make up these reports?
A. Yes, I know this. His sources were from the South Seas Government.

89. Q. Did Colonel Miyazaki make this report up personally or did he just forward the report and one of his subordinates made it up?
A. I do not know the circumstances.

90. Q. Do you remember whether the report was signed by Colonel Miyazaki or in any way by his mark?
A. These reports had the official signet of the commanding officer of the South Seas Kempeitai.

91. Q. This report of thirteen foreigners -- was that the complete list of all the foreigners in the Palau Islands at that time?
A. I thought it to be so.

92. Q. Do you have any reason to think that it didn't contain the list of all the foreigners?
A. No, I had no reason to believe to the contrary.

93. Q. And you, as the Division Intelligence Officer, had no reason to believe there were any other foreigners in the Palau Islands?
A. That is correct. I believed in that report because units had been assigned to each of the islands of the Palau group and if there had been omissions in this roster it would have been reported by the units on the islands.

94. Q. When you testified you used the word national. Do you mean by that a citizen when you used the term national?

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.

95. Q. How is it that you recognize Lieutenant Yamamoto?
A. Does counsel mean here in the courtroom?

96. Q. Yes. Why do you recognize among these accused just Lieutenant Yamamoto?
A. In the early part of May, 1944, when I was assigned to Palau, I was put in charge of the supplies and provisions. The Sumida Unit was a supply unit and Lieutenant Yamamoto as adjutant came often to my quarters in place of his commanding officer for purposes of liaison.

97. Q. On September 18, 1944, who was the commanding officer of the Sumida Unit?
A. Major Sumida.

98. Q. You say this Sumida Unit was a supply unit. Do you know how many personnel were assigned to the unit?
A. I do not know the exact number of personnel but I know that they had approximately two hundred trucks.

99. Q. Was it an independent unit?

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

The accused made no reply.

The commission announced that the objection was sustained.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 10:15 a.m., took a recess until 10:30 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank?
A. First Lieutenant Kempeitai Sano, Giichi.

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2. Q. If you recognize these accused tell us their names and ranks.
A. I know every one of them.

3. Q. Tell us their names and ranks.
A. Front row from the left: Captain Yamamoto, First Lieutenant Ichikawa, Sergeant Major Ishiyama, Warrant Officer Sugimoto, Sergeant Major Ichimiya, Sergeant Major Ozaki, Sergeant Major Tamamoto, Sergeant Yokoyama, Corporal Ezure, Leading Private Fujitani, Leading Private Kawaguchi, Leading Private Ando, Leading Private Hayashi, Leading Private Hidaka, Leading Private Ito, Leading Private Iwamoto, Leading Private Nakamura, Leading Private Okamura, Leading Private Sagara and Superior Private Uchida.

4. Q. Have you ever had duty in the Palau Islands?
A. Yes.

5. Q. Between what dates did you serve there?
A. I arrived on Palau for duty on March 18, 1944 and I continued my duties there until February 14, 1946.

6. Q. In September of 1944 to what unit were you attached?
A. I was attached to the South Seas Kempeitai.

7. Q. On what island were you stationed in September of 1944?
A. I was on the main island of Palau, Babelthuap, at Gasupan near Misuzu Bridge.

8. Q. What were your duties in September of 1944?
A. I was Chief of the Special Higher Section of the South Seas Kempeitai.

9. Q. Did you know Lieutenant Colonel Miyazaki?
A. Yes, I know him.

10. Q. In September of 1944 was he a lieutenant colonel?
A. Yes.

11. Q. Do you know how many missionaries were in custody in September of 1944 on Babelthuap?
A. Yes.

12. Q. How many were there?
A. There were six missionaries.

13. Q. Do you know the nationality of those missionaries?
A. Yes, I know.

14. Q. What was their nationality?
A. There were two Spanish missionaries who were formerly stationed on Koror. Of the remaining four who came from Yap, one was a Spaniard, one or two were Portuguese and one a Colombian national.

15. Q. In September of 1944 did you have a conversation with anyone concerning these missionaries?
A. Yes, I had a conversation.

16. Q. With whom did you have this conversation?
A. I was told by Lieutenant Colonel Miyazaki about the execution of these six missionaries.

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17. Q. Do you remember the approximate date on which you had this conversation?
A. I do not remember the exact day but I think it was in the middle of September of 1944.

18. Q. Where was this conversation held?
A. This conversation was held at the quarters of Lieutenant Colonel Miyazaki.

19. Q. Was there anyone else present besides yourself and Miyazaki at the time of this conversation?
A. There were present Lieutenant Colonel Miyazaki, myself, Captain Nakamura who was in command of the First Detachment and Adjutant Ichikawa.

20. Q. Tell us all that you remember that was said during this conversation?

This question was objected to by the accused (except Ichikawa) on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. On that day the three above-mentioned persons were called to the quarters of Miyazaki and there told that "by orders of the Division Headquarters the six missionaries and their employees living at Gasupan will be executed today." The order was that all Kempeis and auxiliary Kempeis excluding duty personnel of the day and those who were ill would go to the execution. Captain Nakamura will command the execution at the scene. Details will be planned by him and be reported to Colonel Miyazaki. The time of assembling will be this evening. The above was ordered by Colonel Miyazaki.

21. Q. Is that all you remember?
A. Yes.

22. Q. About what time of the day was this conversation had?
A. I think it was around nine o'clock in the morning of the day of the execution.

23. Q. Do you know where the missionaries were living at this particular time?
A. Yes.

24. Q. Where were they living?
A. They were living at the South Seas Development quarters at Gasupan on Babelthuap.

25. Q. Do you know whether or not they were under guard at this time?
A. Yes.

26. Q. Were they?
A. As I remember it an auxiliary Kempei of the First Detachment was sent to guard them.

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

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The judge advocate replied.

The commission directed that the answer be stricken out.

27. Q. Do you know how long they had been living in this particular place?
A. Yes, I know.

28. Q. How long?
A. I think approximately one month.

29. Q. Now after you had this conversation with Miyazaki what happened next?
A. On the evening of that day the Kempeis and auxiliary Kempeis assembled in the compound including the commanding officer and below.

30. Q. What happened then?
A. After falling in, Commanding Officer Miyazaki addressed everybody present. He said by orders of the Division Headquarters we now start for the execution of the missionaries. Then followed by an address by Captain Nakamura on the details of the execution addressed to the Kempeis, non-commissioned officers and auxiliary Kempeis. Then teams comprising one Kempei and one auxiliary Kempei were numbered off from one to around seven or eight.

31. Q. Do you mean that there were about seven or eight teams?
A. Yes, as I remember it, seven or eight teams. The majority of the Kempeis and auxiliary Kempeis left first and boarded the truck which was waiting in front of the Kempeitai. Those remaining, headed by Lieutenant Colonel Miyazaki, soon left the quarters after their departure.

32. Q. Which group did you go with?
A. I was with the latter group. I accompanied Lieutenant Colonel Miyazaki at that time. After leaving the Kempeitai we proceeded to the place where the truck was waiting. There I met Captain Yamamoto of the Sumida Unit. I boarded this latter truck and we proceeded then to the quarters of the South Seas Development Company where the missionaries were staying.

33. Q. Is this the Captain Yamamoto that you met (indicating the accused Yamamoto, Kazuharu)?
A. Yes.

34. Q. Go ahead.
A. We arrived at the missionaries' quarters. When we got there they had their belongings packed and were ready to move. Miyazaki entered the building and said, "Let us be going," and taking the missionaries with him boarded the latter truck.

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.

35. Q. Were you present when Miyazaki said, "Let us be going" to the missionaries? Did you hear him say that?
A. Yes, I heard it.

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36. Q. How many people came out of that house with Miyazaki?
A. The six missionaries I mentioned previously. One Filipino, who was an employee, his wife, she was a native, and two children. A total of ten.

37. Q. What happened then?
A. They all boarded the truck including the commanding officer and proceeded to what was generally known as Gasupan Daijo or heights. There we all alighted from the truck. The trucks with the Kempeis and auxiliary Kempeis which had left before us, I believe we passed. We overtook the truck with the Kempeis and auxiliary Kempeis which had left previously, and thus we arrived at the scene. When we had all gotten off the truck Commanding Officer Miyazaki said something in a foreign language to the missionaries. When we alighted the teams formed according to previous arrangements were assigned to each missionary for guards. I think one or two persons to each missionary. Then Commanding Officer Miyazaki told us that he had declared the death sentence on the missionaries in a foreign language. The jungle was about two hundred meters removed from the spot where we alighted and there a hole had been dug in preparation for the execution. Taking them to the scene, Commanding Officer Miyazaki told Nakamura that we will now execute them.

38. Q. Which Nakamura did he tell this to -- Captain Nakamura?
A. Yes, Captain Nakamura.

39. Q. What happened then?
A. Before the hole the missionaries were made to sit down and with either pistols or rifles they were shot.

40. Q. Were only the missionaries made to kneel down?

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

The judge advocate reframed the question.

41. Q. Other than the six missionaries was anyone else made to kneel down?
A. I remember four persons, the Filipino employee, his wife and two children were sitting on the side and immediately after the missionaries had been executed they were made to take up their place in front of the hole.

42. Q. And what happened to them?
A. And after making them kneel in front of the hole they were shot. After the shooting dirt was thrown into the hole and with Lieutenant Colonel Miyazaki leading we retreated from the spot and returned to the barracks.

43. Q. About what time of the day were these people executed?
A. We left the barracks toward evening and when we arrived at the scene of the execution it was already dark. Therefore, I think it was around six or seven in the evening.

44. Q. Can you give us the names of any persons who were present at that execution?
A. Yes.

45. Q. Give us their names.
A. Of those who were present at the scene of the execution I remember the following: Lieutenant Colonel Miyazaki, Captain Nakamura, Lieutenant Ichikawa, Captain Yamamoto of the Sumida Unit, Sergeant Major Ishiyama, Warrant Officer Sugimoto, Sergeant Major Ichimiya, Sergeant Major Tamamoto, Sergeant Yokoyama, Corporal Ezure, Leading Private Kawaguchi, Superior Private Naka-

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mura, Leading Private Okamura and Superior Private Uchida.

46. Q. With the exception of Miyazaki and Captain Nakamura, are all the other men whose names you have given us present in court here today?
A. Yes, they are all present.

47. Q. How dark was it at the scene of this execution? Could you see without any light?
A. No, without lights nothing could be seen.

48. Q. Were there any lights there?
A. Yes, we took the lights with us.

49. Q. What kind of lights did you have?
A. We brought lanterns and candles.

50. Q. Did you bring a lantern or a candle?
A. After everybody had taken up their position at the scene of the execution somebody handed me a candle and I watched with this in my hand.

The witness was duly warned.

The commission then, at 11:32 a.m., took a recess until 2 p.m., at which time it reconvened.

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

51. Q. How many people at the scene of the execution had battle lanterns or candles?
A. I do not remember clearly the number of persons.

52. Q. Approximately?
A. Approximately there were about five or six.

53. Q. Other than yourself, can you give us the names of any of those people who had battle lanterns and candles?
A. I do not recall.

54. Q. Can you give us the names of any of the men who actually shot these victims?
A. I do not recall, but at the scene when the command to fire was ordered I recall that Ishiyama was scolded by Commanding Officer Miyazaki because his pistol did not go off.

55. Q. What happened after Miyazaki finished scolding Ishiyama?
A. I recall that the person whom Ishiyama did not shoot was shot by Colonel Miyazaki.

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56. Q. Were all the people present at this execution members of the Kempeitai?
A. There were officers of the Kempeitai and below and about four or five men and Yamamoto from the Sumida Unit as I recall.

57. Q. Can you give us the names of the men from the Sumida Unit who were present?
A. I do not know their names except for Captain Yamamoto and Leading Private Kawaguchi.

58. Q. Do you know an individual by the name of Namekawa?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I do not.

59. Q. How big a hole was there at the scene of this execution?
A. I recall that the hole was two meters wide, three meters long and about two meters deep.

60. Q. Do you know when this hole was prepared?
A. No, I do not.

61. Q. Do you know who prepared it?
A. I have since heard from Captain Nakamura that he dug a hole by the orders of the commanding officer.

The accused moved to strike this answer on the ground that it was hearsay.

The judge advocate replied.

The commission directed that the answer be stricken out.

62. Q. Were any of these victims tied?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. When they got off the truck I saw them being tied.

63. How many were tied?
A. I recall that the six missionaries were tied and one employee, the man, was tied, and I recall that the woman was not tied and so there were seven in all.

64. Q. Were the two children tied?
A. No.

65. Q. Have you any idea how old these children were?

A. I recall that the elder child was about five or six years old and the younger one about one year old.

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

The judge advocate replied.

The commission announced that the motion was not sustained.

66. Q. Other than being tied, was anything else done to these people?
A. No.

67. Q. About how many men would you say were present at the execution of these ten victims?
A. By "how many persons" what do you mean?

68. Q. I mean the members of the Kempeitai and the Sumida Unit and the officers who were there?
A. I think there were about twenty-five or twenty-six in all.

69. Q. Were all the people that you mentioned as being present at the execution also present at the assembly when Miyazaki made this speech about the execution of the missionaries?
A. No.

70. Q. Who was present at the execution who was not present at the assembly?
A. Yamamoto and the men of the Sumida Unit.

71. Q. At this assembly do you remember exactly what Miyazaki had to say?
A. I do not recall all of what he said but the main point was that by orders of Division Headquarters these missionaries and others will be executed. I recall this.

72. Q. You said that the details concerning the execution were to be given by Captain Nakamura. What did Nakamura have to say?
A. I do not recall Captain Nakamura saying anything at this time.

73. Q. Who picked out the men to be members of the teams?
A. That Captain Nakamura appointed.

74. Q. You have told us there were seven or eight teams. How many men were on each team?
A. Two.

75. Q. Who made up the team?
A. I recall that there were one non-commissioned officer Kempei and one assistant Kempei.

76. Q. When were the teams designated -- at the assembly?

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

The judge advocate withdrew the question.

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