

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

AJIOKA, MISAO et al.

(15 DEC 1947)

(162423)
PART 1 OF 2

1097

ADDRESS REPLY TO

AUG 11 NAVY DEPARTMENT

AND REFER TO

WASHINGTON 25, D. C.

JAG:I:JWMM:bem
OO-Ajoka, Misca/A17-10/OQ
(8-16-48) 162423

23 AUG 1948

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

Philip H. Brown
Acting Secretary of the Navy

Case No
162423

FINISHED-FILE

23 AUG 1948

SMH

1098

In reply refer to Envelope
and No.

Op22D/flf
Serial 837p22

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



23 JUL 1948

FIRST ENDORSEMENT on
JAG Record of Proceedings
OO-AJIOKA, Misao/A17-10/OQ
I (6-22-48) HH:bem 162423
dated 12 July 1948.



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

Subject: Record of Proceedings of Military Commission at
Guam in the case of Misao Ajioka.

1. Returned, contents noted.

J. S. Hammock
J. S. Hammock,
By direction.

RECEIVED
26 JUL 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
S.C.M. SECTION

1099

OO-AJIOKA, Misao/A17-10/00
I (6-22-48) HH:bem 162423

MEMORANDUM IN THE MILITARY COMMISSION CASE OF: AJIOKA, Misao, former
warrant officer, IJA and
YAMADA, Kiyoshi, former
sergeant, IJA.

Place of trial:
Guam, Marianas Islands

Date Tried:
15 December 1947

Date Received:
27 April 1948

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

2. The record of the case is as follows:

CHARGES:

I, MURDER

Spec - 29 December 1944, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, attached to and serving at military installations of the Imperial Japanese Army, Palau Islands, did, each and together, at Babelthmap Island, 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, 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 named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

II, VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1- Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Spec 2- Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one named person, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of said named person, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

OO-AJIOKA, Misao/A17-10/OQ
I (6-22-48) HH:bem 162423

PLEAS: Not Guilty to all charges and the specifications thereunder (Each of the accused.)

FINDINGS: As to Ajioka, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications-not proved)
As to Yamada, Kiyoshi - I, G (spec. proved in part)

SENTENCE: Confinement for a period of twenty-five (25) years (as to each accused)

C.A. ACTION: Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.

3. FACTS: Prior to arraignment of the accused, the judge advocate informed the commission that an oral stipulation had been entered into by the defense counsel and the judge advocate under the terms of which, when classified dispatches are referred to during the course of the proceedings of the commission, reference only to the content and substance of these dispatches will be made in open court. The commission announced that the stipulation was approved.

The commission overruled the objections of the accused to the charges and specifications. It also denied a plea in abatement, contained in the objections to the charges and specifications, and pleas to jurisdiction.

Prosecution: A witness, former Kempeitai first lieutenant, NAKAMURA, Kazuo, testified that on either the 29th, 30th, or 31st of December, 1944, he received orders from his commanding officer at the Kempeitai headquarters, located in the jungle on Babelthup, Palau Islands, to proceed to the Gasupan Kempeitai Detachment, a subordinate command. (Note: "Kempeitai" means military police force). He was to carry orders for the execution of an Englishman held by such detachment. According to the orders the execution was to be carried out by one, YAMADA, with a pistol. In preparation for the execution the witness was instructed to call the Gasupan detachment by telephone and order a hole to be dug near where some Spaniards had been killed. This he did. Then, after the noon meal, he took along one assistant Kempei and went to the Gasupan detachment. When he arrived there the commanding officer of the detachment, AJIOKA, was away but returned in ten to twenty minutes. Upon his return, he remarked to the witness, "The hole is ready." Whereupon the witness relayed to him the orders for the execution. AJIOKA was said to have commented at that time, "Is it not pitiful?"

After the orders were given to AJIOKA he left the room in which he and the witness had been conversing. In a short time he returned and reported "Everything is ready." The witness stated that he then went out of the room and saw Sergeant YAMADA, employee UEMURA, the Englishman, Smith, one assistant Kempei, and another person. This group of people, including the witness and AJIOKA, walked up the hill of Gasupan. While two of the group went to find the hole which had been dug the rest waited at the entrance of the jungle. After a period of time the two men returned and said that they had not been able to find the hole.

Near the place where the group had been waiting was a hole which looked like a fox hole of a size about one and one-half or two meters square. The witness said that he told AJIOKA, "If the hole cannot be found, let us use this hole." When AJIOKA agreed the witness said to YAMADA, "Do it." According to the testimony Sergeant YAMADA made a face as if he did not want to do it and acted as if he were not going to comply with the order. Then AJIOKA said to him, "Do it."

OO-AJIOKA, Misao/AL7-10/OQ
I (6-23-48) HH:bem 162423

Do it." YAMADA then shot Smith in the back of the head with a pistol. The Englishman died with only one shot and fell into the hole. When the witness ascertained that Smith was completely dead he told Assistant Kempei, Uemura, to bury the body. This was done. After the war, the corpse was dug up, cremated, and the remains buried.

The wife of the deceased man testified that she had lived on Palau from 1905 until 1945. In March of 1923 she married Smith. She produced a memorandum, written by the brother of Smith, which was received in evidence and identified as "Exhibit 1." The memorandum certified that Smith was born in 1875 in Victoria, Hong Kong; that he was educated in the place of his birth; that he was a British subject; and, that he left Hong Kong about the year 1890 for the Caroline Islands. Smith, his wife stated, was kept under guard by the Japanese from 1941 to 1944. In October 1944 he was taken away and she never saw him after that time.

Former Kempei First Lieutenant Sano, Giichi, who had been on duty in the Palau Islands as head of the Special Higher Section of the South Seas Kempeitai, testified that Smith and a German and his wife were placed under guard by the Japanese while an investigation was made relative to the escape of several natives from the islands. The three people placed under guard had, reputedly, assisted the natives in their escape. There was also a report that the Englishman and the German were signaling to American planes. In December 1944, the witness stated, the Englishman, whom he called James, was transferred from his place of confinement at Garasmo to Gasupan. He never saw James after that. His commanding officer told him that the Englishman had been executed.

A former superior private, one of the men who transferred the Englishman to the Gasupan detachment, testified to circumstances relative to the transfer. He identified a picture, admitted in evidence and marked "Exhibit 2", as that of the Englishman, Smith. This picture had been furnished by the wife of Smith. For a period of time after the transfer, the witness was away on an inspection trip. When he returned to Gasupan the Englishman was no longer there. He did not see him again until 15 August 1945. At that time he and about thirty other men were assembled early in the morning by the commanding officer. They were led to the scene of some graves and told to start digging. The body the witness dug up was that of the Englishman. He recognized the features of the deceased man for the corpse had not deteriorated very much. The corpses that were dug up were all carried to one location and placed on a fire. After the cremation a hole was dug and the remains buried.

Two witnesses testified relative to receiving orders from AJIOKA to dig a hole. One of them stated that, subsequently, when he, as a member of a party which included AJIOKA and YAMADA, went to find the hole, he couldn't do so. He searched for it for almost an hour and was scolded by AJIOKA when he returned to the party.

Confessions signed by each of the accused were admitted in evidence over the objection of the accused and identified as "Exhibits 4 and 5".

Defense - The commission, at the request of the accused, stated that it would take judicial notice of certain documents and writings.

The accused, AJIOKA, testified to substantially the same facts preceding the execution as did the first witness for the prosecution, former first lieutenant Nakamura. He stated, however, contrary to what Nakamura testified, that he did not order Yamada to shoot. Neither did he see who fired the shot due to the fact that, at that instant, he was watching a plane which was flying overhead. Nakamura, he said, ordered Yamada to shoot but when Yamada hesitated, Nakamura

OO-AJIKA, Misao/A17-10/00
I (6-23-48) HH:bem 162423

said to him, "What are you hesitating about? Hurry up and shoot."

AJIKA said that when Nakamura told him the Englishman was to be executed, he replied, "It is a pity and therefore please send him back home." and "As he is a pitiful old man, please let him return to his home. We have lived our lives together in the air raid shelter every time we were bombed, so please send him back home." He also denied giving any order to dig a hole to serve as a grave.

The accused, Yamada, testified that Nakamura was the individual who gave the order to shoot the Englishman. When the order to shoot was given he was in a daze and confused. Nakamura scolded him for not obeying the order promptly. He was, he said, like a person in a dream and as he pointed the barrel of the pistol toward Smith, it went off.

In his confession, Yamada stated that Nakamura shot the Englishman first. However, while testifying in his own behalf, Yamada said that such statement was absolutely false. He was temporarily angry at Nakamura at the time the statement was written and, therefore, wrote the falsehood.

The commission denied the motion of the accused for a directed acquittal in the case of AJIKA, Misao.

4. APPLICABLE LAW AND DISCUSSION: The objections to the charges and specifications in the instant case are based on the same grounds as the objections in previous Military Commission cases. In such previous cases it was held that the commission properly overruled the objections (See Asano et al, Docket No. 161779). The grounds for the pleas in abatement and pleas to the jurisdiction of the Commission were, also, discussed in previous Military Commission cases (See Asano et al, supra). In such cases it was held that the pleas were properly denied.

5. CONCLUSIONS AND RECOMMENDATION: It is recommended that the case be passed as straight legal without further comment.

JHR

H. H. Granger
H. H. GRANGER
Lt. Comdr., U.S.N.

H. Hutchinson
H. HUTCHINSON
Lieut., U.S.N.

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GCM REFERRAL - Cont'd.

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Plea Not Guilty to all charges and the specifications thereunder (Each of the accused).

Finding As to AJIOKA, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications - not proved). As to YAMADA, Kiyoshi - I, G (spec. proved in part)

Sentence Confinement for a period of twenty-five (25) years (As to each accused).

C. A. ACTION Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.


NAVY DEPARTMENT
Office of the Judge Advocate General

12 JUL 1946

To: Chief of Naval Operations (Op 22).

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

Referred for information.


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

GCM REFERRAL

(6-23-48) bem

General Court-Martial Case No. 162423

Name	Rank or Rating	Date Received
Misao AJIOKA,	Former warrant officer, IJA	27 April 1948
Kiyoshi YAMADA,	Former sergeant, IJA	
(Tried in joinder)		

Trial Held	Date of Trial
Guam, Marianas Islands	15 December 1947

Present Offenses

CHARGE I, MURDER

Spec - 29 December 1944, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, attached to and serving at military installations of the Imperial Japanese Army, Palau Islands, did, each and together, at Babelthnap Island, 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, 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 named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II, VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Spec 2-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one named person, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of said named person, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

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OCM REFERRAL

(6-23-48) bem

General Court Martial Case No. 162423

Name	Rank or Rating	Date Received
Misao AJIOKA, Koyoshi YAMADA, (Tried in joinder)	Former warrant officer, IJA Former sergeant, IJA	27 April 1948
Trial Held Guam, Marianas Islands		Date of Trial 15 December 1947

Present Offenses

CHARGE I, MURDER

Spec - 29 December 1944, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, attached to and serving at military installations of the Imperial Japanese Army, Palau Islands, did, each and together, at Babelthup Island, 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, 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 named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

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Spec 1-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

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OCM REFERRAL - Cont'd.

Plea Not Guilty to all charges and the specifications thereunder (Each of the accused).

Finding As to AJIOKA, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications - not proved). As to YAMADA, Kiyoshi - I, G (spec. proved in part)

Sentence Confinement for a period of twenty-five (25) years (As to each accused).

C. A. ACTION Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.

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Office of the Judge Advocate General

12 JUL 1946

To: Chief of Naval Operations (Op 22).

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Referred for information.

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



OCM REFERRAL

(6-23-48) bsm

General Court Martial Case No. 162423

Name	Rank or Rating	Date Received
Misao AJIOKA, Kiyoshi YAMADA, (Tried in joinder)	Former warrant officer, IJA Former sergeant, IJA	27 April 1948

Trial Held	Date of Trial
Ouan, Marianas Islands	15 December 1947

Present Offenses

CHARGE I, MURDER

Spec - 29 December 1944, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, attached to and serving at military installations of the Imperial Japanese Army, Palau Islands, did, each and together, at Babelthuap Island, 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, 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 named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II, VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

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OCM REFERRAL - Cont'd.

Plea Not Guilty to all charges and the specifications thereunder (Each of the accused).

Finding As to AJIOKA, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications - not proved). As to YAMADA, Kiyoshi - I, G (spec. proved in part)

Sentence Confinement for a period of twenty-five (25) years (As to each accused).

C. A. ACTION Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.

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Judge Advocate General of the Navy.

OCM REFERRAL

(6-23-48) bsm

General Court Martial Case No. 162423

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Misao AJIOKA, Kiyoshi YAMADA, (Tried in joinder)	Former warrant officer, IJA Former sergeant, IJA	27 April 1948

Trial Held	Date of Trial
Guam, Marianas Islands	15 December 1947

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Spec 1-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Spec 2-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one named person, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of said named person, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

OCM REFERRAL - Cont'd.

Plea Not Guilty to all charges and the specifications thereunder (Each of the accused).

Finding As to AJIOKA, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications - not proved). As to YAMADA, Kiyoshi - I, G (spec. proved in part)

Sentence Confinement for a period of twenty-five (25) years (As to each accused).

C. A. ACTION Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.

NAVY DEPARTMENT
Office of the Judge Advocate General

12 JUL 1946

To: Chief of Naval Operations (Op 22).

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

Referred for information.

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

OCM REFERRAL

(6-23-48) ben

General Court Martial Case No. 162423

Name	Rank or Rating	Date Received
Misao AJIOKA, Kiyoshi YAMADA, (Tried in Joinder)	Former warrant officer, IJA Former sergeant, IJA	27 April 1948
Trial Held Ouan, Marianas Islands		Date of Trial 15 December 1947

Present Offenses

CHARGE I, MURDER

Spec - 29 December 1944, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, attached to and serving at military installations of the Imperial Japanese Army, Palau Islands, did, each and together, at Babelthuap Island, 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, 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 named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II, VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, a named person, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Spec 2-Same date, same installations, AJIOKA, Misao, then a warrant officer, IJA, did, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one named person, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of said named person, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

OCM REFERRAL - Cont'd.

Plea Not Guilty to all charges and the specifications thereunder (Each of the accused).

Finding As to AJIOKA, Misao - I, G (spec. proved in part); II, ACQUITTED (2 specifications - not proved). As to YAMADA, Kiyoshi - I, G (spec. proved in part)

Sentence Confinement for a period of twenty-five (25) years (As to each accused).

C. A. ACTION Subject to remarks, the proceedings, findings on Charge I and the specification thereunder and sentences approved. AJIOKA now being deceased, the sentence as to him can not be executed. A certified copy of the death certificate is made a part of the action. The remains of AJIOKA, Misao are buried in Plot #45, Lot 426 of the Japanese cemetery, Asan, Guam. YAMADA, Kiyoshi, will be transferred to the custody of the Commanding General of the 8th U.S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo prison.

NAVY DEPARTMENT
Office of the Judge Advocate General

12 JUL 1946

To: Chief of Naval Operations (Op 22).

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

Referred for information.

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

15 March 1948-2000

AJIOKA
YAMADA

YASAO
Kiyoshi

GENERAL COURT MARTIAL DATA SHEET

former W.O.
Sgt.

10A
10A

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

H. Hutchinson
(Reviewing Officer)

Docket No. 162423

	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 <u>person</u> of the accused?	✓		
6. Did the court have jurisdiction of the <u>offenses</u> 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 <u>not</u> 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?	✓		Overruled
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. IV

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

24 June 1948
(Date)

JH. Whitman
(Signature of reviewing officer)

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FF12/117-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

31 MAR 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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

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

Enclosure: (A) Record of subject case (original and three copies; one
copy for CinCPacFlt, one copy for SecNav for delivery to
United Nations War Crimes Commission, and one copy for
Commander 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 - MURDER

Specification

In that AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a
sergeant, IJA, and others, names to the relator unknown, all attached to the
military installations of the Imperial Japanese Army, Palau Islands, and while so
serving at said military installations, did, each and together, at Babelthuap
Island, Palau Islands, on or about December 29, 1944, at a time when a state of
war existed between the United States of America, its allies and dependencies,
and the Imperial Japanese Empire, willfully, feloniously, with premeditation and
malice aforethought, and without justifiable cause, assault, strike, kill and cause
to be killed by shooting with firearms, exact description to the relator unknown,
one Charlie SMITH, alias James SALLY, an unarmed British national, then and there
held captive by the armed forces of Japan, this in violation of the law and customs
of war.

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasupan Military Police Detachment, did, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely YAMADA, Kiyoshi, then a sergeant, IJA, permitting him the said YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, on or about December 29, 1944, at Babelthuap Island, Palau Islands, by shooting with firearms, one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasupan Military Police Detachment, did, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of the said Charlie SMITH, alias James SALLY, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

88889

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

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

AJIOKA, Misao

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

YAMADA, Kiyoshi

CHARGE I	- Not guilty	(R.p. 3)
Specification	- Not guilty	(R.p. 3)

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

AJIOKA, Misao

CHARGE I	- Guilty	(R.p. 94)
Specification	- Proved in part	(R.p. 94)
Proved except the word "Sally", which word is not proved.		

CHARGE II	- Not guilty	(R.p. 94)
Specification 1	- Not proved	(R.p. 94)
Specification 2	- Not proved	(R.p. 94)

YAMADA, Kiyoshi

CHARGE I	- Guilty	(R.p. 94)
Specification	- Proved in part	(R.p. 94)
Proved except the word "Sally", which word is not proved.		

8120

FF12/AL7-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Warrant Officer AJIOKA, Misao, I.J.A., et al.

d. Sentences:

AJIOKA, Misao	Twenty-five (25) years confinement	(R.p. 97)
YAMADA, Kiyoshi	Twenty-five (25) years confinement	(R.p. 97)

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:

15 December 1947 to 24 December 1947.	
Arraignment: 15 December 1947.	(R.p. 3)
Sentenced: 24 December 1947.	(R.p. 97)

3.

FORMAL MATTERS:

a. Authority for the commission to act.

By precept dated 8 November 1947, the commission was ordered to convene 20 November 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to authority inherent in a Military Commander and as authorized by the Commander-in-Chief, Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. 1946; ComMarianas Desp. 292336Z Sept. 1947; CinCPacFlt Desp. 020103Z Oct. 1947;

001200

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

SecNav Desp. 081946Z Oct. 1947; CinCPacFlt Desp. 092353Z Oct. 1947). The trial was held under authority of Naval Courts and Boards, except that the commission was permitted to relax the rules of naval courts to meet the necessities of the trial and use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, and modifications thereof, as necessary to obtain justice.

b. All members of the commission were present throughout the trial with the exception of Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, who was absent on duly authorized emergency leave (Prefix "B").

c. All members of the commission, judge advocates, reporters, interpreters and witnesses were sworn (R.p. 1, 36).

d. The charges and specifications were shown to have been served on the accused on December 9, 1947 (R.p. 1).

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

f. There was no objection to any member of the commission (R.p. 1).

g. The accused objected to the charges and specifications (R.p. 2, Prefix "E", "F") 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 of the objections was, in my opinion, correct (see para. 3(g) my memorandum on KOICHI, et al case, dated 20 March 1948).

h. The commission found the charges and specifications in due form and technically correct (R.p. 2).

i. The accused were properly arraigned (R.p. 3).

4. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 2, Prefix "H", "I") in effect on the following grounds:

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

1. The victim in the instant case was a civilian resident of an island under Japanese mandate and occupied by that nation at the time of the alleged crimes; therefore, the alleged murder cannot be classified as a war crime.

2. Both accused were demobilized military personnel who had been returned to Japan; therefore, they should be tried by the Japanese civil authorities and not by a military commission.

3. The accused were not legally brought before the military commission, as provided in paragraph 1 of the precept, in that they were not properly extradited from Japan and their arrest and confinement in Japan prior to being brought to Guam was unlawful.

4. The alleged crimes were committed in the Palau Islands; therefore, under the principle of "lex loci, lex fori," the accused should be tried under local and not international law.

The plea to the jurisdiction was in my opinion properly denied (R.p. 2) for the reasons stated in paragraph 6(a) below.

b. Other than as indicated in 4(a) above, there were no motions or pleas in bar made by the accused prior to their plea of "Not Guilty."

c. The accused both pleaded "Not Guilty" to all charges and specifications (R.p. 3).

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

a. For the prosecution.

In December of 1944, former Kempei First Lieutenant SANO, Giichi, IJA (R.p. 43) was ordered by Lieutenant Colonel MIYAZAKI to investigate the foreigners at GARASMAO (R.p. 44). He was told that the Kempeitai (military police) had been requested by Staff Officer YAJIMA and that SANO was to bring the Englishman and the German and his wife to the GASUPAN Kempeitai (R.p. 44). The Englishman was Charlie SMITH, "so and so" JAMES (R.p. 44). SANO was told to take Sergeant Major TAMAMOTO and Sergeant YAMADA (R.p. 44, 45) and some Kempeis and go to GARASMAO. SANO went to GARASMAO and secured the Englishman, took him first to the GARASMAO Unit and then sent him with YAMADA and one assistant Kempei on a truck to the GASUPAN Kempeitai Detachment (R.p. 45, 63). Charlie SMITH was married in 1923 in PALAU (R.p. 37). He told his wife that he had been born in HONG KONG (R.p. 27) and that he was a British subject (Exh. 1).

FF12/AL7-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Warrant Officer AJIOKA, Misao, I.J.A., et al.

Former Kempeitai First Lieutenant NAKAMURA, Kazuo, was Head of the Criminal Section of the South Seas Kempeitai in December 1944 (R.p. 5). NAKAMURA received orders from MIYAZAKI to go to the GASUPAN Detachment and have the detachment execute the Englishman. YAMADA was to carry out the execution with a pistol (R.p. 6). The execution of the Englishman at the GASUPAN Detachment was an order of Division Headquarters (R.p. 6). NAKAMURA was to call the GASUPAN Detachment on the phone and have them dig a hole (R.p. 6). NAKAMURA did call the GASUPAN Detachment and relay the orders (R.p. 6). The same day NAKAMURA went to the GASUPAN Detachment (R.p. 7). On his arrival the Commanding Officer, Warrant Officer AJIOKA (R.p. 53, 7) was absent but in a short time returned and said, "The hole is ready." AJIOKA had ordered the hole dug (R.p. 65, 7). NAKAMURA then relayed all the orders to AJIOKA (R.p. 7). AJIOKA left and soon returned and reported, "Everything is ready" (R.p. 7). NAKAMURA then went out of the room and found in front of the room Sergeant YAMADA, employee UEMURA, the Englishman SMITH, the assistant Kempei who had come with NAKAMURA, AJIOKA, and a person NAKAMURA thought was assistant Kempei HAYASHI (R.p. 7). The AJIOKA and YAMADA who NAKAMURA saw in front of the room were the accused in the present case (R.p. 8). The seven went up the hill of GASUPAN (R.p. 8). HAYASHI or UEMURA or both went to look for the hole and could not find it (R.p. 8). Near by where the party was waiting was a foxhole and NAKAMURA suggested that this hole be used (R.p. 8). AJIOKA agreed to this (R.p. 8). NAKAMURA said to YAMADA, "Do it." YAMADA acted as if he were not going to do it so AJIOKA said to him, "Do it. Do it," and YAMADA shot SMITH in the back of the head with a pistol (R.p. 8, 15, 87). NAKAMURA had the body of SMITH buried but that after the end of the war it was dug up and cremated (R.p. 8, 55).

b. For the defense.

The two accused took the stand in their own behalf (R.p. 82, etc.; 86, etc.) and testified in brief as follows: AJIOKA was attached to the South Seas Kempeitai (R.p. 83). At the end of November 1944, the South Seas Kempeitai Headquarters moved to SHISUI-ZAN and AJIOKA was left behind to protect the buildings and provisions (R.p. 83). The group that remained was called the GASUPAN Kempeitai Detachment but was not an official detachment (R.p. 83, 51). In December of 1944, the group at GASUPAN including AJIOKA and YAMADA belonged to the First Kempeitai Detachment or Company and were under the command of Commanding Officer Captain NAKAMURA, Kazuo (R.p. 83, 85, 51, 86). NAKAMURA alone ordered YAMADA to shoot (R.p. 88, 84, 85).

6.

DISCUSSION:

a. As to jurisdiction.

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

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.; Yamashita v. Styer, 327 U.S. 1).

The accused made a plea to the jurisdiction as indicated in paragraph 4(a) 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). 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, JAG 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).

Further discussion of the question as to whether the commission had jurisdiction in this case to try the accused for the murder of Charlie SMITH, a British national 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 Charlie SMITH, 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(a)(2), (3) and (4) above, given by the accused 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, et al case, dated 20 March 1948).

b. As to procedure.

8825

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

(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.

There is sufficient competent evidence to support the commission's findings of "proved" and "guilty" relative to both accused with respect to the specification of Charge I and to Charge I. The commission's finding of "not proved" as to Specifications 1 and 2 of Charge II and "not guilty" as to Charge II in the case of AJIOKA is supportable for the evidence involving AJIOKA with relation to Charge II gave rise to a question of fact which the commission in its capacity as jurors resolved in favor of the accused (N.C. & B., Sec. 304).

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 offense as indicated by the evidence.

In connection with the sentences, it is pointed out that one of the accused, AJIOKA, Misao is now deceased, having committed suicide on 29 January 1948, and that insofar as he is concerned, the sentence can not be executed. This raises the question as to what action the reviewing authorities should take with reference to the sentence of AJIOKA. The undersigned has been unable to find any instruction or law covering specifically the question presented. However, Section 341, Naval Courts and Boards covers the case where an accused improperly escapes from military custody. It provides:

8828

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

"....Thus the fact that, after arraignment and during the trial, the accused has escaped from military custody furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in the case; and the court may and should find and sentence as in any other case...."

In military cases that have been presented to the United States ^{Supreme Court} involving the question of jurisdiction, it has been consistently held "that the jurisdiction of the court having once attached by the arrest, it retained jurisdiction for all the purposes of the trial, judgment, and execution" (Barrett v. Hopkins, 2 McCrary, 129 and 7 Fed., 312; see also Winthrop's Military Law and Precedents, 2nd Ed., 1920 reprint, pp. 90 and 91 and cases there cited).

It is my opinion that the proceedings, findings and sentence as to accused AJIOKA, deceased, should be approved by the convening and reviewing authorities and that their actions should include a statement to the effect that the execution of the sentence is impossible.

e. Generally.

(1) During the trial, the accused made certain pleas, motions and requests as indicated on pages 78 and 90 of the record and also the accused and judge advocate made various objections to the admissibility of certain evidence. Each of the rulings of the commission on these matters has been considered. Based upon the authorized procedure for the commission and the rules of evidence, which were properly adopted (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interest of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

(2) Commission approved a stipulation made by the judge advocate and defense counsel prior to the members having been sworn (R.p. 1). This was improper (Sections 394-5, Naval Courts and Boards; see also C.M.C. 2-1943 p.183). When stipulation is made, it should be followed by an affirmative statement in the record to the effect that the accused acquiesced in the agreements when they have been made by his counsel..." (C.M.C. 1-1942, p. 290). However, while the commission erred in accepting the stipulation before the members were sworn, and also in not seeing that the accused acquiesced in the agreement, it is my opinion that the substantial rights of the accused were not prejudiced. The stipulation was ob-

00127

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

viously entered into for the purpose of cryptographic security and the stipulation did not involve the issues of the case, nor did it constitute an admission unfavorable to the accused.

7. OPINION:

It is the opinion of the undersigned that:

- a. The military commission was legally constituted.
- b. The commission had jurisdiction of the persons and the offenses.
- c. The evidence supports the findings of "proved" and "guilty" as to the accused AJIOKA and YAMADA relative to the specification of Charge I and Charge I. The finding of "not proved" and "not guilty" in the case of the accused AJIOKA on the specifications of Charge II and on Charge II can be supported on the evidence which came before the commission.
- d. The record discloses no errors materially prejudicial to the accused.
- e. The sentences are legal. However, due to the fact accused AJIOKA is now deceased, the sentence as to him is impossible of execution.

8. RECOMMENDATIONS:

It is recommended (1) that the proceedings, findings of guilty and sentences in the cases of the accused AJIOKA, Misao and YAMADA, Kiyoshi be approved by the convening and reviewing authorities; (2) that the convening and reviewing authorities include in their respective actions a statement to the effect that due to the fact accused AJIOKA is deceased the sentence as to him is impossible of execution; (3) that the convening and reviewing authorities in effect concur in the acquittal of the accused AJIOKA of the specifications of Charge II and of Charge II by taking no action relative thereto (Sec. 472 $\frac{1}{2}$, N.C. & B.); (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:

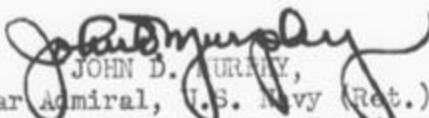
Actions designed to carry the above recommendations into effect

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 Warrant Officer AJIOKA, Misao, I.J.A., et al.

should they meet with your approval are submitted herewith as enclosures (B) and
(C).


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

cc: JAG, USN

88129

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

31 March 1948

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. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z 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 6 December 1947 and served on the accused on 9 December 1947. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated 5 December 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

On page 1 of the record it is noted that the commission, before its members were sworn, approved a stipulation, concerning the security of classified matter, entered into by the judge advocate and the defense counsel. It does not appear from the record that the stipulation was made with the specific consent of the accused. "Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members." (Sect. 394, U.C.M.C.). Accordingly the action of the commission in approving the stipulation was erroneous. Further when a stipulation is made it should be followed by an affirmative statement in the record to the effect that the accused acquiesced in the agreement made by his counsel (CMO 1-1942 p. 290). However, here the stipulation accepted related only to matters pertaining to the security of classified material and did in no way involve the issues of the case. It is the opinion of the convening authority that the substantial rights of the accused were not prejudiced. (CMO 2-1943, p. 183).

The attached certified copy of death certificate in the case of AJIOKA, Misao is hereby made a part of this action. AJIOKA now being deceased, the sentence as to him can not be executed.

Subject to the above remarks, the proceedings, findings on Charge I and the specification thereunder and sentences in the foregoing case of AJIOKA, Misao and YAMADA, Kiyoshi are approved.

00130

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

31 March 1948

YAMADA, Kiyoshi will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison.

The remains of AJIOKA, Misao are buried in plot #45, lot 426 of the Japanese cemetery, Asan, Guam.

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

8138

DEATH CERTIFICATE

W. D., A. G. O. Form No. 15-48
(Obt. W. D., P. M. G. Form No. 93, which may continue in use)
14 June 1964

ENCLOSURE (1)

INTERNATIONAL RED CROSS COMMITTEE
GENEVA
CENTRAL AGENCY FOR PRISONERS OF WAR

DEATH CERTIFICATE

SURNAME		FIRST NAME	
1. AJIOKA		Hideo	
BIRTH PLACE OF		BIRTH DATE OF	
2. Japan		15 January, 1912	
DEATH PLACE OF		DEATH DATE OF	
3. U.S. Naval Hospital, Guam, P.I.		29 January, 1945	
UNIT (Corps, Regiment, Battalion, Company)		NUMBER OF REGISTRATION (Indicate on identification tag)	
4. Convicted War Criminal		Civilian	
FAMILY'S ADDRESS, IF KNOWN			
5. Hara Ken Hara Shi Nishishinseiko Cho			
IF MARRIED, DATE AND PLACE THEREOF, IF KNOWN (Information required for Germans only)			
6. Married, Wife's name: Katsie - Date: unknown		CAPTURE, WHERE	
7. Arrived on Guam, 9 December, 1944, from Sugamo Prison, Japan		CAPTURE, DATE	
CAUSE OF DEATH			
8. Lacerations of left jugular veins, Contributory: Hemorrhage			
BURIAL		PLACE OF	
9. Japanese Cemetery		Asan, Guam, P.I.	
LOCATION AND IDENTIFICATION OF GRAVE		BURIAL DATE OF	
10. Plot 445 Lot 426		13 February 1945	
DISPOSITION OF PERSONAL EFFECTS BELONGING TO DECEASED			
11. Held in Provost's Office - Will be shipped to Japan on order of ComMarines.			
WILL PERSONAL EFFECTS BE SENT, TOGETHER WITH DEATH CERTIFICATE BY THE WAR DEPARTMENT?			
12. No			
BRIEF DETAILS OF DEATH AND BURIAL FOR TRANSMITTAL BY INTERNATIONAL RED CROSS TO FAMILY OF DECEDENT			
13. Patient found lying in a pool of blood at approximately 1400, on 29 January, 1945, with severe lacerations of throat. The patient was in shock when first seen, and, in spite of all therapy expired at 1530 on 29 January, 1945. Wounds were self-inflicted with a rusted pocket knife.			
SEAL OFFICE OF THE PROVOST MARSHAL GENERAL			
CERTIFIED TRUE COPY		/s/ Gold S. Fifer (Signature of medical officer)	
J. A. REGAN, LCDR., U.S.N.		Commanding	

W.D. A.G.O. Form No. 18-48
(Use W. D. P. M. G. Form No. 95, which may continue in use)
14 Jan-49

23-11100-1 U. S. GOVERNMENT PRINTING OFFICE: 1944

ENCLOSURE (B)

01133

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

CinCPacFlt File

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

Serial:

The proceedings, findings on Charge I and the specification thereunder and sentences in the foregoing case of AJIOKA, Misao and YAMADA, Kiyoshi and the action of the convening authority thereon are approved.

Due to the fact accused AJIOKA, Misao is now deceased, the sentence as to him can not be executed.

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)

1134

FF12/117-10(2)
02-JDI-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3605

2 APR 1948

MILITARY COMMISSION ORDER NO. 42

(In re AJIOKA, Misao, former Warrant Officer, IJA, et al)

1. During period 15 December 1947 to 24 December 1947, AJIOKA, Misao, former warrant officer, IJA, and YAMADA, Kiyoshi, former sergeant, 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 - MURDER (one specification)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Names of Accused</u>
1	Kill an unarmed British national, Charlie SMITH, alias James SALLY, then held captive by the armed forces of Japan.	Babelthup Island, Palau Islands.	29 Dec. 1944	AJIOKA YAMADA

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

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Names of Accused</u>
1	Failed to control a person under his command.	Babelthup Island, Palau Islands.	29 Dec. 1944	AJIOKA
2	Failed to protect an unarmed British national, Charlie SMITH, alias James SALLY, then held captive by the armed forces of Japan.	Babelthup Island, Palau Islands.	29 Dec. 1944	AJIOKA

FINDINGS: The commission on 23 December 1947 made the following findings:

"As to the accused, AJIOKA, Misao:
The specification of the first charge proved in part, proved except the word 'Sally,' which word is not proved.
And that the accused, AJIOKA, Misao, is of the first charge guilty.

"The first specification of the second charge not proved.
The second specification of the second charge not proved.
And that the accused, AJIOKA, Misao, is of the second charge not guilty, and the commission does, therefore, acquit the said AJIOKA, Misao, of the second charge.

"As to the accused, YAMADA, Kiyoshi:
The specification of the first charge proved in part, proved except the word 'Sally,' which word is not proved.
And that the accused, YAMADA, Kiyoshi, is of the first charge guilty."

81135

FF12/417-10(2)
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3605

2 APR 1948

MILITARY COMMISSION ORDER NO. 42

(In re AJIOKA, Misao, former Warrant Officer, IJA, et al)

SENTENCES: The commission on 24 December 1947 sentenced the accused as follows:

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

"The commission, therefore, sentences him, YAMADA, Kiyoshi, to be confined for a period of twenty-five (25) years."

2. On 31 March 1948 the convening authority (Commander Marianas), subject to certain remarks not herein quoted, took the following action:

"....AJIOKA now being deceased, the sentence as to him can not be executed.

"....the proceedings, findings on Charge I and the specification thereunder and sentences in the foregoing case of AJIOKA, Misao and YAMADA, Kiyoshi are approved.

"YAMADA, Kiyoshi will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison.

"The remains of AJIOKA, Misao are buried in plot #45, lot 426 of the Japanese cemetery, Asan, Guam."

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

cc: CinCPacFlt (3) ✓
JAG, USN (3)
SCAP (3)
Comdg. Gen. U.S. 8th Army, Japan (3)
National War Crimes Officer, Wash., D.C. (3)
CO, Marine Barracks, Guam (5)
ComMarianas Liaison Officer, Tokyo, Japan (3)

AUTHENTICATED:

H. D. Vanston

H. D. VANSTON,
Flag Secretary.

8136

Case of
AJIOKA, Misao
YAMADA, Kiyoshi

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
27 APR 1948

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

162423

IV

1137

Ajioka, Misao
Yamada, Kiyoshi

Trial by Military Commission
at Guam, Marianas Islands
December 15, 1947

INDEX

	Page
Organization of commission.	1
Introduction of counsel	1
Members, judge advocates, reporters, and interpreters sworn	1, 36
Arraignment	3
Pleas	3
Adjournments.	10, 32, 52, 71, 81, 90, 92, 95, 98
Prosecution rests	78
Defense rests	90
Findings.	94
Sentences	97

TESTIMONY

Name of witness	: Direct : and : redirect	: Cross : and : recross	: Commission
Prosecution	:	:	:
Nakamura, Kazuo, 1st lt., IJA-----	5, 33	: 9, 34	: -----
Rita Borgia Smith, civ.-----	36	: 39	: -----
Sano, Giichi, 1st lt., IJA-----	43, 51	: 45, 51	: -----
Iwamoto, Harukichi, sup.pvt., IJA-----	53, 61	: 55, 61	: -----
Nakagawa, Takeo, corp., IJA-----	63	: 66	: -----
Uemura, Senichi, civ.-----	67	: 71	: -----
Ogden, H. L., cdr., USN-----	72, 77	: 73	: -----
Defense	:	:	:
Ajioka, Misao, accused-----	82	: 84	: -----
Yamada, Kiyoshi, accused-----	86, 89	: 88, 89	: -----

EXHIBITS

Ex- hibit :	Character of	: Admitted : in Evidence
1	: Memorandum as to nationality of Charlie Smith	: 37
2	: Photograph of Charlie Smith	: 38
3	: Statement of Ajioka, Misao, in English	: 77
4	: Statement of Ajioka, Misao, in Japanese	: 77
5	: Statement of Yamada, Kiyoshi, in English	: 77
6	: Statement of Yamada, Kiyoshi, in Japanese	: 78

1138

FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

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

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander-in-Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. Pac. Flt. serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 061946Z 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.

KUNATA, 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.

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lt. Col. USA

A (1)

1139

FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

Subject: Precept for a military commission.

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

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

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

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

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

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

A true copy. Attest:

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

CERTIFIED TO BE A TRUE COPY

A (2)

1140

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

Serial 22660

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

From: The Commander Marianas Area,
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:

Joseph A. Regan
Lt Col. U. S. M.

"B"

1141

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 A. Rogers
Lt. Col. U.S.N.

"C"

1142

味岡操及山田清ノ起訴

及罪状項目ニ對スル異議

昭和二十二年十二月十五日

年 護 人 鉄田日出夫

被告兩名ハ以下述ベル理由ニ因リ本件起訴及罪状項目ニ對シテ異議ヲ申立テル。

1. 第一起訴ニ於テ味岡操ト山田清トハ合同起訴サレタルガ *Several Courts & Boards §17* ニモ規定サレタル様ニ數人ガ偶同時同所ニ於テ同一犯罪ヲ犯シタカトテ之ヲ合同起訴シ得ルモノデハナシ。二人若シハソレ以上ノ人々ヲ合同起訴シ得ル爲ニハ、彼等ガ共同ノ不法計畫遂行ノ爲ニ一個ノ犯罪ヲ犯シタコトヲ必要トスル。故ニ被告兩名ヲ合同起訴レタル第一起訴中ニハ "in pursuance of a common unlawful design and concert" トカ "in pursuance of a common intent" トカ言フ言葉ヲ挿入スベキデアル。若シ之ヲ許サヌ様ナ事情ガアルヲバ、各被告ヲ別個ニ起訴スベキデアル。

2. 被告等ハ互ニ利害ノ對立アルニ拘ラズ合同起訴ノ不利益ヲ受ケタルミナラズ、其ノ他、姓名不詳者ト合同サレタル。此ノ姓名不詳者ト合同起訴ハ被告等ノ重大ナル權利ヲ侵害スルモノデアル。何トナレバ、此ノ姓名不詳者ナル言葉ノ中ニ誰ガ包含サレタルカヲ知ラズシテハ、被告等ハ適當ナ年費ヲ準備シ得ナイカラデアル。

加之、 A -起訴 = 獨ラレタ事ヲ基礎トシテ構成サレタ A ニ起訴中
ニハ「其他姓名不詳者」ハ言葉ハ見出サレタイ。 A ニ起訴 A -罪狀項目中
ハ "to control the operations of a member of his detachment
and subject to his control and supervision, namely by
Yanada Kiyoshi, permitting him, the said Yanada
Kiyoshi, to kill unlawfully ..." トアツテ、 A ニ起訴 A -被告味岡
ト関係アル者ハ独リ相被告山田ノミデアル。「其他姓名不詳者」ハ
全ク消エテ仕舞ワナル。更ニ A ニ起訴 A -罪狀項目ヲ見ルト "... he
permitted the unlawful killing of the said Charlie Smith
... by members of the armed forces of Japan" トアツテ、
ソレガ誰ノ意味スルカ明記サレテ居タイガ、 A ニ起訴 A -被告味岡
ガ用ヒラレテナル。全ク同一事ニ基ク起訴罪狀項目、各ニ於テ其
参加者ヲ異ニスル様ナシ統一ト起訴、仕方ハ極メテ不當デアルト思フ。
因テ A -起訴中、"others, names to the relator unknown"
ナル語ハ削除サルベキデアル。

3. 被告味岡操ハ A -起訴 = 於テ殺人罪ニ起訴サレ、更ニ A -
起訴 A -罪狀項目 = 於テ全ク同一被害者ニ對スル保護義務違反ニ付テ
起訴サレタル。抑、殺人罪ハ意思的作爲 (wilful commission) 7.
保護義務違反ハ過失的不作爲 (negligent omission) 7. 夫々其
本質トスルカ常態デアル。犯罪、基本の要素タル違法性、程々ニ於テ
作爲、不作爲ヨリ大ナルト多言ヲ須ヒズシテ用ラカデアル。母親ガ幼児
ニ授乳シタイト子供ハ喉咽ヲ絞メルトトデハ同ジク幼児ノ死ナル

結果ヲ伴フトシテモ後者ノ悪性、前者ノルニ勝ルニト爲テデアラウ。被告
味岡が *Charlie Smith*、保護義務ヲ全クシカフタ結果トシテ同人が
死亡シタスレバ、味岡ハ保護義務違反責任ヲ負ハルニデアラウ。然レ
Charlie Smith、死亡ガ更ニ一步ヲ進メテ被告味岡、意思的行爲ニ
基クテラバ、保護義務違反ハ意思的行爲ニ因テ生ズル責任即チ傷害
致死罪或ハ殺人罪ノ中ニ當然包含セラルベキモノデアル。此法理ハ
日本ニ於テノミナラズ、廣ク世界各國ニ於テ認めラレテキル所デアル。独リ米
國ノ刑法理論ニミテ之ヲ認めナイデアラウカ。然レテモ、現ニ *Naval*

Courts & Boards § 19 *Duplication of charges*、項ニハ
"Where the offense falls apparently equally within
the scope of two or more articles of the Articles of
the Government of the Navy, or where the legal
character of the offense cannot be precisely known
or defined until developed by the proof, it is quite
proper to specify the offense under two or more
charges; but there is, of course, no reason for
doing this, if one charge is lesser than and in-
cluded in the other. In such case the specifi-
cation should be laid under the more serious
charge." ト規定サレテキルデアル。之ヲ本件ニ付テ見ルニ、
一ニ起訴ニ罪狀項目ニ述ベラレテキル保護義務違反ハ、一ニ起訴ニ
述ベラレテキル殺人罪ヨリハ、其違法性程度ニ於テ低ク且ツ叙上ノ

法理-照し膏悲之=包含サルベキモデアルカ。オ=起訴オ=罪状項目、職務怠慢ハ=重起訴トテ削除サルベキモト信スル。

4. 各罪状項目末尾ノ「之ハ戦争法規註=慣習=違反スルモデアルト云フ書キオハ被告等ハ違反シト主張セラル。法規註=慣習、逐語的=明記スベキ旨要求スル Naval Courts & Boards §27、規定=違反スルヲナス。被告等ハ其違反シト主張サレル法規慣習ヲ十分=知ラシラリスレテハ適當ナ年護ヲ準備シ得ナカラ~~テ~~斯ル起訴ノ方法ハ被告ノ重大ナル權利ヲ侵害スルモデアルト理由デ吾人ハ屢此語=反對シ来タ。今此實=固シ特=各員会ノ御注意ヲ喚起シ度イハ。被告味岡ノ保護義務違反ヲ内責スルオ=起訴オ=罪状項目デアル。其ノ中ハ「as it was ^{his} duty to do」ト云フ言葉デアル。

此罪状項目、眼目ハ *unlawfully disregard and fail to discharge his duty* デアル。「disregard」ト云ヒ「fail to discharge」ト云ヒ、不作為ヲ内省トスルモデアル。然ル=軍ナル不作為ハ犯罪ヲ構成スルモデハナイ。作為義務アル者、不作為=シ始メテ犯罪ヲ構成スルデアル。随テ本罪状項目=「as it was ^{his} duty to do」ト書イタハ正シ。オ=起訴オ=罪状項目=之ト同一ノ語ガアルベキデアルト思フ。唯其ノ義務ノ發生原因ノ明記サレタナク、遺憾トスル。凡ソ其違反=対シテ法律上ノ制裁ヲ伴フ義務ハ徳道上ノ義務デハナクテ、此~~レ~~迄エ法律上ノ義務デナケレバナラヌ。然ラバ此法律上ノ義務ハ抑何=由テ生スルカ。凡ソ法律上ノ義務ノ發生原因ハ法令ノ規定上官命令慣習契約事務管理不當利得不法行為等。

デアラウ。尤モ最後ノ二款ハ今茲デハ問題外デアル。然ラバ此罪狀
項目ニ於テモ叙上ノ法律上ノ義務ノ發生原因ヲ孰レカ明示セネバ
ナラヌ。ソレヲ明示セズニテ單ニ "as it was his duty to do" ト言放シ
タケデハ全ク独断的ノ結論ヲ被告ニ強要スル過ギナリ。法律上
義務ノ發生原因ヲ明示スル爲ニ單ニ "此レハ戦争法規ニ慣
習ニ違反スルモノデアル" ト言放ツタケデハ不十分デアラウ。如何ナル
戦争法規慣習ニ違反シタカヲ具體的ニ明示スルコトヲ必要トスル
ノデアル。ソレニ依ツテ被告ニ課セラレタ法律上ノ義務ガ何ニ由來スルカ
ヲ被告ニ明確ニ知ラシメル爲ニ。

(終)

秋田日出史

Objections to changes +
specification
KUWAIT

1149

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS

In re: AJIOKA, Misao and YAMADA, Kiyoshi

By

Mr. KUWATA, Hideo

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

1. In Charge I, the accused AJIOKA, Misao and YAMADA, Kiyoshi, are charged in joinder. As Section 17 of Naval Courts and Boards states, "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."

In order to try two or more persons in joinder, it is necessary that they have committed the same offense in pursuance of a common unlawful design and concert. Therefore, Charge I which charges the two defendants in joinder should include such a phrase as, "in pursuance of a common unlawful design and concert" or "in pursuance of a common intent." If the circumstances do not permit the interposition of this phrase, these accused should be tried separately.

2. Despite the clash of interest, not only are these accused joined in trial to the prejudice of each one individually but they are joined with "others, names to the relator unknown." This joinder with "others, names to the relator unknown" is most prejudicial to the substantive rights of the accused because none of these accused can properly prepare his defense without knowing who is included in the term "others, names to the relator unknown."

Besides, the term "others, names to the relator unknown" can not be found in Charge II, which is based upon the facts alleged in Charge I. Specification 1 of Charge II reads, "to control the operations of a member of his detachment and subject to his control and supervision, namely YAMADA, Kiyoshi, permitting him the said YAMADA, Kiyoshi, to kill unlawfully..." In this specification, the accused YAMADA is the only person who was joined with AJIOKA, and there are no "others, names to the relator unknown" in the allegation, while Specification 2 of Charge II reads: "...he permitted the unlawful killing of the said Charlie Smith...by members of the armed forces of Japan..." The term "members" which is in plural form, is used in this specification, though it is not clear for whom the term "members" stands. These specifications are based upon the same fact and yet the alleged persons in each of these specifications are different. We believe that such an ambiguous way of formulating charges is very improper. We maintain that the term, "others, names to the relator unknown" in Charge I should be deleted.

3. In Charge I, the accused AJIOKA, Misao is charged with murder, while he is also charged in Specification 2 of Charge II with discharging

"E (1)"

and failing to discharge his duty to protect the same victim as in Charge I. Needless to say, murder is ordinarily composed of wilful commission of an unlawful act, while disregarding and failing to discharge one's duty is negligent omission of legal duty. As to the degree of unlawfulness, one of the fundamental factors of an offense, commission is more unlawful than omission. That a mother does not give her breast to her child and that she strangles the child will both bring about the same effect, the death of the child. It is quite evident, however, that the latter is much more malicious than the former. If Charlie Smith died because of the accused Ajicka's disregarding and failing to discharge his duty to protect him, Ajicka will be charged with neglect of duty to protect him. But if the death of Charlie Smith was caused by the wilful acts of the accused Ajicka, the responsibility caused by his wilful acts, namely murder or manslaughter, will include that of neglect of duty. This theory of criminal law is acknowledged not only in Japan but also in any civilized countries of the world. Does the American criminal jurisprudence admit this? It does. Naval Courts and Boards, Section 19, states: "Where the offense falls apparently equally within the scope of two or more Articles of the Government of the Navy, or where the legal character of the offense cannot be precisely known or defined until developed by the proof, it is quite proper to specify the offense under two or more charges; but there is, of course, no reason for doing this, if one charge is lesser than and included in the other. In such case the specification should be laid down under the more serious charge." Reflecting upon the present case, neglect of duty to protect a person alleged in Specification 2 of Charge II is lesser in its unlawfulness than the crime of murder alleged in Charge I, and, in view of the above mentioned theory of criminal jurisprudence, it should properly be included in the crime of murder. Therefore, "neglect of duty" alleged in Specification 2 of Charge II should be cancelled as duplication of charges.

4. At the end of each specification, it is alleged: "this in violation of the law and customs of war." Not only does this allegation violate Section 27 of Naval Courts and Boards which requires that the laws and customs violated by the accused should be set forth verbatim in the specification, but also it is most prejudicial to the substantive rights of the accused because the accused can not prepare their proper defense without being fully apprised of the laws and customs which they are alleged to have violated. For these reasons, we have often objected to the term, "this in violation of the law and customs of war." In this regard, now I would like to call your special attention to Specification 2 of Charge II in which can be found the term, "as it was his duty to do..." The main point of this specification is "unlawfully disregard and fail to discharge his duty." Either "disregard his duty" or "fail to discharge his duty" is essentially composed of omission, while mere omission does not constitute a crime. If a man who has a duty to do a certain act does not do it, then the omission constitutes a crime. Therefore it is right that this specification alleges "as it was his duty to do." The same term should be interposed in Specification 1 of Charge II. But this duty, so far as it requires legal punishment against its violation, is not a moral duty but should be a legal duty. Then from where is this legal duty derived? Generally speaking, this legal duty is derived from provisions of statutes,

"E (2)"

superior orders, customs, contracts, managements of affairs, unjust enrichments, torts, etc. (The last two are beside the point in regard to this specification.) Then this specification should clearly show from where the legal duty is derived. The mere allegation "as it was his duty to do" without specifically showing the cause from which the duty is derived, is to force a dogmatic conclusion upon the accused. In order to clarify where the legal duty comes from, it is not sufficient only to state "this in violation of the law and customs of war" but it is also necessary to show specifically what law and what customs of war the accused violated so that the accused may be fully apprised of the course from which is derived the legal duty imposed upon them.

Respectfully,

Hideo Kuwata.

I hereby certify the above, consisting of two and one-half (2½) typewritten pages, to be a true and complete translation, to the best of my ability, of the original document in Japanese.



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

"E (3)"

1152

OBJECTION TO THE CHARGES AND SPECIFICATIONS
IN THE CASE OF AJIOKA, Misao et YAMADA, Kiyoshi

DELIVERED BY
Commander Martin E. Carlson

15 December 1947

May it please the Commission:

The defense further objects to the charges and specifications on the ground of improper joinder of parties.

In CMO 4-1931, pages 13 and 14, the J.A.G. of the Navy held that "Under certain circumstances, namely, where common unlawful design, concerted action, or conspiracy are involved, parties to the particular offense may be properly joined, but a trial in joinder cannot properly be had unless these circumstances are alleged to have obtained."

As we have pointed out, the specification under Charge I does not allege that AJIOKA, Misao and YAMADA, Kiyoshi committed the act by common unlawful design, or conspiracy.

In CMO 4-1931, the J.A.G. further holds that "the mere fact that several persons happen to have committed the same offense at the same time does not authorize them being joined in the charge." (See file: A17-9(3) EN4 (211227) July 23, 1928.

In this our objection to the charges and specifications we include this plea in abatement wherein YAMADA, Kiyoshi prays that this Commission grant him a severance at this time from AJIOKA, Misao because of clash of interest and that affidavits which the judge advocate has and which he is going to introduce into evidence against YAMADA, Kiyoshi shows this definite clash of interest between the two parties.

The accused YAMADA, Kiyoshi, therefore prays that the charges and specifications be quashed as against him.

We further object to the charges and specifications because all of the accused are not included in both charges. In Charge II, violation of the law and customs of war, only one of the accused, AJIOKA, Misao, is charged.

In 27 Am. Jur. Indictments and Informations, Sec. 123, page 683, the rule is laid down: "Different defendants cannot be charged in the same indictment where they are not all included in each count thereof." Citing Mc Elroy vs U.S., 164 U.S. 76, 41 Led 355, 178, Ct. 31; Culjsek vs U.S. (C.C.A. 9th(53F (2nd) 554, 82 F.L.R. 480.

We object to the specification under Charge I because it does not follow the sample specification in Section 53 of Naval Courts & Boards.

"P (1)"

The objection that the specification under Charge I does not follow the sample specification of murder in Section 53, Naval Courts and Boards which is based on the ruling of the J.A.G., Navy Department, in CMO 237-1919, page 15, to the effect that "the specification should allege the felonious infliction of mortal wound of which mortal wound the said -- died."

In CMO 39-1919, p. 15-16, the J.A.G. ruled that in case of manslaughter the specification should allege with sufficient definitiveness facts which if true would show the murder was felonious.

We specifically object to the common law allegations of murder in the specification under Charge I and move that such allegations be stricken from the specification on the ground that there are no common law offenses against the United States. Citing 14 American Jurisprudence Criminal Law, Vol. 14, Criminal Law, Section 15, page 766, and Peltit vs Walsh, 194 U.S. 205; 18 U.S.C.A. Par. 451 et Seq, and U.S. vs. Reese 92 U.S. 214, 23 Fed.

Section 15 reads: "Crimes against United States. - While there was some uncertainty in the early decisions 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 vs U.S., 276 U.S. 505, 72 L. ed. 676, 48 S. Ct. 400; U.S. vs Gradwell, 243 U.S. 476, 61 L. ed 857, 37 S. Ct. 407. Annotation: Am. Cas. 1918f, 991.)

In order that an act may be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist. (Citing U.S. vs Bethgate, 246 U.S. 220, 62 L. ed. 676, 38 S. Ct. 269; U.S. vs Eaton, 144 U.S. 677, 3 L. ed. 591, 12 S. Ct. 764; U.S. vs Brewer, 139 U.S. 278, 35 L. ed. 190, 11 S. Ct. 538; Manchester vs Mass., 139 U.S. 240 35 L. ed. 159, 11 S. Ct. 559; Jones vs. U.S. 137 U.S. 202, 34 L. ed. 691, 11 S. Ct. 80; U.S. vs Britton, 108 U.S. 199, 27 L. ed. 698, 2 S. Ct. 531; Cotton vs U.S., 11 How. (U.S.) 229, 13 L. ed. 675; U.S. vs Hudson, 7 Branch (U.S.) 32, 3 L. ed. 259.

Annotation: Am. Cas. 1913 E., 1252, & Am Cas. 1918f, 991.

The courts of the United States in determining what constitutes an offense against the U.S. must resort to the statutes of the U.S. enacted in pursuance of the Constitution. Re Kollock, 165 U.S. 526, 41 L. ed. 813, 178. Ct. 444.)

The courts have no right to treat an act done within a state as a crime against the U.S. unless Congress has declared it to be such. (citing U.S. vs Reese, 92 U.S. 214, 23 L. ed. 563) This is particularly true of acts committed upon the mandated islands of the Pacific, particularly the Palau Islands.

As my colleague has stated not to set forth the law and customs of war which these accused are said to have violated is prejudicial to their substantive rights. This is particularly prejudicial in this present case where a Japanese national is said to have committed an offense at Palau against a British national.

We maintain there is a presumption that these two accused both Japanese nationals do not know either our common law or our statutory law.

My colleague has pointed out that Charge II is but a duplication of Charge I insofar as Ajioke, Misao, is concerned. I wish to call the commission's attention to the ruling of the J.A.G. in C.M.O. 45-1916, page 2. "The department does not approve of trying an accused on two charges where the identical facts are made the basis of both." C.M.O. 5-1914, page 7. "Insofar as the record discloses there appears to have been no necessity in this case for resorting to multiplicity or plurality of charges in order to provide every possible contingency in evidence." As explained in C.M.O. 42-1914, page 7, and the offense set forth under Charge III is not distinguished from that under Charge II. "---the department---has invited attention to the foregoing in order that a recurrence of the irregularities noted herein may be prevented."

We further object because a bare neglect of duty is not a crime. We cite 14 Am Jur. Criminal Law, Section 14, page 764 and particularly footnote 2 which reads: "Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so prescribes, as there is no common law crimes in the state." People vs Kurpp; 206 L. Y. 373, 99 NE 841 Am Cas. 1914 B. 243.

So in this case we move that the commission quash Charge II.

Both of these accused while in custody were required, and we shall prove that they 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 Am Jur. Indictments and Informations, Section 151, page 705, the charges and specifications should be quashed. Citing State vs Pierce 173 Ind 99; Siklek vs Cowin 133 Va. 789; State vs Lloyd 152 Visc. 24.

For the many objections which we have made to the charges and specifications we move that they be quashed as against both of these accused.

Respectfully,

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

7 (3)

1155

味岡操及山田清、管轄權を問ふ抗弁。

昭和二十二年十二月十五日

弁護人 鎌田日出夫

被告味岡操及山田清は本軍事委員会が被告等を審理するに對し
以下述べる理由を以て抗弁を提出する。

1. 先づ本件起訴罪状項目に依りて、本件犯罪、被害者は「日本軍に抑
留されてゐる武装してゐないイギリス人 Charlie Smith 別名 James Sally
ト云ふ者」であつて、彼は俘虜であらう。若し Smith が俘虜であらば其の
様子は記載されてゐる。檢事は戦争犯罪、基本法に依りて證據するに
たむ宣言の十條に「我等、俘虜を虐待せる者を含む一切の戦争犯罪人
に對し、嚴重たる處罰を加へらるべし」と規定されてゐる。即ち本軍事委員会
の審理対象となるべき戦争犯罪人とは畢竟戦争犯罪を犯した者である。
然らば戦争犯罪とは何であるか。ほつたむ宣言は「基に聯合國最高司令官
の制定發布した極東國際軍事裁判所條例の五條と同裁判所の管
轄に屬する犯罪を列挙してゐるが、其の中、其の二項は「通例の戦争犯
罪即ち戦争法規または戦争慣例の違反」と規定されてゐる。此規定は
極めて簡單であつて軍に基き原則として過ぎないが、此規定の解釈上参考
となるのは主として拙著「戦争犯罪人、處罰を問ふ」國際軍事裁判所
條例、である。同條例の六條の二項は「戦時犯罪即ち戦争の法規や
慣例の違反である。この違反は占領地の、または占領地にある一般人民
に對しに行われし殺害、虐待、奴隷労働やその他目的のたぐひの強制的

移動、捕虜、公海上の人民の殺害と虐待、人質の殺害、公私有財産の
掠奪、都市町村の恣意的な破壊、軍事的必要によって正当化されな
い荒廃を包含する。但し、これに限るのではない。」ト規定サレテ中ル。
此ノ規定ニ依ツテ明ラカニ如ク、戦争犯罪トハ俘虜ニ對スルモノヲ除キ、
占領地或ハ公海上ニ於テ犯サレタ犯罪デアル。此ノ規定ニハ「これに限る
のではない」ト云フ但書ハ付イテ中ルガ、此ノ但書ニ依ツテ一國ノ領土内ニ在リ
一般人民ニ對シテ行ハレタ殺害迄モ戦争犯罪ニ中ニ包含セシメルモノト
考ヘラレナイ。勿論此ノ規定ハ独逸ニ對スルモノデアルガ、日本ニ對スル極東
國際裁判所條例ヲ五條ヲ二項ニモ亦全ク之ト同一ニ解釈セラルベキ
モノト信ズル。何トナレバ、聯合國ガ戦犯ノ審理ニ付キ独逸ニ對シテコレ
一層苛酷ニ條件ヲ日本ニ課スルモノトハ到底考ヘラレナイカラ。本件犯罪ノ
行ハレタト云フハ「お諸島ガ公海デナシ」トハ明白デアル。然ラバ占領地
デアルカ、之ヲ決定スル前ニ先ヅ占領地ノ觀念ヲ考察シヨウ。陸戦ノ法規
慣例ニ關スル條約ヲ四ニ條ニ曰ク「一地方ニシテ事實上敵軍ノ權力内
ニ歸シタルトキハ占領セラレタルモノトス」ト。本件犯罪ノ行ハレタト云フ昭和
十九年十二月十九日當時「お諸島」ハ「ベリル」島ハ未ダ米軍ノ權
力内ニ歸シテ中タ、デハナカツタ。即チ當時「お諸島」ハ「ベリル」島ガ
日本ノ領土ノ一部デアツタトハ顯著ニ事實デアル。假令本件ノ被害者
Charlie Smith 別名 James Sally ナル者ガ英國ノ国籍ヲ有スル外國人
デアツタトシテモ、苟クモ日本ノ領土内ニ居住スル以上日本ノ主權ニ服スベキ
理ノ當然デアル。日本ノ國民タル被告等ガ日本ノ主權ニ服スル Charlie
Smith ヲ殺シタト云フ本件ハ、假令ソレガ正當ニ理由ナキモノデアツタ所詮

處罰ヲ免シタイモデアルトシテモ、之ヲ處罰スルハ日本ノ主權ノ範圍内デアル。
換言スレバ、本件被告等ノ行爲ヲ處罰スベキヤ否ヤ、處罰スベキモトセバ如何
ナル程迄ノ刑罰ヲ科スベキヤヲ決定スルハ、純然タル日本ノ国内事項デアル。
而シテ国内事項ニ對スル不干涉ハ、國際法上ノ基本原則ノ一ツデアル。國際
裁判所條例才六條才二項々ノ規定ガ戰爭犯罪ヲ俘虜ニ對スルモノヲ除キ
占領地或ハ公海上ニ於テ行ハレタ犯罪ニ限定シテ理由ハ一丰モ亦此ノ
國際法ノ基本原則ヲ顧慮シテ結果ニ外ナラヌト思フ。即チ本件ノ内容タル
犯罪ハ全ク通常ノ Murder デアツテ、決シテ戰爭犯罪デハナイ。故ニ本軍
事委員會ニハ被告等ヲ審理スル權能ハナイデアル。

檢事ハ軍事委員會ニ對スル命令書才三項中、"It shall have
jurisdiction over all Japanese nationals and others
who worked ... charged with offenses committed against
United States nationals, persons ... and white persons
whose nationality has not prior to ordering of the
trial been established to the satisfaction of the
convening authority." ナル條項ニ基テ本軍事委員會ニ本事件
ヲ審理スル權限アリト主張スルカモ知レタイ。然レラバ、ついに宣言ヲ
受諾シタ日本國民ハ同宣言ノ範圍内ニ於テハ外國、或ハ國際、法廷ノ
裁判ニ服スルノデアアル。即チ同宣言ニ所謂戰爭犯罪ヲ犯シタ戰爭
犯罪人ナルガ故ニ、コソ吾法廷ノ裁判ヲ受ケルノデアツテ、元々戰爭犯罪ニ
非ラル本件犯罪ニ付テ本法廷ノ裁判ヲ受ケネバナラヌ理由ハ徹底ス
テ明白ニ確信スル次第デアル。

2. 最ニ小市事件ニ於テ詳述シテ様ニ先ヅナーニ被告人ノ利益ヲ考慮スル
刑事事件ニ於テハ、被告人ノ現在地ヲ管轄スル裁判所ガ一次的ニ其ノ事件ニ付
土地ニ關スル管轄權ヲ有スルデアル。唯犯罪地ニ於テ特ニ犯罪ノ證據蒐集
ガ容易デアルト云フ様ニ事情アル場合ヤ共同被告人ノ一部ガ犯罪地ヲ
管轄スル裁判所ノ管轄區域内ニ在リ、他ガ其ノ區域外ニ在ル場合等ニ於テハ
訴訟ノ便宜上一部ノ被告ノ利益ヲ犠牲ニシテ犯罪地ヲ管轄スル裁判所
ニ土地ニ關スル管轄權ガ認めラレルトガアルニ過ギナイ。尤モ英米法ニ於テ
ハ便宜ハ管轄權ヲ左右スル正當ノ理由ニハ何等ナラヌトデアルガ。

前記事件ノ場合ヲ見ルニ被告等ハ孰モ俘虜タル身分ヨリ解放セラレテ
日本ニ歸リ、ソコデ日本政府ニ依リ正式ニ復員セシメラレ、開米市民ノ一人トシテ
日本国内ニ居住シテ居タリデアル。はらお諸島ノ日本軍ニ既ニ悉ク日本ニ歸ツテ
復員シ、今ヤはらお諸島ニバベマデツカ島ハ本件犯罪ノ證據蒐集ニ付
何等ノ便宜ヲモ供スルモノデハナイ。現ニ本件ノ取調ヲ專ラ東京デ行ハレ、
被告及主要ナル証人ハ孰モ取調熟スルニ從ヒ逐次当地ニ移送サレテ
来タモノデアル。斯クテ本事件ヲ青軍委員會ニ裁スルニ付被告人ノ利益
ノ爲ニモ將又訴訟ノ便宜上クラモ何等ノ理由ナキ所デアル。

國ヨリ檢事ハ軍委員會ニ付スル命令書第ニ項中、"It shall
have jurisdiction over all Japanese nationals and
others ... in the custody of the convening authority at
the time of trial ..." 此ノ條項ヲ援用シテ本軍委員會ニ本件ヲ
審理スル權限アリト主張スルデアラウ。然レモ裁判開廷ガ時開廷
權者ノ保管ニ屬スル日本人ナラバ誰デモ之ヲ裁判ニ得ルト云フガ如キハ

凡ソ管轄ナル觀念ヲ無視スルモノデアツテ、寧ロ之ヲ認メザル簡潔ナルニ如カズト謂フベキデアル。

3. 假ニ命令書中前記條項ガ承認サレトシテモ、同命令書オ一頁末尾ニモ明記サレタル様ニ、本軍事委員会ハ同委員会、前ニ正親ニ屬サレタ人々ノミヲ裁判シ得ルデアル。

今本件被告等ガ逮捕サレタ経緯ヲ見ルニ、被告味岡操ハ昭和二十年十二月二十七日、俘虜タル身分ヨリ解放サレ、翌二十一年一月七日日本ニ帰還シ、同月十日復員シ、名実農業ニ従事中本年二月二十六日日本軍憲一名被告ノ家庭ヲ訪シ、逮捕狀ヲ示サズ又逮捕ノ理由ヲモ告ゲズテ最寄警察署ニ被告ノ同行ヲ求メタデアル。被告ハ同署ニ二日留置サレタ後東京ニ送ラレ、勾留狀ヲ示サズ、又勾留ノ原因ヲモ告ゲラレルトモナシニ、巢鴨刑務所ニ拘禁サレタ。ソニテ同年十二月八日引渡狀ナシニ、見ぐあむ島ニ送ラレタデアル。

被告山口清ハ被告味岡ト同時ニ復員歸郷シ、雑誌記者トシテ勤務中本年二月二十四日日本軍憲一名被告ノ家庭ヲ訪シ、逮捕狀ヲ示サズ、又逮捕ノ理由ヲモ告ゲズテ最寄警察署ニ被告ノ同行ヲ求メタ。同ニテ被告ハ東京ニ送ラレ、同月二十六日勾留狀ヲ示サズ又勾留ノ理由ヲモ告ゲラレルトモナシニ、巢鴨刑務所ニ收容サレタデアル。ソニテ同年十二月八日引渡狀ナシニ、見ぐあむ島ニ送ラレタデアル。

凡ソ人ヲ逮捕監禁スルニ當リ、權限アル軍憲ノ発シ且ツ其理由ヲ明記シタ逮捕狀或ハ勾留狀ヲ示サスト云フモノハ現代文明國民ニ普ク保障サレタ基本的人權ヲ侵害スルモノデアツテ其違法ナル外義ハナシ。

事件ニ於ケル抗弁ニ於テ詳述シテ如クデアル。上述如ク被告等ニ對スル逮捕
監禁移送ノ手續ニハ重大ナル瑕疵ガアリ其違法性ハ到底域ニ得バ
モナシ。果シテ然ラバ被告等ハ正當ナル手續ニ依テ本委員会ノ前ニ齎サレ
タノデハナシカス。本委員会ハ被告等ヲ審理スル權限ヲ行使シ得ナシト
信ズル。檢事ハ日本國民ヲ含むノ海軍々事法廷ニ齎ラス正當ナル手續
ヲ承知シテナル筈デアル。正當ナル手續ヲ経ルコトハ善イ前例ヲ貽ス意味
ニ於テ必要デアル。日本領海軍ハ個人權利ガ如何ニ熱心ニ保護
サレテハカラ日本國民ニ示スベキ大義デアル。便宜爲グト云フコトハ今
道リ方ニ對スル弁解ニハ絶對ニナラナイト確信スル次第デアル。(終)

鉄田日出史

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY AJIOKA, MISAO AND YAMADA, KIYOSHI, DELIVERED BY MR. KUWATA, HIDEO, DEFENSE COUNSEL, ON 15 DECEMBER 1947.

The accused AJIOKA, Misao and YAMADA, Kiyoshi object to being tried by this Military Commission for the following reasons:

1. First, according to the charges and specifications of this case, the victim of this incident is a man named "Charlie Smith, alias James Sally, an unarmed British national, then and there held captive by the armed forces of Japan", so he is not a prisoner of war. If Smith was a prisoner of war he should be so described. The Potsdam Declaration which is relied upon by the prosecution as the fundamental law for the trials of war crimes provides in its Article 10: "...but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners..." The war criminals who should be tried by this Military Commission are those who committed war crimes. Then what are war crimes? The Charter of the International Military Tribunal for the Far East issued and promulgated by the Supreme Commander for the Allied Powers according to the Potsdam Declaration enumerates in Article 5 the crimes which come under the jurisdiction of the tribunal, and paragraph b of the article provides: "b. Conventional War Crimes: Namely, violations of the laws and customs of war;". This provision is a very simple one and only states the fundamental rule. For the interpretation of this provision, "Charter of the International Military Tribunal" concerning the punishment of German war criminals will serve as a reference. Article 6 par. 2 of the Charter provides: "War crimes. Namely, violations of the laws and customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of, or in, occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing hostages, plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity." As you will fully understand by this stipulation, war crimes are crimes committed in occupied territories or on the seas except the crimes against prisoners of war. Although this article provides, "but not be limited to", but we maintain that this provision does not include murder of a civilian population in the domain of a belligerent country as a war crime. Of course, this is a provision for German war criminals. But we hold that Article 5 b of Charter of International Military Tribunal for the Far East should be interpreted in the same way as this provision, for the Allied Forces should not force more severe conditions on Japan than those they forced on Germany in the trial of war crimes.

It is clear that the Palau Islands on which the crime in this case is alleged to have been committed are not the sea. Then, are they an occupied territory? Before answering this question, let us consider what an occupied territory is. Article 42 of the Laws and Usages of War on Land states: "Territory is considered occupied when actually placed under the authority of the hostile army." At the time of 29 December 1944 when the alleged crime of this case was committed, Babelthuap Island, Palau Islands was not placed under the authority of the American forces. In other words, it is clear that Babelthuap Island, Palau Islands was then a part of the sovereign territory of

Japan. Even if the victim of this case, namely Charlie Smith, alias James Sally, was a foreign national with British nationality, it is only too proper that he should be subjected to Japanese sovereignty so long as he lived in the Japanese territory. In this case, these accused who were Japanese subjects killed Charlie Smith who was made subject to Japanese sovereignty. Even if the killing was without justifiable cause and these accused can not be exempted from punishment, the punishment must be by and under Japanese sovereignty. In other words, it is a purely domestic question for Japan to decide whether the acts of these accused should be punished and, if they should be punished, what degree of punishment should be imposed upon them. And non-interference in the domestic questions of a country is one of the fundamental principles of international law. I think that the reason for Article 5 Par. 2 b of the Charter of the International Military Tribunal to limit the war crimes to crimes committed in occupied territories or on the seas, except the crimes against the prisoners of war, is based on this fundamental principle. The crime constituting the substance of this case is purely and ultimately a common murder, not a war crime. Therefore, this military commission has no authority to try these accused.

The Judge Advocate may hold that this military commission has jurisdiction to try this case by relying upon the provision in paragraph 3 of the precept for a military commission which reads: "It shall have jurisdiction over all Japanese nationals and others who worked ... charged with offenses committed against United States nationals, persons ... and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority." However, the Japanese people who accepted the provisions of the Potsdam Declaration are subject to the jurisdiction of foreign courts or the International Tribunal only within such limit as provided in the declaration. In other words, if a person is a war criminal who committed a war crime provided in the declaration, he will presumably be tried by this court. Since the crime in this case is not a war crime, I am convinced that there is no reason for the accused in this case to be tried in this court.

2. As I have explained in detail in the preceding Koichi Case, and this Commission tried that case, the court which exercises jurisdiction over the accused's present domicile should have priority as regards jurisdiction over territory in criminal cases in consideration of the benefit of the accused person. Only in such cases where the gathering of evidence is ordinarily easy at the place of the crime, or where some of the accused in the trial of joinder are within the jurisdiction of the court which exercises jurisdiction over the place of the crime while the other accused are outside the jurisdiction of the court, the court which exercises jurisdiction over the place of the crime is recognized for the sake of the convenience in procedure as being able to have territorial jurisdiction over the crime even to the prejudice of some of these accused; although it is said that according to the American and British law this kind of jurisdiction for the sake of convenience is not admitted.

Let us consider this case. Both the accused were released from the status of prisoners of war, returned to Japan where they were officially demobilized by the Japanese government and subsequently resided in Japan as citizens. All members of the armed forces of Japan on the Palau Islands were repatriated to Japan and demobilized. Now, Babelthuap Island, Palau Islands will not afford any conveniences for gathering the evidence of the crime of this case. In fact, the investigation of this case was made in Tokyo, and the accused and main witnesses were sent from Tokyo to this place as soon as their investiga-

tions were completed. Therefore, in view of both the benefit of the accused and the expediency in the procedure of this case, there is no ground to try this case by this military commission.

The Judge Advocate will hold that this military commission has jurisdiction to try this case by citing the provision in paragraph 3 of the precept for a military commission which reads: "It shall have jurisdiction over all Japanese nationals and others ... in the custody of the convening authority at the time of the trial..." However, to insist that this commission has jurisdiction over all Japanese nationals in the custody of the convening authority at the time of the trial disregards the meaning of jurisdiction.

3. Even if the above cited provision of the precept can be admitted, this military commission can try only such persons as may be legally brought before it as clearly provided at the end of paragraph 1 of the precept.

Now, let us observe the circumstances under which these accused were arrested. The accused AJIOKA was released from the status of a prisoner of war on 27 December 1945, repatriated to Japan on 7 January 1946, demobilized on the 10th of the same month and subsequently engaged in agriculture. On 26 February of this year, a Japanese official called on him at home and asked him to go with him to the nearest police station without showing a warrant of arrest and without telling him the reason of arrest. He was detained at the police station for two days, and after that sent to Tokyo. Then he was confined in the Sugamo Prison without being shown a warrant of arrest and without being informed the reason. Then he was sent to Guam on 8 December 1947 without any warrant of extradition. The question of how Ajioka came into the jurisdiction of this military commission should be gone into at this time.

The accused Yamada was repatriated and demobilized at the same time with the accused Ajioka and worked as a writer of a magazine. On February 24 of this year a Japanese official visited him at home and took him to the nearest police station without showing a warrant of arrest and without informing him of the reason. In the meantime, he was sent to Tokyo, and was confined in Sugamo Prison without being shown a warrant of arrest and without being informed of the reason. Then he was sent to Guam on 8 December of this year without any warrant of extradition.

Needless to say, to arrest and detain a person without a warrant of arrest or detention issued by competent authority and clearly stating the reason of the arrest and detention is most prejudicial to the fundamental rights of an individual which is universally guaranteed among the people of modern civilized countries, and its unlawfulness was explained in detail in my objection in the Koichi case. As I stated above, there are many faults in the arrest, detention, and extradition of these accused, and their unlawfulness is unremedial. Since the circumstances are as I have mentioned, these accused were not legally brought before this military commission. Therefore I believe that this commission can not exercise jurisdiction to try these accused.

H (3)

1166


The prosecution is well aware of the proper procedure to get a Japanese national the custody of this Navy convened military setting here on Guam. To have a proper procedure is also necessary for purpose of precedence.

The American forces occupying Japan are, we believe, most anxious to set an example and show to the people of Japan how jealously guarded are the rights of an individual. Expediency can not justify the present practice.

Respectfully

HIDEO KUWATA.

I hereby certify the above, consisting of four (4) typewritten pages to be a true and complete translation of the original document to the best of my ability.


EUGENE E. KERRICK,
Lieutenant, USNR,
Interpreter.

"H (4)"

PLEA TO THE JURISDICTION OF THE COMMISSION

TO TRY AJIOKA, Misao et YAMADA, Kiyoshi

Delivered by

Commander Martin E. Carlson

Both of these accused further object to the jurisdiction of this Commission to try them and hereby enter their plea to the jurisdiction.

This plea is based on the grounds that these two accused are not subject to the commission's jurisdiction and that the offense is not one cognizable by this Military Commission.

By the terms of the precept, Serial No. 20971 dated Nov. 8, 1947, this Commission can only try "such persons as may be legally brought before it." It is not enough therefore that a person be brought before this Commission, the judge advocate must prove that he is legally before this Commission. By this one plea to the jurisdiction we put into issue the question that these persons are not legally before this Commission.

Since these two accused were both regularly demobilized we maintain that to bring them before this Commission for trial their arrest and confinement must be according to law and if all the requirements of the present Japanese Constitution and the Constitution of the United States of America, that is if there was not "due process", then both of these accused are not legally before this Commission and there can be no jurisdiction.

As we have stated we can easily show that there was no valid arrest, there was illegal and unlawful confinement, and there was no proper extradition. We shall also prove that both of these accused were demobilized and had all the rights of any Japanese civilian under the new Japanese Constitution promulgated in Japan with the approval of the Supreme Commander Allied Powers.

Since the fact that both of these accused were demobilized in order to come before this Commission for proper trial there must be legal and due process. The burden of proof never shifts. The prosecution must show that these two accused were not demobilized or if they were demobilized then that there was due process in their arrest, confinement, and extradition, and that they are legally before this Commission.

In accordance with Section 334, Naval Courts & Boards, "The jurisdiction of courts-martial over officers, midshipmen, nurses and enlisted men ordinarily ends when they become regularly separated from the service by acceptance of resignation or discharge." Since both of these accused were regularly separated from the service, the Commission lost jurisdiction over them.

I (1)

1168

The question whether these accused were regularly demobilized is just as relevant, material, and in issue as whether or not the accused committed the offense complained of. This is because this Commission is limited in the trial of persons by paragraph one of the precept to "the trial of such persons as may be legally brought before it."

Since this question whether the accused were ever demobilized is by one plea put in issue any witness can at any time testify and answer the question "Was Ajicka demobilized?" or "Was Yamada demobilized?" If the witness knows he can answer on cross-examination regardless of whether the question was put to him on direct examination. The answer is relevant, material and proves whether or not this Commission has jurisdiction over these accused.

Secondly the offense is not one cognizable by this Military Commission.

It is alleged that the two accused "did at Babelthup Island, Palau Islands.....kill...one Charlie Smith...an unarmed British National..."

"Lex loci, lex fori" is the accepted principle as stated by the Supreme Court of the United States. Again the prosecution must show the exception to this rule because they have alleged otherwise in the specifications.

The American Banana Co. v. United Fruit Co. (1909) 213 U.S. 347, 29 S.Ct. 511, 53 L. Ed. 826, 16 Am. Cas. 1047 holds that "the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done." (See Wilson on International Law (Hornbook Series Chapter 6 Jurisdiction, page 131.)

We ask that the Commission take judicial notice of the Treaty of Versailles, June 28, 1919, particularly Article 119:

"The United States' laws provide that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the U.S. and of the state wherein they reside.' 35 Here jus soli is followed. Great Britain's follows the same rule" 36...Footnote 35: Constitution, Amendment 14, Para. 1, U.S.C.A.; Great Britain, Act. August 4, 1922, 12 - 13 Geo. V., 244. Jus Soli does not apply to areas under hostile military occupation (United States v Wong Kim Luk (1898) 169 U.S. 649, 18 S.Ct. 456, 42 L. Ed. 890; Ingles v. Sailor's Snug Harbor (1830) 3 Pet. 99, 7 L. Ed. 617); or to a legation (De Georffrey v. Riggs (1890) 133 U.S. 258, 10 S.Ct. 295, 33 L. Ed. 642) ...Footnote 36 4 - 5 Geo. V. c, 17. from Wilson on International Law, Hornbook Series, Chapter 6 Jurisdiction p. 133.

So that in accordance with the above ruling it is not enough for the prosecution to simply allege "an unarmed British National" because the offense is alleged to have been committed at Babelthup which was an area under hostile (Japanese) military occupation at the time the offense was committed.

"1 (2)"

Furthermore Wilson, Ibid p. 138, sets forth the rule, "Transfer of territory usually transfers the political allegiance of the inhabitants of the territory. Inhabitants of a territory thus transferred are often allowed a reasonable time in which to withdraw, if they do not wish to accept the nationality of the new jurisdiction."

On page 139 of Wilson, Ibid, we read:

"Under the Treaty of Versailles, 1919, the inhabitants of several areas were allowed to choose their allegiance usually involving residence in the territory of their choice."

By expatriation Smith lost all allegiance to Great Britain.

So this plea to the jurisdiction is made that Smith was not a British national, if he ever had been he lost any political allegiance he might have had to Great Britain when Palau Islands were mandated to the Japanese by the Treaty of Versailles in 1919. This is further borne out by the fact that Great Britain does not claim jurisdiction in this case thereby in effect holding that Smith owed no political allegiance to Britain. When has Great Britain ever given up jurisdiction? There is no jurisdiction of Great Britain because Charlie Smith was not a British national.

We maintain therefore that the burden of proof is upon the prosecution to show jurisdiction and that they must amend the specifications of both Charge I and Charge II by showing wherein the United States had jurisdiction over these Japanese and over the crime alleged to have been committed against a British national.

Respectfully,

Martin Emilius Carlson
MARTIN EMILIUS CARLSON
Commander, U.S.N.R.

December 15, 1947.

"T (3)"

1170

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

6 DEC 1947

Serial:

22331

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: Charges and Specifications in the case of:

AJIOKA, Misao
YAMADA, Kiyoshi

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

CHARGE I

MURDER

Specification

In that AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed by shooting with firearms, exact description to the relator unknown, one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II

~~VIOLATION~~ VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

On December 29, 1944, In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasupan

"J (1)"

1171

Received true and correct copies, both in English and Japanese, of Charges I and II, and specifications thereunder, on the 9th day of December, 1947.

味 長 操
Ajioka, Misao

山 田 清
Yamada, Kiyoshi

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

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

22331

6 DEC 1947

Military Police Detachment, did, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely, YAMADA, Kiyoshi, then a sergeant, IJA, permitting him the said YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, on or about December 29, 1944, at Babelthuap Island, Palau Islands, by shooting with firearms, one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasupan Military Police Detachment, did, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of the said Charlie SMITH, alias James SALLY, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

C. A. Pownall
C. A. POWNALL,

Rear Admiral, U. S. Navy,
The Commander Marianas Area.

"J (2)"

1173

アメリカ合衆國太平洋艦隊
マリアナ方面司令部

昭和二十二年十二月六日 三三三三一号

發 マリアナ方面司令部

宛 アメリカ合衆國海軍少佐ジョセフ・エリック・
アメリカ合衆國海軍大尉ジェームス・ビ・ケニー
又ハマリアナ方面司令部軍法委員會に
於ける檢察事としての貴官の後任者

記 味岡操
山田清

の事件に於ける起訴及罪狀項目

- 一、以上の人々ハ貴官ハ檢察官たる軍法委員會に於て左記の起訴及罪狀項目に就キ裁判されるであらう。よて貴官ハ裁判長に其の旨を通報し被告に裁判の日時も通知し檢察側及び被告側の全証人を召集せよ。

第一起訴

罪狀項目

パラオ諸島の日本帝國陸軍軍事施設に配属された當時陸軍進駐味園隊當時陸軍進駐味園隊及び其の他の姓名不詳者も同軍事施設に勤務中各個又は相共にアメリカ合衆國連合諸國及び其の屬領の日本帝國と戦争状態に在った昭和十九年十二月二十九日頃パラオ諸島バベルタプ島に於て意思的に違法的に企圖と悪意とを以て正当な理由もなく同時同処に於て日本軍により拘留されてた武装していないイギリス人チャリスミス別名セーバス・サリーも當局に不詳不明の火器により襲撃し殺害し殺した。之は戦争法規並に慣習に違反している。

第三起訴

戦争法規に慣習の違反

舞臺項目 一

パラオ諸島の日本陸軍軍事施設に配属され、
に當時陸軍准尉味岡操がガスバニ憲兵
令隊長として同軍事施設に勤務中アメリカ合
衆国連合諸國及び其の屬領が日本帝國と戦
争状態に在り昭和十九年十二月二十九日頃パラオ諸
島に於て彼等の令隊長の一員として
彼等軍官以下に在り當時陸軍軍曹山田
清の行動を抑制せり山田清が昭和十九年十二月
二十九日頃パラオ諸島に於て同時に
同地に於て日本軍隊により抑留されてゐた武裝
していないイギリス人ジョージ・スミスと名ゼー
ス。サリ・モ・火器。射撃により不法に殺し殺させる
ことを許可しガスバニ憲兵令隊長としての職
責を不法に無視し遂行しなかつた。之れ戦争
法規に慣習に違反してゐる。

第二記

目狀項目 二

二、本諸島に日本陸軍軍事施設に配属されて
 いた當時陸軍進駐隊隊長カスパー・憲兵
 分隊長として同軍事施設に勤務中アメリカ合
 衆國連合諸國及び其の屬領が日本帝國と戦
 争状態に置かれた時、一九四一年十二月二十九日頃ハ
 ンコウ島に上陸し、同時に同処に於て日本
 軍隊により捕縛された武装した兵士、イ
 ンディアン、スミ、名也・ス・サリーを保護
 することゝが彼、権限内の事であり而も當
 時の状況に適切たる処置であつたにも拘らず
 又それが彼、職責で与つたにも不拘日本軍
 隊の人の火器、射薬により同チャリー・スミ
 名也・ス・サリーを憲法所に殺すことを許
 可しカスパー・憲兵分隊長としての職責を不法
 に無視、遂行した。之が戦争法規並
 に慣習に違反してゐる。

三. 工. 本 - 元

アメリカ合衆国海軍少将

$$N = A + \text{不可回合子}$$

Continue to be true and energetic &
devotion to the best of my ability.
Yours S. J. Smith
USNR

OPENING STATEMENT FOR THE PROSECUTION

By

Lieutenant Commander Joseph A. Regan, USN.

If it please the commission:

In 1944, a British subject, by name Charlie Smith alias James Sally, was living in the Palau Islands. He was married to a native woman and had been a trader in these islands for some time past.

Sometime during that year his wife left his home taking with her their children and with them she lived on a different part of the island away from the Japanese who occupied the various islands of the Palaus. Late in the year she and the children fled the island along with a band of Chamorros. The Japanese learned of this flight and the arrest of Charlie Smith was ordered by Colonel Miyazaki of the Military Police. He ordered Lieutenant Sano to pick up Smith, make an investigation to see if he had had anything to do with the flight of his wife, and deliver him to Gaspan Military Police for safe keeping. Sano accompanied by Yamada, one of the accused in this case arrested Smith and Yamada took him from his home to the Gaspan Military Police where Smith was confined in an air raid shelter.

Ajioka, the other accused in this case, was the officer in charge of the Gaspan Military Police Detachment which was rather small.

Sano's investigation did not bring to light any proof that Smith was aiding the enemy or had had anything to do with the escape of his wife and the other natives. Sano so reported to Miyazaki, but instead of ordering the release of Smith, Miyazaki ordered his death.

Miyazaki sent for Captain Nakamura and told him to have the Gaspan Military Police carry out the execution. Miyazaki also told Nakamura to supervise and not to leave everything to Ajioka, the commanding officer of the Gaspan Detachment.

After receiving these orders, Nakamura called the Gaspan Detachment and Ajioka was advised that Smith's death had been decided upon. Ajioka sent some of his men out to dig Smith's grave.

Either the next day or the day after that, Captain Nakamura arrived at the Gaspan Detachment and was advised by Ajioka that all preparations had been made. Smith was taken from the air raid shelter and Nakamura, Ajioka and Yamada took him into the jungle. For some unexplained reason, they were unable to find the grave that had already been prepared, but they did come across a bomb crater that served equally as well. Nakamura told Yamada to shoot Smith but Yamada hesitated. He acted, however, when Ajioka told him to shoot and he put a pistol bullet through Smith's head.

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1178

The prosecution will present witnesses who were present when the execution took place and also witnesses who helped at the close of the war to disinter the dead body of Smith.

The prosecution admits that these accused are not the only Japanese responsible for the murder of Smith but the Prosecution does insist that these accused did participate in his murder and should be punished for it.

Respectfully,

Joseph A. Regan

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

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1179

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, December 15, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Major Andrew I. Lyman, U. S. Marine Corps,
Lieutenant Commander John S. Cheredes, Medical Corps, U. S. Navy, members,
and Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Corporal Raymond E. Gardner, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Stewart R. Smith, yeoman first class, U. S. Navy, and Archie L. Haden, junior, yeoman first class, U. S. Navy, as reporters, and they were duly sworn.

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

Each of the accused requested that Commander Martin E. Carlson, U. S. Naval Reserve; Mr. Sanagi, Sadamu; Mr. Karasawa, Takami, and Mr. Kuwata, Hideo, act as his counsel. Commander Carlson, Mr. Sanagi, Mr. Karasawa, and Mr. Kuwata took seat as counsel for the accused. 92

The judge advocate read the precept and modifications thereof, copies prefixed marked "A," "B," and "C."

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate informed the commission that an oral stipulation had been entered into by the defense counsel and the judge advocate under the terms of which, when classified dispatches are referred to during the course of the proceedings of this commission, reference only to the content and substance of these dispatches will be made in open court. No reference to the date-time group, or other means of identification of classified matter will be made, but defense counsel represented by Commander Carlson, U. S. Naval Reserve, will be given full opportunity to verify the accuracy and the authenticity of any statement regarding the content of such dispatches. The reason for this stipulation is primarily one of cryptographic and communication security. Counsel for the defense have all, individually and jointly, agreed to this procedure.

The commission announced that the above was approved.

The judge advocate did not object to any member.

The accused did not object to any member.

The judge advocates and each member were duly sworn.

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 December 9, 1947.

1180

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 "D."

An interpreter read an English translation of Mr. Kuwata's objection, prefixed marked "E."

Commander Carlson made a further written objection to the charges and specifications, prefixed marked "F."

The accused waived the reading of this objection in Japanese.

The judge advocate replied.

The accused waived the reading of the reply of the judge advocate to this objection in Japanese in open court.

The commission ruled that the plea in abatement contained in the objection to the charges and specifications by Commander Carlson was denied.

The commission was cleared to consider the objections to the charges and specifications.

The commission was opened and all parties to the trial entered. The commission announced that the objections of the accused were overruled, and that the commission found the charges and specifications in due form and technically correct.

Mr. Kuwata, Hideo, a counsel for the accused, read a written plea to the jurisdiction of this commission in Japanese, prefixed marked "G."

An interpreter read an English translation of the plea to the jurisdiction, prefixed marked "H."

Commander Martin E. Carlson, a counsel for the accused, read a written plea to the jurisdiction of this commission, prefixed marked "I."

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

The judge advocate replied and called the attention of the commission to paragraph three of the precept which refers to the jurisdiction in the instant case. The judge advocate presented a certified copy of the referenced dispatch to Commander Carlson of defense counsel and to the commission.

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

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that the pleas to the jurisdiction were denied.

The accused stated that they were ready for trial.

The judge advocate read the letter containing the charges and specifications, original prefixed marked "J."

An interpreter read the charges and specifications in Japanese, prefixed marked "K."

The judge advocate arraigned the accused as follows:

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

Q. To the second charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

The commission then, at 11:25 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.

The prosecution began.

The judge advocate read a written opening statement, appended marked "L."

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

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

That a state of war existed between the United States of America and the Imperial Japanese Empire during 1944.

The Potsdam Declaration of July 26, 1945, particularly paragraph 10, which reads in part as follows: "We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, as far as practicable to interned civilians; particularly Article 2 of Title I of that convention which reads as follows: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited."

That Babelthuap Island, Palau Islands, is part of the Commander Marianas area.

The Hague Convention of October 18, 1907, and especially Article 23(c) which reads as follows: "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion."

Of the fact that, "The United States and the enemy governments, namely, Germany, Italy and Japan have agreed through the Swiss government to treat interned civilian alien enemies, on a reciprocal basis, at least as favorably as prisoners of war."

An interpreter read the request for judicial notice in Japanese.

Mr. Karasawa, Takami, a counsel for the accused, read a written objection to the request of the judge advocate on judicial notice, appended marked "M."

An interpreter read an English translation of the objection of the accused to the request for judicial notice, appended marked "N."

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, read a written objection to the request of the judge advocate on judicial notice, appended marked "O."

The accused waived the reading of the objection to the request for judicial notice in Japanese in open court. gx

The judge advocate replied.

The commission made the following ruling:

The commission rules that the objections are not sustained and that the commission will take judicial notice of the various items requested by the judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank?
A. Nakamura, Kazuo.

2. Q. And your former rank?
A. Former Kempeitai first lieutenant.

(Translator's Note: "Kempeitai" means military police force; a "Kempei" is a member of the military police force.)

3. Q. If you recognize the accused, give us their names and former ranks.
A. On the left is former Kempeitai Warrant Officer Ajioka. On the right is former Kempeitai Sergeant Yamada, Kiyoshi.

4. Q. Did you ever serve with the Japanese army in the Palau Islands?
A. Yes, I did.

5. Q. To what particular unit were you connected?
A. I served under the former South Seas Kempeitai.

6. Q. Between what dates did you serve with the South Seas Kempeitai?
A. I served with the South Seas Kempeitai from the 9th or 10th of March, 1944, to 26 December, 1945.

7. Q. What were your duties in December of 1944?
A. I was head of the criminal section of the South Seas Kempeitai.

8. Q. Do you know an individual by the name of Charlie Smith?

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. Yes, I know him.

9. Q. When was the first time you saw Charlie Smith?
A. It was either the 29th or the 30th or 31st of December, 1944. It was one day of these three.

10. Q. Where did you see him?
A. I saw him at the Gasupan Kempeitai Detachment, situated at Gasupan Village, on Babelthup.

11. Q. Were you stationed with the Gasupan Military Detachment?
A. I did not have duty there.

12. Q. Why did you go there?
A. I went there by orders of the commanding officer (Translator's note: Of the Kempeitai Detachment).

13. Q. Who was this commanding officer? What was his name?
A. Miyazaki, Aritsume.

14. Q. What particular orders did Miyazaki give you?

A. "The Englishman at the Gasupan Kempeitai Detachment is to be executed. This is an order of division headquarters to First Lieutenant Nakamura. Go to the Gasupan Detachment right away and have the Gasupan Detachment carry out the execution. The place of execution will be near the place where the Spanish were killed formerly. It shall be carried out by Yamada with a pistol. Do not leave everything up to the head of the detachment but you, too, go along to the scene and directly supervise the execution. You do not have to tell the Englishman what his sentence is because you do not understand English. Tell the Gasupan Detachment right away by a telephone to dig a hole. I have the piles so I can not go." He said details other than these, but I do not recall them. What I have just said now is not word for word what he said but it was to this effect.

The accused moved to strike the answer on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion to strike was denied.

15. Q. Do you know why he was referred to as "the Englishman"?

A. I do not know.

16. Q. Do you know the name of the Englishman?

A. I know him only by the name Smith. It is "something" Smith.

17. Q. Did you ever hear him called by any other name or referred to by any other name?

A. I do not know.

18. Q. Where were you when Miyazaki gave you these orders?

A. I received this order at the entrance to the commanding officer's quarters at the Kempeitai headquarters, which was in the jungle of the Shisui-zan on Babelthuap.

19. Q. After you received these orders, what did you do?

A. I called up the detachment right away by telephone and relayed the orders.

20. Q. What detachment did you call?

A. Gasupan Detachment.

21. Q. You say you relayed these orders. What exactly did you tell the Gasupan Detachment?

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. I do not recall definitely but it was to the following meaning: The Englishman at the Gasupan Detachment is to be executed. To carry this out, dig a hole near where the Spaniards were executed right away. This is an order of the commanding officer, Miyazaki. I do not recall definitely but this is the meaning of my order.

This answer was objected to by the accused on the ground that the witness was incompetent and the accused further moved that the answer be stricken from the record.

The judge advocate replied.

The commission announced that the motion to strike was denied.

22. Q. After you made this telephone call to the Gasupan Detachment, what did you do?

A. I did nothing.

23. Q. After you made this telephone call, what happened next?

A. Right after the noon meal I was called by Miyazaki so I went to the commanding officer's quarters and he said to me as follows: "Didn't you go yet? There is no air raid now so go right away." And at this time he also gave me two or three smaller cautions about the air raid but I do not remember these.

24. Q. Was this conversation with Miyazaki held the same day that you made the telephone call to the Gasupan Detachment?

A. Yes.

25. Q. After you had this conversation with Miyazaki, what did you do?

A. I forget his name, but I took along one assistant Kempei and went to the Gasupan Detachment.

26. Q. Did you go to the Gasupan Detachment on the same day you made the telephone call to him?

A. Yes.

27. Q. What happened when you arrived there?

A. When I arrived there the commanding officer of the detachment, Ajioka, was away. So I waited for him for a while. At that time one soldier went to call Ajioka. Commanding officer of the ~~the~~ detachment, Ajioka, came back and he said to me: "The hole is ready." Whereupon I relayed all the orders of the commanding officer to him in this room. JK

28. Q. Is that the only thing that Ajioka said to you?

A. I think he said, "Is it not pitiful?" JK

29. Q. After you told Warrant Officer Ajioka about the orders, what happened next?

A. I waited by myself for him in this room. Very soon after, Warrant Officer Ajioka came back and reported, "Everything is ready." Therefore I went out of the room and saw in front of the room Sergeant Yamada, employee Uemura, and Englishman, Smith, one assistant Kempei who came with me, and I think there was another person and I think he was assistant Kempei Hayashi, and also Ajioka was there. These persons all went along.

30. Q. This Sergeant Yamada who was out there, is that the same Yamada whom you have identified in this courtroom?

A. Yes.

31. Q. And this Ajioaka who was the commanding officer of the detachment, is that the same Ajioaka whom you have identified in this courtroom?

A. Yes.

32. Q. What happened then?

A. The seven of us walked and we went up the hill of Gasupan. Hayashi or Uemura or both of them went to find the hole and we waited at the entrance of the jungle. We waited but they did not come back. So I went to where they had gone, but I could not locate them. So I came back to where I had been before. Then Hayashi or Uemura came back and said although they searched for the hole they could not find the hole that had been dug.

The witness was duly warned.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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.

(Examination continued.)

33. Q. After they told you that they could not find this hole that had been dug, what happened then?

A. Near the place we were waiting, there was a hole which looked like a fox hole of a size about one and one-half or two meters square. I told Ajioaka, "If the hole cannot be found, let us use this hole." Then Ajioaka agreed to this so I relayed the orders of Commanding Officer Miyazaki by saying to Yamada, "Do it." At that time Sergeant Yamada made a face as if he did not want to do it and acted as if he were not going to do it. Then Ajioaka said to him, "Do it. Do it." Yamada shot Smith, himself, in the back of the head with a pistol. Smith died with only one shot and fell into the hole. I looked into the hole and saw he was completely dead. Therefore I said to an assistant Kempei, Uemura, to bury the body and they buried the body.

34. Q. Do you know what became of the body of Smith?

A. Do you mean at that time?

35. Q. No, afterwards.

A. After the war, his corpse was dug up and was cremated and was buried.

36. Q. Can you tell us what Smith looked like?

A. I have only seen him for about thirty minutes or an hour and as I do not know his ordinary life I do not know what kind of person he was but just looking at him he was old and had dirty clothes on. That is all I could say.

37. Q. What kind of skin did he have?

A. It was ordinary. It could not be said he was white or dark but he did not have the skin like a white man. He was very short.

38. Q. What color hair did he have?

A. I do not recall.

Cross-examined by the accused:

39. Q. You have testified that you had duty with the South Seas Kempeitai around December 1944. How was the Kempeitai organized during that time?

A. In July 1944 the Kempeitai moved from Koror to Babelthuap. At the same time, by orders of the commanding officer, the First Detachment and the headquarters were bound together and the First Detachment was dissolved. Commanding Officer Miyazaki felt sorry to do away with the First Detachment so he left only the name. I was the head of Police of the Kempeitai.

40. Q. Please explain how the Kempeitai was organized at Palau during December of 1944.

A. The commanding officer, Colonel Miyazaki; adjutant, Second Lieutenant Ichikawa; head of criminal section, First Lieutenant Nakamura; head of Special higher section, First Lieutenant Sano; head of intendance, Second Lieutenant Tamanoi; members of the general affairs section, Sergeant Yokayama and, I believe, Sergeant Sugimoto was also there. The members of the special higher section were Sergeant Tamamoto and Sergeant Takahashi. Members of the criminal section were Warrant Officer Nakamura, Corporal Kokubo, Sergeant Major Ishiyama and Sergeant Ozaki. OK

41. Q. Is this all of the organization of the Palau Kempeitai?

A. No. The members of the criminal section, other than the ones I listed before are Sergeant Nagatome, and persons at the Gasupan Detachment were Warrant Officer Ajioka, Corporal Nakagawa, and Sergeant Yamada. Other than this there were several assistant Kempei in each of these sections.

42. Q. At the time of this incident, where was the Kempeitai headquarters located?

A. It was located in the jungles of the Shisui-Zan at Babelthuap.

43. Q. When was the Kempeitai headquarters first located at this place?

A. It was either October or November of 1944.

44. Q. Where was it at this time?

A. Before this time it was at the place where the Gasupan Detachment was located.

45. Q. When the Kempeitai headquarters moved from Gasupan to Shisui-Zan, how many men were left at Gasupan?

A. I do not recall definitely but there were four or five persons including the soldiers with Warrant Officer Ajioka and Sergeant Yamada included.

46. Q. What was the duty of the men who were left behind?

A. The collection of information, emergency police work and guarding of buildings. There may have been others than this but I do not know them. This is my imagination because I did not receive the order.

47. Q. Isn't it true that the persons who were left behind were mostly sick persons and that their duty was only to guard the buildings and provisions left there?

A. As I did not receive this order or relay it, I do not know but it is a fact that most of the persons there were in ill health.

48. Q. Was the group that was left at Gasupan considered a detachment by the Kempeitai tables of organization?

A. I think that it can not be said to be a formal detachment. Because I did not receive the order I do not know. I think this was only emergency.

49. Q. Do you know that about February 1945, four or five Kempeitai detachments were formally organized under the Kempeitai?

A. I do.

The judge advocate moved that this answer be stricken on the ground that this testimony referred to a matter which occurred subsequent to the alleged murder of Smith and was therefore irrelevant and immaterial.

The accused replied.

The commission announced that the motion was granted and directed that the answer be stricken out.

50. Q. At the time of the incident, isn't it true that the Gasupan Kempeitai was not a detachment according to the Kempeitai table of organization?

A. I think it was not a detachment and as you say was all mostly sick persons and they had to guard the buildings and provisions but they also had to police their section so now and then some able bodied men like Yamada and Hayashi were sent to the detachment. I do not know if it was official or not but it was for an emergency measure. The commanding officer of the Kempeitai would say to me that if there is a name of a commanding officer detachment given to them it will look better so he had the name given to them.

51. Q. Please answer my question directly. Please answer if the Gasupan Detachment was a detachment at the time of the incident or not.

A. I do not know.

52. Q. Do you know whether on or about February 19, 1945, four or five detachments were formally formed on Palau.

A. I know about this.

53. Q. Then the detachment at Gasupan at the time of the incident was not a detachment was it?

This question was objected to by the judge advocate on the ground that it was vague and ambiguous.

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, December 16, 1947.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, December 16, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Andrew I. Lyman, U. S. Marine Corps,
Lieutenant Commander John S. Cheredes, Medical Corps, U. S. Navy,
members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Nakamura, Kazuo, the witness under examination when the commission
adjourned, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Cross-examination continued.)

54. Q. When Commanding Officer Miyazaki ordered you to see that the
execution of the Englishman was carried out, did he give the reason?
A. He did not mention the reason for the execution.

55. Q. You have testified that you talked through a telephone with the
remaining forces at Gasupan about digging a hole. With whom did you talk?
A. I do not remember whom I talked to.

56. Q. Was it Ajioka?
A. I do not recall.

57. Q. How much time elapsed after you made this telephone call and the
time you arrived at the remaining forces at Gasupan?
A. I do not recall the exact time that elapsed but as the hole was already
dug and considering the distance between the headquarters to the unit, I
suppose that three or four to five hours had elapsed.

58. Q. When you arrived at the remaining forces at Gasupan, was Ajioka
absent?
A. I recall that he was absent.

59. Q. How long did you wait until Ajioka came from the time you arrived?
A. This, too, I do not recall definitely but I did not wait several hours. It was only a matter of ten or twenty minutes.

60. Q. When Ajioka came back, isn't it true that you had prepared the Englishman to leave here and you were waiting for Ajioka outside?
A. That is not true. I did not say anything to anyone. I waited for Ajioka in his room.

61. Q. Please state in as much detail as possible the conversation you had with Ajioka when he came back.
A. I do not recall word for word the gist of this conversation but it was to the following meaning: I said, "I came here by orders of the commanding officer. Smith is to be executed and it is to be executed by the detachment. I will also go to the scene. The method will be that Sergeant Yamada will shoot. Place, at the hole which is already dug." At this time Warrant Officer Ajioka said, "Isn't it a pity." He also seemed to be reluctant to execute Smith who was confined at his detachment. He also asked how many men he should take along so I replied, "Bring as many as you can."

62. Q. When you told about the execution of Smith to Ajioka, isn't it true that Ajioka said, "Isn't it a pity. Isn't it better to let him go free?"
A. I do not recall that.

63. Q. After Ajioka said, "Isn't it a pity" didn't you say to him, "It is not a matter of your concern. It is a superior order. You just come along?"
A. I did not say such a thing. I just said it was an order of the commanding officer.

64. Q. As Ajioka showed that he was reluctant to the execution of this Englishman, didn't you say that you were going to return this Englishman to his home?
A. That is wrong.

65. Q. Did you say anything to this effect?
A. There was nothing said to this effect.

66. Q. When you ordered Yamada to shoot at the scene, what was the relative position of yourself, Ajioka, Yamada, and Smith?
A. Smith was near the hole. I was also near the hole. Ajioka was also near the hole. I mean by the words "near the hole" to be four or five meters from the hole.

67. Q. Please explain again, including Yamada, the relative positions of these four?
A. Smith was nearest the hole. Yamada was standing near Smith. I recall someone else here - probably it was one assistant Kempei - standing near Yamada. I was to the right and back of Smith. Ajioka, I believe, was behind Yamada. They all moved around so this was not the position they held all the time but when I gave the order I believe this was their position.

68. Q. As Ajioka was very reluctant to this execution, wasn't he standing far behind at this scene?
A. At first Smith was with Ajioka and he was sitting down about ten or twenty or thirty meters from the hole. Then later Ajioka came with Smith to the hole and I recall that he was at the position as I mentioned before.

69. Q. After you ordered Yamada to shoot, explain exactly the attitude of Yamada and the action he took at the time he shot.

A. After I said "Go ahead" to Yamada, Yamada showed reluctance in his face and took two or three steps back and he had an attitude showing he could not do this. Therefore Warrant Officer Ajioka said, "Yamada, go ahead, go ahead." Ajioka said this from behind Yamada. Yamada took a shot. At this time I recall faintly that Yamada said, "Shall I let him sit down or stand up?" I do not recall what I said but I either said to let him sit down or stand up. At this time Ajioka was looking at this silently from about two or three steps back from where we were.

70. Q. When you saw Yamada hesitating, didn't you say, "What are you hesitating about?"

A. No, I did not.

71. Q. You have just testified that Ajioka told Yamada "Go ahead, go ahead." Isn't it true that Ajioka was silent all through this?

A. I do not recall anything other than this which Ajioka said, "Yamada, go ahead, go ahead."

72. Q. At the time when Yamada was going to shoot, did it jam the chamber of his pistol?

A. I do not recall.

73. Q. To the question, "Do you know an individual by the name of Charlie Smith?" You answered, "Yes I know him." You mean that you knew him in December of 1944? Isn't that what you mean?

A. The first time I saw his face was at the execution but I had heard rumors before this time that this man was at the Gasupan detachment.

74. Q. Did you ever see any written report on Charlie Smith?

A. I recall I saw a document which was circulated from the Special Higher Section but as this report did not originate in my section, I do not know or recall the details of this report. I do not know what it was or what it contained.

75. Q. What was your section?

A. Criminal Section.

76. Q. And your section never investigated Smith, did they?

A. No.

77. Q. So, as far as you know, Smith was not a criminal?

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 whether he was a criminal or not, but if the commanding officer said he was to be executed there must have been some kind of a crime. If you will ask Sano of Special Higher Section or Division Headquarters personell, you might find out more of this.

The judge advocate moved that the portion of the answer beginning with and following the words "but if the commanding officer" be stricken on the ground they were not responsive.

The commission announced that the motion was granted and directed that the words be stricken out.

78. Q. Since you did not know that Smith was a criminal and there were no records in your department to show that he was a criminal, why didn't you object when Miyazaki ordered you to have these people kill Smith? JK

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.

79. Q. Didn't Miyazaki tell you why he wanted you to kill Smith?
A. No.

80. Q. And you didn't object to killing Smith?

A. I did not object, but as I did not want to supervise the carrying out of this execution I was reluctant in accepting this and I was told to go right away but I did not go right away. At this time the commanding officer ordered that Smith was to be executed. I could not object to an order. I could not do anything and before this time I had objected very much to another case but my objection was not sustained so in the case of Smith.....

The judge advocate moved that the words "but as I did not want to supervise the carrying out of this execution I was reluctant in accepting this and I was told to go right away but I did not go right away. At this time the commanding officer ordered that Smith was to be executed. I could not object to an order. I could not do anything and before this time I had objected very much to another case but my objection was not sustained so in the case of Smith" be stricken on the ground that they were not responsive.

The accused made no reply.

The commission announced that the motion was granted and directed that the words be stricken out.

81. Q. Since you were reluctant and since you could not object, then you thought you would lose the responsibility by getting these two people to come with you to carry it out, did you not?

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

The accused replied.

The commission announced that the objection was sustained.

82. Q. You testified that the first time you saw Smith was the 29th, 30th, or 31st day of December. How do you remember that it was one of these days?

A. I said this from my recollection that it was one, two, or three days before the New Year.

83. Q. When the Kempeitai organization moved from Gasupan to another place, isn't it true that there were only two enlisted men and one warrant officer left behind at that time?

A. I do not recall definitely how many persons were left when we moved, but probably it was one warrant officer and two or three enlisted men.

84. Q. How far is Shisui-Zan on Babelthuap from Gasupan?

A. By walking it would take about an hour and forty minutes, so I believe it to be about eight kilometers.

85. Q. When you went there, did you ever walk?

A. From where to where?

86. Q. From Shisui-Zan at Babelthuap to Gasupan. Have you ever walked?

A. I have.

87. Q. And on that day that you went there to get Smith, did you walk?

A. Yes.

88. Q. How long did it take you?

A. I do not know how long I took at that particular time but usually it took about one hour and forty minutes. This is my pace of walking and if someone walked faster he could make it in less time.

The commission then, at 10:15, took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, 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.)

89. Q. In December of 1944 did the Kempeitai at Gasupan have an official name?

A. The commanding officer named it the Gasupan Kempei Detachment.

90. Q. He named it that in February of 1945, didn't he?

A. When the headquarters moved the commanding officer said that if this unit was named it would operate better so the commanding officer gave it a name right after the headquarters moved, or about four or five days later; and he called it Gasupan Kempei Detachment. But later on, I do not recall if it was February of the next year or not, but at this time several Kempei detachments were established throughout the area in each district. At this time this Gasupan Kempei Detachment was also included.

91. Q. That was the first time then in 1945 when the Gasupan unit was officially established, wasn't it?

A. I do not know whether it could be called official or unofficial when the commanding officer gave it the name but the commanding officer first named it the Gasupan Kempei Detachment in December. The difference, I think, from this and the later one was that the first one was only given orally by the commanding officer and the second was a written document given by the commanding officer.

92. Q. Who got this written document about the Gasupan Detachment from Miyazaki?

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

The accused replied.

The commission announced that the objection was sustained.

93. Q. When Colonel Miyazaki officially designated in writing this Gasupan Unit, did he get permission from General Inoue?

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

The accused did not reply.

The commission announced that the objection was sustained.

94. Q. Was Colonel Miyazaki, in December 1944, on the staff of General Inoue?

A. I do not think he was a member of the staff but he was receiving directions from General Inoue. Jx

95. Q. You mean that in December 1944 General Inoue was issuing orders to the Kempeitai?

A. In carrying out the duties the Kempeitai was given orders.

96. Q. Isn't it true that the Kempeitai was organized with headquarters at Tokyo and did not receive their orders through Inoue?

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. The Kempeitai was under the command of the Kempeitai Headquarters in Japan but in regard to their work they received orders from Inoue. In other words, in regard to policing and so on. Jx

97. Q. How about orders as to executions? Whom did they receive orders from in regard to executions?

A. This is carrying out the work of the Kempeitai so it would come from division headquarters.

98. Q. And you want your testimony to stand, that the orders were from division headquarters that you were to execute prisoner Smith. Is that right?

A. Yes.

99. Q. You testified, "it shall be carried out by Yamada with a pistol." Were these orders from division headquarters also?

A. This I do not know, but from my imagination I think the commanding officer appointed him.

100. Q. In your testimony in which you said that Colonel Miyazaki said, "You do not have to tell the Englishman his sentence because you do not understand English," that should have been, instead, "because the Englishman does not understand Japanese," shouldn't it? 9x

A. I do not know which it should have been but it was the meaning that there was a difference in our languages.

101. Q. You mean then that the Englishman didn't understand Japanese?

A. I do not know whether he knew Japanese or not. I never talked to him.

102. Q. Did Miyazaki know whether he understood Japanese or not?

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

The accused did not reply.

The commission announced that the objection was sustained.

103. Q. Are you sure that Smith didn't understand Japanese?

This question was objected to by the judge advocate on the ground that it was repetitious and argumentive.

The accused did not reply.

The commission announced that the objection was sustained.

104. Q. When you went to Gasupen that day, just whom did you see when you first arrived there?

A. Is that before I met Ajioka?

105. Q. When you first arrived there.

A. I do not recall who he was.

106. Q. Was there anyone at the Gasupen Unit when you arrived there that day?

A. There was someone.

107. Q. Was he a soldier?

A. I think he was a Kempei or an assistant Kempei.

108. Q. What did you say to him when you came?

A. I asked him if Warrant Officer Ajioka was present.

109. Q. What did he say?
A. I do not know the words he said but he said to the meaning that Ajioka was away.

110. Q. Did he say that Ajioka was out with some woman?
A. I do not recall.

111. Q. Did you tell him to go and find Ajioka?
A. I do not recall clearly but I might have said to him to go find him or he said to me, "I will go find him."

112. Q. ^{Who} did go and find Ajioka?
A. I do not recall. gx

113. Q. Were you left all alone at this place for a while?
A. I do not think everyone would leave the detachment and all go out. I do not think I was alone.

114. Q. Was Yamada there?
A. I do not recall.

115. Q. Was Smith there?
A. I did not see him but I think of course he was there.

116. Q. If you didn't see him, why do you think he was there?
A. That is because when we were ready to leave he was there, so he could not have come from another place.

117. Q. What was the rank or the rate of Ajioka at this time?
A. Warrant officer.

118. Q. Who gave him orders as to what his duties were at this time?
A. What do you mean by duties of Ajioka?

119. Q. In general what his duties were?
A. The commanding officer at the headquarters.

120. Q. And this commanding officer was Colonel Miyazaki?
A. Yes.

121. Q. When did Colonel Miyazaki commit suicide?
A. I do not know.

122. Q. Do you know that he did?
A. I heard he committed suicide but I do not know for sure.

123. Q. Do you know what is meant by command authority?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and called for the opinion of the witness.

The accused withdrew the question.

124. Q. By what authority did Colonel Miyazaki order Smith to be killed?
A. The commanding officer received an order from Division Headquarters and I believe he carried out this order. gx

125. Q. Did he say there had been a trial of Smith?
A. No. I did not hear (this).

126. Q. Why were you reluctant to carry out the killing if it was an order from Division Headquarters?

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

The accused made no reply.

The commission announced that the objection was sustained.

127. Q. Who was next in command of the Kempeitai to Colonel Miyazaki in December of 1944?

A. In rank, I was.

128. Q. What was your rank on December 29, 1944?

A. First lieutenant.

129. Q. Who else was present at the time Colonel Miyazaki ordered you to kill Smith?

A. The orderly might have been there but not right at the scene listening to him. He was within hearing distance. *JK*

130. Q. Where were you when Miyazaki gave you these orders. Were you not in his room?

A. I was at the entrance of Miyazaki's room.

131. Q. And you don't know whether anyone was listening or not?

A. I do not know.

132. Q. Are you sure that you don't know that Miyazaki is dead?

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.

133. Q. Now, if Miyazaki is dead, anything that you say regarding what he told you that day can not be questioned, so that you, being the only one present there, are the only one who knows and can testify what Miyazaki told you. Isn't that true?

A. Even though the orderly might have been listening to our conversation, I do not think he would remember in detail what I have said right now for the order was not for him. It was to me.

134. Q. So you can blame Miyazaki for this entire incident and thus avoid any responsibility on yourself? *JK*

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

The accused made no reply.

The commission announced that the objection was sustained.

135. Q. Is it because your conscience hurts you that you can't testify word for word what Miyazaki told you that day?

A. As this happened quite some time ago I do not remember everything, so I do not remember it word for word. I just give the important meaning.

136. Q. Wasn't this killing your own idea and not Miyazaki's?

A. Absolutely not.

137. Q. Why didn't you object to it then?

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

The accused made no reply.

The commission announced that the objection was sustained.

138. Q. You testified that Ajioka was a warrant officer. Do you know when he was made a warrant officer?

A. I do not know, for when he came to the South Seas Kempeitai he was a warrant officer already.

139. Q. In December of 1944, was he one of your subordinates?

A. He was not my subordinate.

140. Q. This Charlie Smith. The first time that you saw him that day; will you describe how he was dressed.

A. He had soiled clothing on and wore a hat and he was small and an old person.

141. Q. Did you ever see an Englishman or an American in Japan before this?

A. Yes, I have.

142. Q. Was Smith barefooted that day?

A. I do not recall.

143. Q. Did Smith look like an Englishman that you had ever seen?

A. At one glance he didn't look like an Englishman.

144. Q. So as a criminal investigator it was your opinion then that he wasn't an Englishman?

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.

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.

Archie L. Haden, junior, 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. *JK*

(Cross-examination continued.)

145. Q. You testified that you were told by Miyazaki that the execution would take place where the Spanish were killed. Why didn't you have the execution take place where the Spanish were killed?

A. Miyazaki told me to execute Smith near where the Spanish were killed. This was near where the Spanish were executed.

146. Q. And you executed the Spanish so you know where they were killed. Is that right?

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

The accused replied.

The commission announced that the objection was sustained.

147. Q. Why did you phone the Kempeitai Unit instead of going there direct?

A. I was told to telephone first, so I telephoned.

148. Q. Whom were you told to telephone to?

A. I was told to telephone the detachment.

149. Q. Ajioke?

A. The meaning of "to the detachment" was to Ajioke.

150. Q. Did you phone to Ajioke?

A. I do not recall who it was.

151. Q. Did you ever know who you talked to on the telephone that day?

A. According to someone, it is said that it might have been Nakagawa, but I don't know. *JK*

152. Q. You are sure it was not Smith that you phoned to that day?

A. It wasn't Smith.

153. Q. You mean to say you phoned someone and told them to execute Smith and didn't know whom you talked to? Is that the way you relayed orders? *JK*

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

The accused withdrew the question.

154. Q. When you phoned to the unit, didn't you tell them that Smith was to be executed?

A. I did. I said that, "As Smith is to be executed, dig the hole for it."

155. Q. When you phoned to Gasupan that day, did you ask to talk to Ajioka?

A. I do not recall. Usually it was the custom, if Ajioka was there I called Ajioka and talked to him but if he wasn't present I would tell the person on the other end of the line to relay the instructions to Ajioka.

156. Q. But you didn't find out who the person was at the other end of the line that day, did you?

A. I do not know exactly. But there was talk that it might have been Nakagawa.

157. Q. Who is Nakagawa?

A. He is a corporal.

158. Q. Was Nakagawa there when you arrived?

A. I do not recall.

159. Q. Do you recall whether Ajioka was there when you arrived?

A. I think Ajioka was not present.

160. Q. You know he wasn't present when you arrived, don't you?

A. This happened some time ago and I recall that he wasn't present.

161. Q. The reason he wasn't present was that you had not told him you were coming. Isn't that right.

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

The accused made no reply.

The commission announced that the objection was sustained.

162. Q. Do you know why Ajioka wasn't there when you arrived?

A. I do not know.

163. Q. If you had told him or told Nakagawa that you were coming, wouldn't Ajioka have been there?

A. That I do not know.

164. Q. But you had to send for him when you arrived there, didn't you?

A. I recall someone went to call him.

165. Q. And why were you so mad at him when you found that he wasn't there and had to send for him?

This question was objected to by the judge advocate on the ground that the witness had not so testified.

The accused replied.

The commission announced that the objection was sustained.

166. Q. Did you scold Ajioka when he finally did arrive?

A. I did not.

167. Q. Did you tell him, at that time, why you had come there?

A. Yes, I did.

168. Q. Did you tell him that you had ordered one of the men at Gasupan to dig a hole?

A. I did not have to tell him this for he knew this beforehand because, when he came, he said, "The hole is already prepared."

169. Q. When did you phone Gasupan and tell them to dig a hole?

A. Right after I came back from the commanding officer's room.

170. Q. At about what time of day was that?

A. I do not know exactly but as I said before, considering the time to dig the hole, it must have been three, four, or five hours before I arrived at Gasupan.

171. Q. Do you recall what time you arrived at Gasupan?

A. I left right after the noon meal and considering the time it took to walk to Gasupan it must have been about two or three o'clock in the afternoon. *JK*

172. Q. At that time, ^{no} ~~none~~ told you that he had dug the hole as you had told them to? *JK*

A. Do you mean after I arrived at the detachment?

173. Q. Yes.

A. I heard it from Warrant Officer Ajioka.

174. Q. When you came there you didn't find out that the hole had been dug as you had ordered?

A. No.

175. Q. Did Ajioka tell you that he had dug the hole?

A. No.

176. Q. Did he say Yamada had dug the hole?

A. He didn't say who had dug the hole. He just said it had been prepared. *JK*

177. Q. How did you find out who had dug the hole?

A. I do not know who dug the hole, but when the execution was actually carried out I believe the person who dug the hole went also.

178. Q. There were seven of you who went to this execution. Now, which one of the seven was to find the hole for you?

A. I believe it was either Hayashi or Uemura or both of them.

179. Q. Did they ever find the hole?

A. They went to look for it but they couldn't find it.

180. Q. And you didn't ask Ajioka to find the hole because you knew he didn't know where it was?

A. I do not recall how the situation was at this point.

181. Q. You recall that Ajioka had nothing to do with digging the hole, don't you?

A. I do not know whether he had any connection with the digging of the hole or not, but I just received a report from him that the hole was already prepared.

182. Q. Now, when Miyazaki scolded you and said, "Haven't you gone yet?" Didn't you tell him that you had just phoned to the Gasupan Unit instead of going there? OK

A. The commanding officer told me to telephone first and then go. Some time elapsed between the time I met the commanding officer and the time I went.

183. Q. But he still scolded you, didn't he?

A. I was scolded and told to go right away.

184. Q. The reason you were told to go right away was because you were the one who was ordered by Miyazaki to kill Smith and not these two men. Isn't that correct?

A. No, that is not true. I recall an orderly or someone came to me to see if I had already gone but I hadn't gone so I was told to report to the commanding officer. When I got there I was told, "Haven't you gone yet? There is no air raid, so go right away."

185. Q. Who was present when you told Ajioka that Smith was to be killed?

A. I don't think that anyone was there.

186. Q. Did you tell him when he was with you in his room?

A. Yes.

187. Q. What else did you tell him?

A. Then Ajioka said, "It is pitiful," and I also told him that I would go along too and for him to make the preparations right away.

188. Q. And when he said, "It is pitiful," you said, "It does not make any difference anyway." Didn't you?

A. I didn't say such a thing. I also made a remark to the effect that it was pitiful.

189. Q. But you still insisted in carrying out the killing even if it was pitiful?

A. This was an order received from the commanding officer. Yamada, Ajioka, and myself, we all had this pitiful feeling. I, as an officer, was sent to see that this was carried out. I could not have refused to carry out this order. OK

190. Q. Instead of carrying it out yourself you got a poor little sergeant to do the job. Is that right?

A. That is not true. I was told by the commanding officer so I ordered him.

191. Q. So you forced him to do it even though he didn't want to do it?
A. We all were reluctant. Ajioka and I, too, were reluctant but as I relayed that this was an order of the commanding officer, we carried it out.

192. Q. Did you ever tell Ajioka or Yamada why Smith was killed?
A. I did not say.

193. Q. Why didn't you say?
A. I did not know it myself so I did not say.

194. Q. You mean you had Yamada kill Smith without any other reason except that you, an officer, ordered him to do so?
A. It was not my order. I just relayed the order.

195. Q. Do you mean that in the Kempeitai in December of 1944 you could have people killed by simply ordering someone to do it without having any reason?
A. I do not think that there wasn't any reason. I think there was some reason but I do not know it.

196. Q. And you never bothered to find out?
A. In the Japanese Army, we are not allowed to ask the reason of a commanding officer when an order is given out and I did not ask him. I just could have imagined it. *JK*

197. Q. When you told Miyazaki that you had killed Smith, didn't he give you any reason then as to why he had had him killed?
A. He did not.

198. Q. When did you tell Miyazaki that you had killed Smith?
A. I said it right after I got back. *JK*

199. Q. When did you get back?
A. It was around evening and by judging the time it was just before dark or after it became dark.

200. Q. Did he say that it was good that you had done that?

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

The accused made no reply.

The commission announced that the objection was sustained.

201. Q. You say you took along an assistant Kempei from Miyazaki's headquarters. Why did you take him along?

A. At that time there might have been an air raid so we were told to go out in twos and only in emergencies did we go out alone and I took him as an officer's orderly.

202. Q. Was he armed with a pistol?
A. I recall that he did not have a pistol.

203. Q. Did you have a pistol?

A. I recall that I did not have a pistol.

204. Q. You mean you went out unarmed?

A. Around December of 1944 Americans had not landed on Babelthuap and it was only an air raid so we would walk in the jungle. We walked as light as we could and we did not carry any arms.

205. Q. That was true of all the Kempei?

A. According to their duties. For instance, in carrying out patrolling they would be armed. Other than this, in most cases, they are unarmed.

206. Q. So, to be sure that you would not have to kill Smith, you did not take a pistol along that day. Is that right?

A. The commanding officer said to have Yamada do it, so I had no need to bring and did not bring a pistol.

207. Q. But you told Yamada to bring his pistol along. Is that right?

A. I did not.

208. Q. How did he know, then, that he was to bring his pistol along?

A. This I do not know for I just told Ajioka that the commanding officer ordered Yamada to perform it.

209. Q. Now, you said you didn't tell the man on the telephone to tell Ajioka that you were coming. Isn't the reason you didn't do so because Miyazaki had not told you to tell Ajioka?

A. The commanding officer did not say such a thing.

210. Q. In the Japanese Kempeitai, does a warrant officer take his meals with non-commissioned officers or the commissioned officers?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination, irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

211. Q. Isn't it true that the reason you didn't tell Ajioka that you were coming was that he was just another person there at Gasupan and it didn't matter whether he was told you were coming or not?

A. I didn't think definitely as to this effect and after it, thinking from the standpoint of now, I cannot say why I did not tell him.

212. Q. When you say Ajioka was a commanding officer, do you mean that he had the same kind of command authority as Miyazaki had?

A. No.

213. Q. How was it different?

A. First, commanding officer Miyazaki was in command of all the Kempeitai. Ajioka commanded only Gasupan. Ajioka worked under Miyazaki and carried out duty as he was ordered and could not do anything without an order. The distance between Gasupan and headquarters was only about eight kilometers so anything which came up Ajioka could report to the headquarters and do what he was ordered to do.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with 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.)

214. Q. I believe that you testified that able bodied men were sent to help the sick men at Gasupan. Was Yamada one of these able bodied men who was sent to help these men at Gasupan?

A. I did not send him. The commanding officer sent Yamada who was in a special, higher section at the headquarters.

215. Q. When was he sent?

A. I do not recall.

216. Q. You mean to tell me that Yamada wasn't a part of the Nakamura section?

A. Yamada was a person who was with the higher section.

217. Q. So that in November of 1944 you didn't send Yamada to Gasupan?

A. I did not send him.

218. Q. How many men were there in the Nakamura section?

A. I think it was five, including myself. There were five Kempeis and in addition to that there were seven or eight assistant Kempeis.

219. Q. Did you have any warrant officers in your^R section?

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

The accused replied.

The commission announced that the objection was not sustained.

A. There were.

220. Q. You testified that you were head of the criminal section. Didn't you also have duty and were you not the head of the Nakamura Company?

A. I wasn't the head of the Nakamura Company but I was the head of the First Kempei Detachment or Company.

221. Q. You were the head of that?

A. This First Detachment or Company was dissolved right after the Kempei was moved to Babelthuap but Commanding Officer Miyazaki said there was no need to do away all together with the First Detachment or Company so we just kept that name and I did the work of chief of the criminal section.

222. Q. So then in December of 1944 the few people who were at Gasupan were still a part of this First Company. Were they not?

A. Ajioka was formerly from the special, higher section and so he went from the special, higher section to Gasupan. Yamada at first was a member of the First Detachment or Company but later he went from the special, higher section to Gasupan.

223. Q. When did you send him to the special, higher section?

A. I do not recall when. It was after we moved to Babelthuap but I do not recall when.

224. Q. Was it after this incident?

A. It was before this incident. At the time of the incident he was at Gasupan.

225. Q. Who was at the head of this special, or higher company?

A. Sano.

226. Q. When you saw Smith there at Gasupan for the first time, was he tied?

A. He was not tied.

227. Q. Was he blindfolded?

A. No, he was not.

228. Q. Was he ever tied or was he ever blindfolded during that day?

A. No. He might have been blindfolded when he was shot but I do not know. 87

229. Q. Of these seven men that went with you, of the seven men in the group, which one of the seven spoke to Smith?

A. I do not recall.

230. Q. How did you get Smith to come along?

A. I do not know.

231. Q. Of these seven persons, were you the senior one?

A. Yes.

232. Q. You were the only officer in the group?

A. Yes.

233. Q. Then as the only officer and the senior one there, you were the only one who gave orders?

A. What orders?

234. Q. Any orders that might have been given?

A. To Yamada I said, "Yamada, do it." And I relayed the orders of the commanding officer to Ajioka.

235. Q. And whom did you tell to find the hole?

A. It was either Hayashi or Uemura.

236. Q. Did they come back and tell you they couldn't find the hole?

A. I do not know whether I was told this from this person or from Ajioke.

237. Q. Did you tell Ajioke to stop looking for the hole?

A. No, I did not.

238. Q. You say that Ajioke agreed to use a fox hole for the burial. Why was it necessary that Ajioke agree to this?

A. I do not know.

239. Q. You said that you picked out the hole and then Ajioke agreed to it. Why was it necessary that Ajioke who was only a warrant officer agree to anything that you said?

A. I received this order from the commanding officer and I went to the scene. I could not do everything myself without consulting Ajioke first for then Ajioke would be without face. So I consulted him.

240. Q. Did you also consult him whether it was agreeable with him to let Yamada do the killing?

A. I did not.

241. Q. He wouldn't lose face over anything like that, though?

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

The accused replied.

The commission announced that the objection was sustained.

242. Q. Before you ordered Yamada to kill Smith, didn't you order Ajioke to kill him?

A. I did not. Of course, when I first told him about this at the detachment I told Ajioke to have the detachment do it.

243. Q. When did you tell Yamada to put live ammunition in his pistol?

A. I did not order him to do so.

244. Q. Did you forget that enlisted men didn't carry live ammunition in their pistols?

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

The accused replied.

The commission announced that the objection was sustained.

245. Q. When you ordered Yamada to shoot Smith, did he have to put a clip of live ammunition in his pistol before he was able to shoot?

A. I do not recall.

246. Q. Do you recall that he was pointing the pistol at you?

A. There was no such fact.

247. Q. You didn't tell him to be careful, otherwise he would shoot you?

A. I did not say it.

248. Q. When you say that his pistol was jammed, didn't you shout at him?

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

The accused made no reply.

The commission announced that the objection was sustained.

249. Q. You testified that at the time Sergeant Yamada made a face as though he didn't want to do it and acted as though he was not going to do it. The reason you said that was because Yamada's pistol had jammed. Wasn't that the reason?

A. I do not recall if the pistol jammed or not.

250. Q. And you don't recall that the pistol was pointed at you?

A. No.

251. Q. All that you testified to yesterday was that Yamada shot Smith. Was that all there was to it?

A. That is so.

252. Q. You didn't say anything to him when he looked as if he didn't want to do it? JK

A. I didn't say anything to anybody. I just saw the faces of Yamada and Ajioka.

253. Q. Do you know what is meant by homicide by misadventure? JK

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

The accused replied.

The commission announced that the objection was sustained.

254. Q. This shooting of Smith by Yamada that day, was it due to the fact that Yamada's pistol went off accidentally? JK

A. That is not true.

255. Q. Was Smith standing up when he was shot by Yamada?

A. I do not recall clearly but I believe he was sitting down.

256. Q. Didn't you testify that he rolled into the hole after one shot?

A. I did.

257. Q. So that you never examined the body to see whether he was dead or not?

A. I did not inspect the body. I just looked at the body with my eyes for a little while.

258. Q. Then you ordered people to begin shoveling dirt over him?

A. Yes.

259. Q. How is it that you were sure he was dead?

A. I just looked at him from above and I did not see him breathing so I knew that he was dead.

260. Q. You didn't care whether he was dead or not. You figured that if you shoveled enough dirt on him he would die anyway. Isn't that so?

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.

261. Q. Who told you that this man that you and these six others killed that day was Smith?

A. You mean that day?

262. Q. Yes.

A. I heard this from Ajioka.

263. Q. Were you, Ajioka and Yamada the only people there when Yamada killed Smith?

A. I do not recall clearly but I believe there was about one assistant Kempei.

264. Q. So that Ajioka could have done nothing in order to protect Smith after you had ordered Yamada to kill Smith?

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.

265. Q. If you hadn't given the orders to kill Smith, Smith wouldn't have been killed that day, would he?

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

The accused made no reply.

The commission announced that the objection was sustained.

266. Q. Was Smith killed that day because you thought he was an Englishman?

A. No. I was ordered by the commanding officer to execute this Englishman Smith so I relayed this order to Ajioka and Ajioka had taken him out, so I believe everything was carried according to orders.

267. Q. But you didn't tie Smith before you killed him, did you?

A. I did not tie him.

268. Q. And you didn't blindfold him?

A. I myself did not blindfold him.

269. Q. Was he tied or was he blindfolded?

A. I believe he wasn't tied but I am not very sure if he was blindfolded or not. OK

270. Q. At least you don't remember whether any great preparations had been made to execute him, is that right?

A. I do not.

271. Q. He was just shot down as he was walking along?

This question was objected to by the judge advocate on the ground that counsel was testifying.

The accused made no reply.

The commission announced that the objection was sustained.

272. Q. Was the shooting of Smith unexpected as far as you were concerned?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, was completely irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Wednesday, December 17, 1947.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guan, Marianas Islands.
Wednesday, December 17, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Andrew I. Lyman, U. S. Marine Corps,
Lieutenant Commander John S. Cheredes, Medical Corps, 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 commission last
adjourned, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

Reexamined by the judge advocate:

273. Q. In December of 1944 was there anyone other than Ajioka in command
of the Gasupan Kempeitai?

A. No.

274. Q. When you left the Gasupan Kempeitai with Charlie Smith and Ajioka,
did Ajioka remain with you until you returned after the execution?

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. Yes.

275. Q. Was it you or Ajioaka who sent Hayashi and Uemura to look for the hole?

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

The judge advocate withdrew the question.

276. Q. Who sent Uemura or Hayashi to look for the hole?

A. I do not recall clearly but I did not give any order. I just asked, "Where is the hole?"

Recross-examined by the accused:

277. Q. Isn't it true that you, as the head of the First Kempeitai Company in December of 1944, were also in charge of the Gasupan people?

A. They were not under my command.

278. Q. When was it made a separate command?

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

The accused made no reply.

The commission announced that the objection was sustained.

279. Q. You testified that Ajioaka remained with you. Isn't it true that the reason he remained with you is because you gave him orders to remain with you?

A. I did not give orders for him to stay.

280. Q. You gave orders to him to start out with you, didn't you?

A. No.

281. Q. Then he volunteered to go with you on this execution?

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

The accused replied.

The commission announced that the objection was not sustained.

A. He did not volunteer to go. I relayed the orders of the commanding officer, so he went according to the commanding officer's orders.

282. Q. And you never ordered him to leave from the time you left Gasupan until the time you returned, did you?

A. I did not give the orders. I did not have the authority to give Ajioaka any orders.

283. Q. Did you have authority to give Yamada orders?

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

The accused made no reply.

The commission announced that the objection was sustained.

284. Q. Did you have authority to give anybody orders at this execution?

A. I did not have any authority to give orders to any members of the detachment. I just relayed the orders of the commanding officer.

285. Q. Was it the order of the commanding officer that Ajioka accompany you, then?

A. Yes.

286. Q. So that Ajioka was not free to do what he wanted but was under the orders of Miyazaki that day, was he?

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

The accused made no reply.

The commission announced that the objection was sustained.

287. Q. The only reason, as I got it from your testimony, that you were there at all was to see that the orders of Miyazaki were carried out. Is that right?

A. Yes.

288. Q. Was Ajioka under the command of Miyazaki?

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

The accused replied.

The commission announced that the objection was sustained.

289. Q. Did you see that Miyazaki's orders were carried out that day?

A. Yes, I did.

290. Q. From whom did Ajioka take orders at the scene that day?

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

The accused made no reply.

The commission announced that the objection was sustained.

291. Q. You have just testified that you had no authority to give orders to Ajioka but on the first day of the trial you testified that when you received an order from Miyazaki, Miyazaki ordered you to go to the scene and supervise the execution. Do you recall this?

A. I was told to supervise the execution on certain points. On these points I supervised but in other points I am not able to give any orders.

292. Q. Then you were ordered to go to the scene and supervise and direct the execution. Is this true?

A. I was told to supervise the execution so I supervised it and I was not ordered to direct the execution.

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

The witness made the following statement:

In regard to this incident, Yamada, Ajioke and myself were all reluctant in carrying out this execution. But as we were ordered by the commanding officer, I could not refuse. I believe Ajioke and Yamada had also suffered in carrying this out for I also suffered when I went in front of the commanding officer and received this order. Therefore, I did not right away carry this out and I stayed behind as much as I could trying to get out of this. I saw that Ajioke and Yamada were suffering also from their attitude. But as a detachment works by the orders of the commanding officer, when ordered to carry out the execution they were in a situation where they could not have refused. Therefore, I beg that the judgment be carried on with consideration of the fact that we were in a position where we could not help but carry it out.

The commission noted that there was a great deal of inadmissible matter in the statement of the witness but directed that the statement remain in the record and that it would be given its proper weight.

The witness was duly warned and withdrew.

Isabella Perez Zafra, an interpreter, was introduced and duly sworn.

A witness for the prosecution entered.

Counsel for the accused requested that the commission bar this witness from testifying on the ground that anything she might say would be hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness was duly sworn.

Examined by the judge advocate:

1. Q. State your name and residence.
A. My name is Rita Borgia Smith. I am a resident of Saipan.
2. Q. If you recognize these accused, tell us who they are.
A. I do not recognize any of them.
3. Q. During what period were you a resident of Babelthusp Island in the Palau Islands?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

- A. I lived on Palau from 1905 until 1945.

4. Q. During what portion of that time did you live on Babelthuas Island?
A. I lived on Babelthuas all that time.

5. Q. During the period that you lived in the Palaus, did you become married to anyone?
A. Yes, I was married.

6. Q. To whom were you married?
A. I married Charlie Smith.

7. Q. When did you marry Charlie Smith?
A. I married him in March, 1923.

8. Q. During the years of your marriage to Charlie Smith, did you ever discuss with him the question of the place of his birth?
A. Yes.

9. Q. Where did he say he had been born?

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. Yes, he told me where he was born.

10. Q. Where did he say he had been born?
A. He told me he was born in Hong Kong.

11. Q. Do you have in your possession any family paper which refers to this matter of the birth of Charlie Smith?
A. Yes, I have a memorandum.

12. Q. From whom was this memorandum received?
A. The memorandum came from his brother.

13. Q. Will you please produce that memorandum?

The witness produced the memorandum which was submitted to the accused and to the commission and by the judge advocate offered into evidence.

The accused objected to the introduction of this memorandum into evidence on the ground that the judge advocate had failed to prove that it was a genuine document, and read a written objection, appended, marked "P."

The judge advocate replied.

The commission announced that the objection was not sustained. JK

There being no further objection, the memorandum offered by the judge advocate was so received in evidence, certified copy appended, marked "Exhibit 1."

An interpreter read "Exhibit 1."

An interpreter read "Exhibit 1" in Japanese.

14. Q. Do you have in your possession any other means of identification of your husband, Charlie Smith?

A. I have.

15. Q. What is it?

A. I have his picture.

16. Q. Will you please produce that picture?

The witness produced a photograph.

17. Q. When was this picture taken?

A. In 1939.

The photograph was submitted to the accused and to the commission and by the judge advocate offered in evidence.

The accused objected to the introduction of this photograph into evidence on the ground that it was not relevant to prove the fact of the murder of Charlie Smith; it was no evidence of the execution, nor was it any evidence of the condition of the victim Charlie Smith at the time of the execution. The accused further objected to this photograph being offered into evidence on the ground that it was irrelevant and incompetent.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, the photograph offered by the judge advocate was so received in evidence, appended, marked "Exhibit 2."

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.

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

No witnesses not otherwise connected with the trial were present.

Rita Borgia Smith, the witness under examination when the recess was taken, entered. She was warned that the oath previously taken was still binding, and continued her testimony.

(Examination continued.)

18. Q. When did you last see your husband, Charlie Smith?

A. In October of 1944.

19. Q. Under what circumstances did you see him at that time?

A. He was put in one house all by himself and he was kept under guard. He couldn't go anywhere.

20. Q. How long had he been under guard?

A. He was under guard for a long time.

21. Q. Can you tell us approximately how long?

A. Since 1941 he was taken and was under guard until October of 1944.

22. Q. Where was the place of his confinement?

A. It was in a village called Garesmao.

23. Q. On what island was that?

A. On Babelthup.

24. Q. The last time you saw, him, did he resemble this picture which has been admitted into evidence?

A. His features were the same but he was very thin.

25. Q. When did you leave the island of Babelthup?

A. On December tenth, 1944.

26. Q. Since October, 1944, have you ever seen your husband again?

A. Never.

Cross-examined by the accused:

27. Q. When did you say you were married to Charlie Smith?

A. In March of 1923.

28. Q. Was it a big wedding ceremony?

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.

29. Q. Who performed the marriage ceremony?

A. A priest by the name of Father Merino.

30. Q. Did you get a marriage certificate from the priest?

A. Yes, I did.

31. Q. Do you still have that?

A. Yes, I still have it.

32. Q. How many children have you as a result of this marriage to Charlie Smith?

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.

33. Q. This other certificate that you had which is said to be signed by Peter Smith. Do you know this Peter Smith?

A. I do not know him.

34. Q. You never saw him?

A. I never saw him but received letters from him.

35. Q. Were these letters written in English?

A. They were all written in English.

36. Q. This certificate said to be signed by Peter Smith. When did you receive that?

A. I do not remember, but shortly after I married Charlie he had it with him.

37. Q. Did you ever ask him where he got it?

A. Yes, I did, and he told me that it was from his brother.

38. Q. You said that your husband was put under guard from 1941 to 1944. Were either of these two people here (indicating the accused) guards?

A. I did not see those faces.

39. Q. Did they also put you under guard?

A. No. It was only my husband.

40. Q. He was the only one that was put under guard of all the people on Palau?

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

The accused made no reply.

The commission announced that the objection was sustained.

41. Q. When they put him under guard, did they let you come and see him?

A. At times when the guards were not around I sneaked in and brought him food. Otherwise I couldn't see him.

42. Q. Do you know when the war started?

A. In 1941.

43. Q. Did they put him under guard before the war started?

A. Not before the war. Not until the outbreak of the war with the Japanese and Americans.

44. Q. From 1941 to 1944 is a long time. Was he sick during that time he was in confinement?

A. He was never sick and there were times when people who saw him asked him if he were sick and he told them that he was all right.

45. Q. When you sneaked in to see him, you couldn't sneak in during the daytime, could you?

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

The accused withdrew the question.

46. Q. The last time when you saw Smith, your husband, would you have recognized him except for the fact that you had lived with him for a long time? He didn't look like this picture, did he?

A. He looked exactly like the picture except that he had lost a lot of weight.

47. Q. He had lost so much weight and was so thin ~~that~~ unless you had really known him you couldn't have recognized him. Isn't that true? *JK*

A. He was really very thin but I was able to tell him from the rest.

48. Q. This place where they confined him. Was it Gasupen?

A. No. I saw him at Garasmao.

49. Q. How far away from Gasupen is that?

A. It will probably take a person a full day to get from Garasmao to Gasupen.

50. Q. So when you came there one night to this place to look for him you couldn't find him. Is that right?

A. I did not find him.

51. Q. Did you ask any of the other people there what happened to him?

A. Yes, I asked someone what became of my husband and someone told me that three soldiers came and took him.

52. Q. When was this? In 1943 or 1944 or 1941?

A. This was sometime in October of 1944.

53. Q. Could your husband speak Japanese?

A. No.

54. Q. What language did he speak?

A. He knew the English language, Chemorron, Spanish, and the language used by the people of Palau.

55. Q. Did these people ever tell you why they took your husband away in October of 1944?

A. No. I was never told why he was taken away.

56. Q. Did the Japanese ever tell you they had killed him?

A. No.

57. Q. Nobody ever showed you where he was buried?

A. No.

58. Q. You testified that you were married to Charlie Smith. Where were you married to Charlie Smith?

A. We were married in a village known as Marokyoku.

59. Q. You have testified that you were married before a priest. Was there any ceremony at this place?

A. Yes, there was a ceremony held.

60. Q. Other than this, was this marriage reported to a government office?

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.

61. Q. While you were married to Charlie Smith, did you ask him what his father's nationality was?

A. Yes, I did.

62. Q. What did he say?

A. He said that his father was an Englishman.

63. Q. Did you ask about his mother?

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

The accused made no reply.

The commission announced that the objection was sustained.

64. Q. While you were living on Palau, did you ever apply for Japanese citizenship?

A. I never did.

65. Q. Did you receive this certificate directly from your husband?

A. My husband actually gave it to me and told me to take very good care of it.

66. Q. Did you ask for this or did your husband give it to you on his own accord?

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

The accused made no reply.

The commission announced that the objection was sustained.

67. Q. When was the last time you were living together with your husband?

A. In 1941.

68. Q. Do you know the day and month?

A. I do not remember.

69. Q. When your husband was brought away, were you there at home?

A. I was not home.

70. Q. When did you know that your husband was taken to Gerasmac?

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

The accused made no reply.

The commission announced that the objection was sustained.

71. Q. You have testified that the Japanese soldiers took your husband away. Before this time did you run away to another island?

A. No, we did not go to any other island. We stayed there at Babelthuap and those people were at Garasmao.

72. Q. How many times did you go to see your husband while he was confined in Garasmao?

A. I went to see him three times. Those times were dangerous. In those days there were a lot of bombing raids and there were soldiers policing on the roads.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that she had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 11:30 a.m., took a recess until 2 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.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Sano, Giichi, former Kempei first lieutenant.

2. Q. If you recognize the accused, tell us their names and former ranks.

A. On the left is Warrant Officer Ajioka and to the right of him is Sergeant Yamada.

3. Q. Did you ever have duty with the Japanese army in the Palau Islands?

A. I did.

4. Q. Between what dates did you serve in the Palau Islands?

A. I went to Palau on March 18, 1944 and served there until March 23, 1946, at which time I arrived at Uraga.

5. Q. What were your duties in December of 1944?

A. I had duty as head of the Special Higher Section of the South Seas Kempeitai.

6. Q. And who was your immediate superior in command?

A. It was commanding officer of the Kempeitai, Lieutenant Colonel Miyazaki.

7. Q. I show you "Exhibit 2" and ask you if you can identify this man?
A. Yes, I do.

8. Q. Who is he?
A. He was an Englishman, James.

9. Q. Is that the only name you know this man by?
A. I came to know him from the record that was at the Kempeitai and in this record I believe it stated Charlie Smith, "so and so" James.

The accused moved that this answer be stricken from the record on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

10. Q. Where did you see this record that you just told us about?
A. When I came to Palau the Kempeitai was at Koror. I saw the record when the Kempeitai was at Koror Island.

11. Q. What particular kind of a record was it?
A. The South Seas Kempeitai makes a report to the Kempeitai headquarters in Tokyo and this was among these reports that were sent to headquarters in Tokyo.

12. Q. What did these reports cover?
A. This was a report on the circumstances of the foreigners on Palau and I looked at this and found this out.

13. Q. When was the first time you saw this man James?
A. When I was ordered by the commanding officer to go investigate the foreigners at Garasmao in December of 1944. That was the first time I saw James.

14. Q. Was this commanding officer Lieutenant Colonel Miyazaki?
A. Yes.

15. Q. What orders did Lieutenant Colonel Miyazaki give you?
A. Miyazaki ordered me as follows: "Staff Officer Yajima of Division Headquarters wants the Kempeitai to investigate the actual facts of the several natives who have escaped from Garasmao and also the Englishman and the German and his wife." This Englishman and the German and his wife were to be guarded and protected by the Kempeitai so I was ordered by Miyazaki to go to Garasmao to investigate the actual fact and to bring back the Englishman and the German and his wife to Gasupan Kempeitai Detachment.

16. Q. Did Miyazaki tell you to take the Englishman to the Gasupan Detachment or send the Englishman to the Gasupan Detachment?
A. I was ordered so.

17. Q. After you received these orders, what did you do?
A. At that time commanding officer told me to bring along Sergeant Major Tamamoto and Sergeant Yamada and some assistant Kempeis so I took along Sergeant Major Tamamoto, Sergeant Yamada and two or three Kempeis and went to Garasmao. *JK*

18. Q. This Sergeant Yamada that you took along, is he the Sergeant Yamada accused in this case?

A. Yes.

19. Q. What happened after you set out?

A. First I contacted the army unit which was stationed at Garasmao. At this unit there were natives working so I talked to the commanding officer and had the natives cooperate. I asked them where this Englishman James was living and about his family.

20. Q. What happened then?

A. Other to asking these natives, there were police of the civil government stationed there and also some Japanese were working in the office concerning the farming of lands, so from these persons I obtained the living condition of the Englishman, James. I left Sergeant Major Tamamoto and with Yamada and one assistant Kempei and a native who was working at the unit as our guide, went to the hut where James the Englishman was living. I saw this Englishman for the first time when I went to his hut. With this native as an interpreter I investigated to find out whether or not this man was the Englishman, James. Then we brought him to the unit stationed at Garasmao. The next day we brought the German and his wife to the same unit. JK

21. Q. What did you do with James?

A. I sent this Englishman, James, with Sergeant Yamada and one assistant Kempei on a truck to the Gasupen Kempeitai Detachment.

22. Q. And in what month of what year was this?

A. It was around 20 December 1944.

23. Q. After you sent James off in a truck with Yamada, did you ever see him again?

A. No, I haven't.

24. Q. Do you know what became of James?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate did not reply.

The commission announced that the objection was not sustained.

A. I do.

25. Q. Who told you what happened to James?

A. The commanding officer, Miyazaki, told me that he ordered First Lieutenant Nakamura to dispose of him.

Cross-examined by the accused:

26. Q. You have testified that you were the head of the Special Higher Section of the South Seas Kempeitai. How many men were in this Special Higher Section?

A. When I first arrived at the South Seas Kempeitai the Special Higher Section was made up by Warrant Officer Ajioka, Sergeant Major Tamamoto, Sergeant Takahashi and myself. After that the organization changed and Ajioka went to Gasupen Detachment as the head of this Gasupen Detachment

and at the time of the incident, there was only Sergeant Major Taramoto, Sergeant Takahashi and myself.

27. Q. Where was Yamada at this time?

A. Yamada was with the Palau First Detachment or Company.

28. Q. Who was the commanding officer of Yamada, then?

A. The commanding officer of the First Detachment or Company, First Lieutenant Nakamura.

29. Q. You have testified that you saw the report of James in the report made from the South Seas Kempeitai to the Kempeitai headquarters in Tokyo in regard to circumstances of the foreigners. What kind of circumstances were in this report?

A. I think the names were listed under the heading of the foreigners under confinement at Palau.

30. Q. Please explain in detail the circumstances when you went to the hut of James at Garasiao.

A. As this happened nearly four years ago I do not recall very clearly, but what I recall is that James was living alone and was living together with his relatives. The hut was the same kind of hut the natives use, with the floor made of bamboo. He had no particular personal effects. I also looked into his room but did not find anything, only a small bundle which seemed to be his clothing. Therefore, when I sent him back to the Kempeitai I let him take this bundle with him.

31. Q. When you went to the hut of James, was there any guard around there?

A. I do not recall that there were guards.

32. Q. When you went to the hut of James did you notice anything to make you believe that he was under confinement?

A. There were no guards stationed there but when I talked with the police from the civil government who were stationed there he said he had another native watch over this Englishman but when I went back there I didn't see anyone who appeared to be a guard.

The accused moved that that portion of the answer beginning with and following the words "but when I talked" be stricken from the record on the ground that it was hearsay.

The judge advocate replied.

The commission directed that the words be stricken out.

33. Q. Did you investigate this man James?

A. I was ordered by the commanding officer to send this Englishman to the Gasupan Detachment. When I first saw James I confirmed whether he was the Englishman, James, or not and that is the only time I talked to him, and after that I didn't ask any more details.

34. Q. Then you only knew that he was the Englishman, James, from the record you saw which was sent from the South Seas Kempeitai to the headquarters in Tokyo?

A. Yes.

35. Q. When you first saw James, what was James wearing?

A. I don't recall clearly but I believe he had short pants and wore a dirty shirt. And he was very dark by sunburn and at one glance he did not look like an Englishman.

36. Q. You testified that with a native as an interpreter you found out whether he was the Englishman, James, or not. What was the language being spoken?

A. I am not very good in English but as I was told that it was an Englishman I asked him in English if he was the Englishman or not but he did not answer so I told the native to ask him and the native said something and I found out that he was James.

37. Q. When you went to James' hut, his wife and children were not there?

A. The family was not there. James was alone.

38. Q. You have testified before that Yajima of the Division Headquarters told Commanding Officer Miyazaki that several natives had escaped from Garasmao and you were ordered to go make this investigation and also told to bring the foreigners back to the Kempeitai. Do you actually know about the fact of these several natives escaping from Garasmao?

A. I do. From the investigation I found out that two natives conferred and had escaped and the whereabouts of the eldest son of James and his wife was unknown.

39. Q. In your investigation of these persons who escaped, did you find out whether they had communicated with James or not?

A. I could not find out whether James and his son were communicating, but there was some contact between James' son and the natives who escaped.

40. Q. Then the reason why James was confined at the Gasupan Kempeitai was that it was feared that James, too, might escape. Is that the reason?

A. James' eldest son escaped and it was feared that he might communicate with James and also it was feared that James might escape through the help of his son. Furthermore, there were rumors by the natives and by other personnel that foreigners were spying and this was reported to Division Headquarters and Division Headquarters had these foreigners confined because of such conditions. JK

41. Q. If a native escaped, why did it matter?

The entire line of questioning 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.

42. Q. You said that you were head of the Special Higher Section and Yamada was part of the First Kempeitai Company which was the Nakamura Company. Were you also part of the Nakamura Company?

A. I was attached to the Kempeitai Headquarters. JK

43. Q. When you came to Palau, was the Kempeitai under the orders and command of General Inoue?

A. When I first came to Palau the South Seas Kempeitai was directly appointed by the Minister of the Army and was not under Inoue.

44. Q. Was it under Inoue in December, 1944?

A. When I first came to Palau it was directly appointed by imperial proclamation but at the time of this incident in December, 1944, I believe it was a Kempeitai Detachment to the Division Headquarters.

45. Q. You talk about a record of foreigners. Do you know when that record was made?

A. Do you mean the document at the time I arrived?

46. Q. The document you testified had the list of these foreigners on Palau.

A. I arrived at Palau in March of 1944 and at this time I saw this. This was a copy of the report sent in to the Kempeitai headquarters in Tokyo and I do not know when it was made.

47. Q. You don't know who made it, either?

A. I do not know.

48. Q. Do you know whether there were ever any corrections made to that report?

A. I do not recall.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

49. Q. When you saw this report, do you know approximately how many names were on this report?

A. I remember.

50. Q. How many?

A. There were five - one Englishman, one German missionary and his wife, and two Spanish missionaries.

51. Q. When you say that you got orders to the effect that the Englishman was to be protected, do you mean that he was to be protected from American bombings?

A. No.

52. Q. What do you mean, then?

A. At that time the natives and the Japanese living around Garasmao were saying that the German and the Englishman were acting to signal the American planes. In other words, spying. Therefore, the unit that was stationed at Garasmao made a report to Division Headquarters to this effect and Divi-

sion Headquarters, in turn, ordered Commanding Officer Miyazaki to have them interned. When I went to get the German there was a guard with a gun and fixed bayonet. Because of this they wanted them under the Kempeitai's custody.

53. Q. So as to protect them from the Japanese?

A. No. Just that they were acting as spies by signaling the planes and it was a disadvantage to the Japanese forces, so the Division Headquarters ordered them to be put under the protection of the Kempeitai.

54. Q. You said there were only five names on this list of foreigners. Wasn't the name of James Sally on that list?

A. I do not recall.

55. Q. Then it wasn't a list of all the foreigners in the Palau Islands?

A. It was a list of names of the foreigners with whom the Kempeitai dealt.

56. Q. Before you went down to pick up this Englishman, had you ever seen an Englishman before in Japan or any other place?

A. I had.

57. Q. Did this man that you turned over to Yamada to bring back - did he look like the Englishmen you had seen before?

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.

58. Q. What army unit was stationed there at Garasmao?

A. The name of the unit?

59. Q. Yes.

A. I don't recall definitely, but I think it was the Emi Unit.

60. Q. When you went down and questioned this man, James, didn't he deny at first that he was an Englishman?

A. No, he did not.

61. Q. Did he say he was born in Hong Kong?

A. Nobody asked at this time.

62. Q. All you did was take his word that he was an Englishman named James?

A. Yes.

63. Q. When you went there in December of 1944, do you mean that this man, James, was still there in Garasmao?

A. I went to Garasmao and then I sent the Englishman, James, from Garasmao to Gasupan. *JK*

64. Q. And that was in December, 1944?

A. I believe it was around the twentieth of December, 1944.

65. Q. He was living in a house at that time?

A. In a native hut.

66. Q. You said he was living with somebody else?

A. I heard that they were the relatives of the wife of James.

67. Q. Were they natives?

A. Yes.

68. Q. Were they women and children?

A. At the same hut there were two other native ^{men} and about two huts away there is another hut and there are women and children there. JK

69. Q. Was this man, James, barefooted when you questioned him?

A. Yes, he was.

70. Q. Is he the only one that you questioned that day?

A. When I was led past this hut the women and children were in and further in there was another hut and there were James and two native men there. I questioned the native who was in the same hut with James about James.

71. Q. How long did the questioning take?

A. I just questioned about James and then looked around the hut so I don't think it took more than twenty or thirty minutes.

72. Q. Then, did I understand you right when you say you loaded James on a truck and told Yamada to take him to Gasupan?

A. That day I believe I took him along to the Emi Unit with us and that evening or the next day there was a truck leaving from the Emi Unit so I put him on the truck and sent him out. JK

73. Q. With whom did you send him?

A. I ordered Yamada to take him and also an assistant Kempei.

74. Q. What orders did you give Yamada?

A. I recall that I ordered him to bring him to the Gasupan Detachment.

75. Q. You said you never saw this man James after that. Is that right?

A. I haven't seen him since.

76. Q. When did Miyazaki tell you that he had had Nakamura execute the Englishman?

A. The latter part of December, I believe.

77. Q. Did Miyazaki tell you that he had ever seen the man that he had Nakamura dispose of?

A. I recall that Miyazaki went to see this person while he was confined at the Gasupan Detachment.

78. Q. But you never went to see him?

A. No.

79. Q. In your testimony on direct examination you said that you could not recall certain facts because it was four years ago. Is that a mistake that it was four years ago?

A. I am not mistaken for it is 1947 now. It was 1947, 1946, 1945, 1944. That is the Japanese system.

80. Q. Did you ever see the son of James?

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

The accused made no reply.

The commission announced that the objection was sustained.

81. Q. Do you know whether there were ever any records made to show that this man, James, was disposed of by Nakamura?

A. This I did not hear about.

Reexamined by the judge advocate:

82. Q. Did you tell Yamada to remain at Gasupan when you gave him instructions regarding Smith?

A. I just ordered Yamada to bring James to the Gasupan Detachment and Commanding Officer Miyazaki ordered Yamada to stay at the Gasupan Detachment.

83. Q. Do you know whether Miyazaki gave those orders to Yamada direct or through you?

A. I recall that Miyazaki told me and I relayed it to Yamada.

84. Q. Was Sergeant Yamada attached to the section that you had charge of?

A. At the time of this investigation there were myself, Tamamoto and Takahashi in the Special Higher Section. Commanding Officer Miyazaki ordered Tamamoto and myself to go and also ordered Yamada who was a member of the First Detachment to go along too. So Takahashi had to be left behind at the headquarters.

85. Q. And you say that in December of 1944 Sergeant Yamada didn't belong to the Special Higher Section. Is that correct?

A. Yes. He was a member of the First Detachment.

86. Q. Do you know the name of the assistant Kempei that went along with Yamada to Gasupan?

A. I believe it was Yamamoto.

Recross-examined by the accused:

87. Q. You say that Yamada belonged to the First Kempeitai Company. Nakamura was the commanding officer of the company, wasn't he?

A. The commanding officer of the First Detachment or Company was First Lieutenant Nakamura.

88. Q. When you took Yamada with you, was Yamada at the headquarters at that time or at Gasupan?

A. I believe Yamada was at Gasupan at that time and I recall that he was first called to the headquarters and then sent along.

89. Q. Were the members of the Gasupan Detachment under Nakamura?

A. I recall that the Gasupan Detachment was under the command of the First Detachment or Company.

Reexamined by the judge advocate:

90. Q. Do you know, as a matter of fact, whom the Gasupen Detachment came under?

A. First Lieutenant Nakamura is under Colonel Miyazaki and the Gasupen Detachment was organized under the First Detachment or First Company and I believe this took place when headquarters moved from Gasupen to Shizui-San around November or December of 1944.

Examined by the commission:

91. Q. At the time these incidents took place, was Yamada attached to the Gasupen Detachment under direct command of Ajioka or was he still attached to the headquarters under direct command of Nakamura?

A. I do not recall clearly, but I believe he was still a member of the First Detachment or Company and had duty at Gasupen.

92. Q. Then when he was at Gasupen, was he under the direct control of Ajioka?

A. The Gasupen Detachment was not a regular detachment in the sense which is usually used. Commanding Officer Miyazaki just called it the Gasupen Detachment and had sent personnel there to work, and this is a detachment which is sent out from the First Detachment or Company.

93. Q. While Yamada was at Gasupen was he under the charge of Ajioka?

A. When Yamada had duty at Gasupen he was under the command of Ajioka. That is, for example, when Commanding Officer Miyazaki ordered Yamada to go with me to investigate, Yamada would come under my command but when I sent him back to Gasupen with James, Commanding Officer Miyazaki ordered Yamada to stay at Gasupen. He was under the command of Ajioka.

Neither the judge advocate, the accused, nor the commission desired further 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 4:30 p.m., adjourned until 9 a.m., tomorrow, December 18, 1947.

90. Q. Do you know, as a matter of fact, whom the Gasupan Detachment came under?

A. First Lieutenant Nakamura is under Colonel Miyazaki and the Gasupan Detachment was organized under the First Detachment or First Company and I believe this took place when headquarters moved from Gasupan to Shizui-San around November or December of 1944.

Examined by the commission:

91. Q. At the time these incidents took place, was Yamada attached to the Gasupan Detachment under direct command of Ajioka or was he still attached to the headquarters under direct command of Nakamura?

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92. Q. Then when he was at Gasupan, was he under the direct control of Ajioka?

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Neither the judge advocate, the accused, nor the commission desired further 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 4:30 p.m., adjourned until 9 a.m., tomorrow, December 18, 1947.

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, December 18, 1947.

The commission met at 9:30 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army, Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Andrew I. Lyman, U. S. Marine Corps,
Lieutenant Commander John S. Cheredes, Medical Corps, U. S. Navy, members
and Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Iwamoto, Harukichi, former superior private.
2. Q. If you recognize these accused, tell us their names and former ranks.
A. Warrant Officer Ajioka and Sergeant Yamada.
3. Q. During the month of December, 1944, were you attached to the forces
of the Imperial Japanese Army in the Palau Islands?
A. Yes, I had duty at the Gasupan Detachment.
4. Q. Who was the officer in charge of the Gasupan Detachment at that
time?
A. Warrant Officer Ajioka.
5. Q. Who were the other members of that detachment in December of 1944?
A. Warrant Officer Ajioka was the commanding officer of this detachment.
Under him there were Sergeant Yamada, Corporal Nakagawa, Uemura and Hayashi.
6. Q. About that time did you receive an assignment in connection with
some prisoners?
A. Yes.
7. Q. From whom did you receive the assignment?
A. From Warrant Officer Ajioka.

8. Q. What did Ajioka tell you to do?

A. I was told by Warrant Officer Ajioka that the Englishman and the Germans were coming to the Asahi Village Detachment and was told to go and get them. So I went by myself around evening to get them. When I went to the Asahi Village Detachment the Englishman and Germans were there and that night I slept there at that detachment. The next day, with the help of an assistant Kempei, I guarded the three during the daytime. Around evening we put them on the truck and took them to Gasupan. With Hayashi I guarded them for about three days. After that Warrant Officer Ajioka and I went on a patrol to Mizuho Village. Warrant Officer Ajioka went back to Gasupan right away. I stayed alone and I patrolled this area for two or three days.

9. Q. About what date was it that you went to the Asahi Village Detachment?

A. I forget the date but I believe it was past the middle of December.

10. Q. On the truck with which you returned the prisoners from Asahi Village Detachment to Gasupan were there any other military personnel besides yourself?

A. Yes. There was one assistant Kempei and one Kempei and I believe this Kempei was Sergeant Yamada, but I am not sure.

11. Q. After you had delivered the prisoners to the Gasupan Detachment, did you have any further duties in connection with them?

A. I was ordered by Warrant Officer Ajioka to guard the three.

12. Q. For how long a period did you guard them?

A. Two or three days, I recall.

13. Q. During that period, did you learn the name of the prisoner who was referred to as the Englishman?

A. Yes. The German understood Japanese and he told me that this person was an Englishman and his name was Smith.

The accused moved that this answer be stricken from the record on the ground that it was hearsay.

The commission announced that the motion was not sustained.

14. Q. I show you "Exhibit 2" and ask if you recognize it?

A. This was the Englishman, Smith.

15. Q. And is that the man you transported from the Asahi Village Detachment to the Gasupan Detachment in December of 1944?

A. Yes.

16. Q. When you returned from this inspection trip, were the prisoners still at the Gasupan Detachment?

A. The German and his wife were not there.

17. Q. Was Smith there?

A. I do not recall.

18. Q. About what date did you return to the Gasupan Detachment?

A. I do not recall the date.

19. Q. After this time did you ever see the body of Smith again?

A. While I was working at the Mizuho Village Detachment, right before the end of the war, it was the fifteenth of August, 1945, a runner from headquarters came to us around four o'clock in the morning and ordered us to gather at the former site of the Gasupan Detachment, therefore we went. Corporal Nakagawa came to get us and led us to the entrance of the scene. From headquarters Commanding Officer Nakamura and about thirty Kempei and assistant Kempei came to the scene. We all assembled with Nakamura in command and after receiving cigarettes we were ordered by Nakamura to dig the graves so we started digging for the corpses. At this time I went to the grave where the Englishman alone was buried and dug it up and after I dug it up I knew it was the Englishman. The reason I knew it was the Englishman was that I had gone to get him from the Asahi Village Detachment and I knew his features well and, furthermore, the corpse had not deteriorated very much so I knew it was the corpse of the Englishman, Smith.

20. Q. What was done with the body of Smith?

A. We made a stretcher and carried all the corpses to one place and we made a fire and cremated the corpses and then we dug a hole and buried the remains.

21. Q. During the burial or during the course of the day, was anything said in regard to the Englishman by either of these accused?

A. No.

22. Q. Didn't Ajioka address the group after the burial?

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

The judge advocate replied.

The commission announced that the objection was sustained.

Cross-examined by the accused:

23. Q. In the direct examination you mentioned Detachment Commanding Officer Nakamura. By this do you mean Captain Nakamura, Kazuo?

A. I do not know his name but he was detachment commanding officer. He was commanding officer of the First Detachment or Company and he was our commanding officer.

24. Q. Is this Nakamura the Nakamura that you met here yesterday?

A. Yes.

25. Q. In December, 1944, were you the subordinate of Commanding Officer Nakamura?

A. Yes.

26. Q. While you had duty at the Gasupan Detachment you were still a member of the Nakamura First Detachment, were you not?

A. Yes.

27. Q. You have testified that you went to dig the corpse of this Englishman, Smith, and you also knew that that particular corpse was the corpse of the Englishman, Smith, because it was not deteriorated very much. Please explain more specifically about the evidence which you obtained showing that it was the Englishman, Smith.

A. This grave was something like an air raid shelter. It was very moist and his clothes were still on. He had on pants which came below the knee but the color had changed. Some of the flesh was still left on his face and on his body. He was not very tall and as the corpse was not scattered I knew that he was the Englishman, Smith.

28. Q. Please explain the condition of his face when you dug up the corpse.
A. The color was dark and there was no flesh on the head and only a little flesh was left on the face so I do not recall clearly as to this point.

29. Q. Was his face in the condition where you could identify him by looking at it?

A. By looking only at his face I could not identify him.

30. Q. Other than his pants, were there any other belongings of Smith dug up when you dug up his corpse?

A. There were no belongings dug up but there were some rags which came out of the hole.

31. Q. When you saw this did you know that this belonged to Smith?

A. Smith only had rags as his belongings and I do not know if this rag that was dug up belonged to him or not.

32. Q. The pants which you dug up. Was it the same pants Smith was wearing while you were guarding him?

A. Yes.

33. Q. Did you examine the back of the head of the corpse of the Englishman, Smith?

A. I dug it up but as it smelled bad I did not go close to it.

34. Q. Was there anyone else who examined this?

A. I believe there is no one who examined this in detail.

The commission then, at 10:30 a.m., took a recess until 10:45 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.

Iwamoto, Harukichi, 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.)

35. Q. When did you say that you first entered the army?

A. I entered the army in January, 1942.

36. Q. At the time of this incident what was your rate?

A. Superior private.

37. Q. How much education had you had before you entered the army?
A. Do you mean school?
38. Q. Yes.
A. Grade school graduate.
39. Q. During all the time you were in the army, what kind of duty did you have?
A. Working, no special duty, just maneuvers and such things.
40. Q. When Ajioka told you to guard these persons, do you recall just what he told you to do?
A. I recall that he said, "Guard the three."
41. Q. You said that you were with them for three days guarding them. Is that right?
A. I recall it was two or three days.
42. Q. Did anybody else help you guard them?
A. Yes. There was one Superior Private Hayashi who rotated with me.
43. Q. Where did you keep this prisoner?
A. During the daytime at the air raid shelter and at night in the barracks formerly occupied by the assistant kempai.
44. Q. During these two days that you guarded them, did Ajioka ever come and see them?
A. Yes.
45. Q. Did Yamada come and see them?
A. Yes.
46. Q. Did either Ajioka or Yamada talk to these people?
A. I do not recall.
47. Q. When you talked to the German, did you talk to him in Japanese?
A. Yes.
48. Q. Was there just one German?
A. One German and his wife. They were man and wife.
49. Q. And you kept the three of them, the Englishman, the German, and his wife, all in one room?
A. Yes.
50. Q. Couldn't the Englishman speak Japanese?
A. No.
51. Q. What was this German's name?
A. I do not know.
52. Q. Do you mean you spoke to a German and guarded him for two days and can't remember his name?
A. I did not ask him.

53. Q. But you asked him what the Englishman's name was, is that right?

A. Yes.

54. Q. Why did you want to know the Englishman's name and not the German's name?

A. I did not particularly ask the Englishman. I had a Japanese - English dictionary and was showing it to the German and he told me the Englishman's name.

55. Q. How long ago was that?

A. About three years ago.

56. Q. And what did this German tell you the Englishman's name was?

A. I heard that this old man was an Englishman and his name was Smith.

57. Q. Do you know whether Japan was at war with Germany at that time?

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.

58. Q. Do you know whether Japan was at war with England?

A. I did.

59. Q. So that when the German told you that this other person was an Englishman, then the two Germans were released, were they?

A. That I do not know.

60. Q. Do you know whether the Japanese killed the German and his wife too?

A. No.

61. Q. This picture that you identified. When did you first see that picture?

A. You mean when I saw this picture first?

62. Q. Yes, this picture that you said was Smith, when did you first see it?

A. Here.

63. Q. It wasn't the picture that Smith had with him that day?

A. I do not know whether he had a picture or not. I wasn't shown any picture.

64. Q. Can you remember what the color of Smith's hair was in this picture you said was Smith this morning?

A. His hair was kind of red and white.

65. Q. Not black like yours?

A. I do not recall clearly.

66. Q. Do you know what the color of his coat was in the picture?

A. White.

67. Q. Did Smith have a white coat on those two days you were guarding him?

A. I believe he was wearing a short-sleeved shirt.

68. Q. What color pants did you say this person that you dug up that day had on? You mentioned something about the color of his pants had changed.
A. They were dark.

69. Q. But you could tell it was the same pants he wore that day you guarded him, is that right?
A. Yes.

70. Q. Could you tell it was the same pants he had on in the picture you were shown this morning?
A. It was different from the pants in the picture.

71. Q. What kind of pants did the man in the picture have on?
A. Whitish pants.

72. Q. Could you tell from looking at the corpse how long it had been buried?
A. I believe it was about seven months.

73. Q. You dug it up in September, 1945, did you?
A. No. 15 August.

74. Q. Why do you remember the date as 15 August?
A. It was the day on which the war ended so I remember it.

75. Q. So on the very day the war ended Nakamura came around and dug up this body?
A. Yes.

76. Q. Were you not surprised that the body was so well kept and that you could recognize it after it had been buried for seven months?

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

The accused made no reply.

The commission announced that the objection was sustained.

77. Q. When you dug, you said it was very moist there. You mean that you had to dig through mud to get to the body?
A. From this place there was a spring coming up and water was running.

78. Q. So where you dug was coral then?
A. No. It was dirt.

79. Q. What did you dig with?
A. Shovel.

80. Q. Were you the only one digging?
A. There were about three others but I do not recall their names.

81. Q. How did you know where to dig?
A. At that time Warrant Officer Kokubo showed me where to dig.

82. Q. Were you the first one of the three diggers to discover the body?
A. I believe we rotated and dug and I dug on the second rotation.

83. Q. But you don't know whether your shovel was the first one to come across this Smith?

A. I recall that when the others dug the corpse started showing.

84. Q. So when the corpse started to show, who was it who said, "This is Smith's body"?

This question was objected to by the judge advocate on the ground that counsel was misquoting the witness.

The accused replied.

The commission announced that the objection was sustained.

85. Q. As soon as the corpse began to show, did you say, "This is Smith's body"?

A. There were four of us and we rotated and dug and when he came out we said among ourselves that this is the corpse of the Englishman who was at Gasupan.

86. Q. Did Nakamura agree with you that it was the corpse of the Englishman?

A. Nakamura wasn't at the scene all the time. He was going from one place to another so I did not talk to him.

87. Q. The thirty people who were digging, were they digging in different spots?

A. Yes.

88. Q. Of the four people who were digging, had any of them buried this Englishman?

A. When we finished the work everybody buried him.

89. Q. You said four of you were digging in this one place. Now, did you or any of the other three who were digging with you bury Smith some seven months ago?

A. I do not know what happened seven months before.

90. Q. Had any of the four people, besides yourself, guarded Smith when he was at Gasupan?

A. No.

91. Q. So then you were the only one that could recognize Smith when you found his body. Is that right?

A. Yes.

92. Q. Everybody else took your word for it that it was Smith's body. Is that right?

A. Yes.

93. Q. When you came across this body, did you notice if all his teeth were in his head?

A. I do not recall.

94. Q. Do you recall if when you guarded Smith he had any teeth or not?

A. I recall that he had teeth.

95. Q. Do you know how old Smith was when you were guarding him?

A. I believe he was past sixty.

96. Q. Did you lift the body or the corpse out of the hole?

A. We all lifted him up.

97. Q. When you lifted him up, did his clothes cling to the body?

A. Yes.

98. Q. Did the shoes stay on his feet?

A. He was not wearing shoes.

99. Q. Could you tell by looking at the corpse how this Englishman had died?

A. I could not tell by looking at the corpse.

100. Q. Did anybody examine the corpse to see how the Englishman was killed?

A. Nobody inspected.

101. Q. Did anybody look to see or did you notice whether the body was all black and blue as if he had been bruised from being beaten?

A. Where?

102. Q. On the body of the corpse?

A. I did not notice.

103. Q. You can't remember whether the body looked as if it had been beaten up before it was buried?

A. Nobody beat him at Gasupan.

104. Q. Was this corpse buried in a wooden box?

A. No.

105. Q. Of the thirty people that were there, you were the only one that recognized that it was Smith's body?

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

The accused did not reply.

The commission announced that the objection was sustained.

Reexamined by the judge advocate:

106. Q. You have stated you were a member of the Gasupan Detachment. Is that right?

A. Yes.

107. Q. And who was the officer in charge of that detachment?

A. Warrant Officer Ajioke.

Recross-examined by the accused:

108. Q. During the time you were in the army, did you ever do clerical work?

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

The accused replied.

The commission announced that the objection was sustained.

109. Q. Do you understand anything about the assignment of personnel and the authority and responsibility of command?

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

The accused made no reply.

The commission announced that the objection was sustained.

110. Q. Why did you say on direct examination that Nakamura was your commanding officer and now you say that Ajioka was the commanding officer?

A. Nakamura is the commanding officer of the First Detachment or Company and under this the Gasupan Detachment was established. And the First Detachment or Company was at headquarters and I was sent to the Gasupan Detachment to carry on duty there.

111. Q. When were you sent from headquarters to Gasupan?

A. At first headquarters and the First Detachment or First Company were situated at Gasupan but they moved to Shisuizan. At that time this Gasupan Detachment was left here and I was left here to work at the Gasupan Detachment. OK

112. Q. Did Ajioka ever tell you that he was the commanding officer?

A. Yes.

113. Q. When did he tell you that?

A. When the headquarters separated from the detachment.

114. Q. When the Gasupan Detachment was established, was it still under the First Detachment under Nakamura?

A. I did not know at that time whether it was the command of Nakamura or the commanding officer, Miyazaki.

115. Q. To what unit did Warrant Officer Ajioka belong?

A. At first Ajioka was a member of the Special Higher Section and when the headquarters and First Detachment moved to Shisuizan I believe Ajioka was left as the head of the Gasupan Detachment.

116. Q. You have testified before that this Gasupan Detachment was sent out from the First Detachment or Company. Is this correct?

A. I said before that I do not know whether the Gasupan Detachment was under the command of Nakamura or Miyazaki.

117. Q. That is what you said to my question but I was talking about your answer to Commander Carlson's question.

A. I was a member of the Nakamura Unit and I was myself left at Gasupan.

118. Q. Was it Warrant Officer Ajioka or Captain Nakamura who kept your service record and your personal records?

A. I do not recall.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

A witness for the Prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Nakagawa, Takeo, Kempei corporal.

2. Q. If you recognize the accused, tell us their names and former ranks.
A. On this side is Head of Detachment Warrant Officer Ajioke, Misao, and on the other side is Kempei Sergeant Yamada, Kiyoshi.

3. Q. Did you ever have duty in the Palau Islands?
A. Yes.

4. Q. Between what dates did you serve there?
A. I arrived at Palau on 29 December 1943 and had duty there until the end of the war when I was demobilized.

5. Q. In December of 1944, what outfit were you attached to?
A. South Sea Kempeitai First Detachment or First Company.

6. Q. And in December of 1944, where in the Palau Islands were you stationed?
A. Amionsu which is on Arakabesan Island.

7. Q. I show you "Exhibit 2" and ask you if you can tell us of whom this is a picture?
A. Yes, I know.

8. Q. Who is he?
A. Charlie Smith.

9. Q. Where did you first see Charlie Smith?
A. At Gasupan Detachment.

10. Q. How did you happen to be at the Gasupan Detachment?
A. Gasupan Detachment was called a detachment but actually there was no work so all the sick persons were sent there. I was sick and I was sent to Gasupan and Namatome went back to headquarters when I came to Gasupan.

11. Q. Was an officer in charge of the detachment?
A. There was no officer.

12. Q. Was Ajioka at the Gasupan Detachment?

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

The judge advocate withdrew the question.

13. Q. Was there any warrant officer in charge of the Gasupan Detachment?

A. Yes, there was.

14. Q. Who was that?

A. Ajioka, Misao.

15. Q. Is that the Ajioka that you just identified in this courtroom?

A. Yes.

16. Q. Tell us what you know about the man that you have identified as Charlie Smith?

A. What do you want me to explain?

17. Q. When did Charlie Smith arrive at the Gasupan Detachment?

A. As I was in bed I do not know when he came to Gasupan.

18. Q. Do you know what month he got there?

A. I believe he came after I went there but I do not know who brought him there or when he came.

19. Q. Do you know how long he remained at Gasupan?

A. Do you mean Charlie Smith?

20. Q. Yes, Charlie Smith.

A. About one week or ten days.

21. Q. And where was he kept while he was at the Gasupan Detachment?

A. He was in the barracks which was formerly occupied by the assistant Kempei.

22. Q. Was he kept under guard?

A. I do not know.

23. Q. Did you ever receive any orders from anyone concerning the digging of a hole?

A. Yes.

24. Q. Who gave you the orders?

A. Ajioka.

25. Q. What did he tell you?

A. I was not ordered to go dig a hole but as I was sick I went to report to Ajioka that I was going for sick call. At that time, Hayashi, Uemura and another prisoner were there. Hayashi had a shovel, Uemura had an air gun and the prisoner had a hoe. Ajioka told me that as long as they were going to dig a hole behind the Sumida Unit, "You go there and see the place."

The accused moved that the answer be stricken from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

26. Q. What happened after you received these orders?

A. I was told to go and see the hole. Hayashi had the shovel, Uemura had the air gun and the prisoner had the hoe, so we all went behind the Sumida Unit into the jungle and I went with them also and I told them when I got there to dig a suitable hole and then go out and shoot some pigeons. After I told them this I went to the Sumida Unit for sick call and then I came back. JK

27. Q. When Ajioka spoke to you of this hole did he use the word "hole" or did he use the word "grave"?

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

The judge advocate withdrew the question.

28. Q. When Ajioka told you about the hole, what word did he use to describe it? JK

A. He said, "They are going to dig a hole so you go and see the hole."

29. Q. When you told these men to dig a "suitable hole" what did you mean?

A. When I was told to go and see the hole I was not told what it was for. We used to dig holes for ammunition and also used to dig holes for sham battles. I also heard that the executive officer of headquarters received some ammunition and there was some ammunition near the place for the hole, so I thought it was for the ammunition, therefore I told them to dig a suitable hole and mark it. We did not know the size of the ammunition so I thought that when the ammunition came we could make it larger. My main object was to have them shoot the pigeons so I said so.

30. Q. Did you see the hole after it was dug?

A. I do not know anything at all about the hole.

31. Q. In relation to the time when the hole was dug, did you ever see Charlie Smith again?

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

The judge advocate withdrew the question.

32. Q. After you had gone out into the jungle for the purpose of supervising this hole digging, did you return to Gasupan?

A. I did not supervise the hole digging.

33. Q. After you left the men who were digging the hole, did you return to Gasupan?

A. Uemura just said that, "We will make a hole here" and I said, "It was all right", and I left for the Sumida Unit which was about two hundred meters from there for sick call and then I returned to Gasupan.

34. Q. Where was Charlie Smith when you returned to Gasupan?

A. I do not remember but, during the daytime, usually the prisoners were in the air raid shelter with Ajioka, Yamada, and an assistant Kempei but on that day Yamada was out on another job so he wasn't there and I do not know how he was that day.

35. Q. When did you next see Charlie Smith?

A. The next day I went to sick call again and the day after that Commanding Officer Nakamura came over and said that he was going to be sent home and at the time I saw him again.

36. Q. Did Nakamura say this to you?

A. Do you mean that he was going to be freed?

37. Q. Yes.

A. He said it to me at the galley.

38. Q. And after Nakamura said this to you, where did you see Charlie Smith?

A. There was a road next to the air raid shelter and I saw Nakamura, Ajioka, Yamada, and Smith going down this road.

39. Q. Was there anyone else with them?

A. Other than this I do not recall.

40. Q. Did you ever see Smith again after you saw him walking down the road with Ajioka, Nakamura, and Yamada?

A. No.

Cross-examined by the accused:

41. Q. Do you know how long Smith had been in confinement when you first saw this Smith at Gasupan?

A. I do not know. I just think he was there about a week.

42. Q. Did you ever see this picture, which you identified, at Gasupan or on the Palau Islands?

A. No.

43. Q. Do you know if the picture was taken on the Palau Islands?

A. I do not know.

44. Q. When you saw Smith go with Nakamura, Ajioka, and Yamada that day, did you think he was going home?

A. Yes.

45. Q. You have testified that you received orders as to digging of this hole, given by Ajioka. Is this correct?

A. It is.

46. Q. The order for digging of the hole, wasn't it you who answered the phone from the headquarters telling the Gasupan Unit to dig the hole?

A. I did not receive an order to dig a hole from Ajioka. I was just told to go see the hole and furthermore I did not answer a phone call from the headquarters.

47. Q. You testified that you saw Nakamura, Ajioke, Yamada and Smith on the road in front of the air raid shelter. Did you hear anything said between Ajioke and Nakamura at this time?

A. I did not hear anything because I saw them from the galley which was about thirty or forty meters from the place.

48. Q. When Smith left, did he have any gear?

A. I believe he had a dirty bag something like the ones the natives usually carried their betel nuts they chewed in.

49. Q. Do you know what was inside of the bag?

A. No.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

It is regarding the hole. I did not receive any order to dig the hole. I think probably Hayashi and Uemura received this order. The reason is that if I had received this order or answered the telephone call I would have instructed the persons in what kind of hole to dig at the scene, but I do not recall their giving any kind of instructions.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and address.

A. Uemura, Senichi, Mie-Ken, Shima-Gun, Shijima-Mura.

2. Q. If you recognize these accused tell us their names and former ranks.

A. Warrant Officer Ajioke and Sergeant Yamada.

3. Q. Did you ever live in the Palau Islands?

A. Yes.

4. Q. When did you live there?

A. From 1936 until the end of the war.

5. Q. In December of 1944 just exactly where in the Palau Islands did you live?

A. I was living in my home near the Gasupan Kempeitai Detachment and I was working at the Gasupan Kempeitai Detachment. JK

6. Q. I show you "Exhibit 2" and ask if you can tell who it is?

A. Yes, he is the Englishman.

7. Q. Do you know his name?

A. I do not know his name.

8. Q. Where did you see this Englishman?

A. At the Gasupan Detachment.

9. Q. Do you remember the month and year in which you saw him?

A. I believe it was around December of 1944.

10. Q. Do you know how long this Englishman was at the Gasupan Kempeitai?

A. I usually went out fishing and getting vegetables and was not at the detachment most of the time and I do not know when he came to the detachment.

11. Q. After you learned that he was at the detachment, how many days did he remain there?

A. I usually went out fishing and getting vegetables and did not stay at the detachment but I think he stayed only about four or five days.

12. Q. While this Englishman was at the Gasupan Detachment, were you given any instructions concerning digging a hole?

A. I do not recall that I directly received an order for digging a hole, but in regard to digging the hole I went along.

13. Q. Tell us what you know about this hole digging.

A. The people who went were Corporal Nakagawa, Superior Private Hayashi, and the prisoner and I were made to go along too. I had lunch and I was going to shoot the pigeons and I was made to go along too.

14. Q. This prisoner that you say went along. Was it the Englishman?

A. No. He was not the Englishman. I believe he was Korean.

15. Q. You say you were made to go along. Who made you go along?

A. I do not remember who told me to go along. I forgot.

16. Q. Were you told what this hole was to be used for?

A. I never heard such a thing.

17. Q. Were you told how deep the hole was to be and how wide it was to be?

A. No.

18. Q. Who was given the order to dig this hole, if you know?

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. No, I do not know.

19. Q. Did you go along on this hole digging expedition?

A. Yes. I presume that Superior Private Hayashi told me to go along.

20. Q. Tell us about that.

A. Hayashi, myself, and the prisoner rotated and dug the hole and between times I went out to shoot pigeons.

21. Q. How big was the hole?

A. (The witness indicated with his hands a space about one yard in width, one yard in depth, and six feet in length.)

22. Q. After you had dug this hole, did you report back to anyone that it had been dug?

A. After we finished digging the hole I went along the edge of the jungle with my gun and I came back about evening so I do not know anything about the report.

23. Q. Did you, yourself, report to anyone?

A. No.

24. Q. After this hole was dug, when did you last see the Englishman?

A. The next morning.

25. Q. Tell us about that.

A. Do you mean when they went together?

26. Q. Yes.

A. That day, from the headquarters, the commanding officer of the First Detachment came with his orderly. This commanding officer of the First Detachment, the orderly, Ajioka, Yamada, and the Englishman, and I who brought the Englishman's bag of gear along.

27. Q. Who told you to bring the Englishman's gear along?

A. That I was told by Ajioka.

28. Q. What did Ajioka tell you?

A. He said, "Do you know where the hole was dug yesterday?" I said, "Yes," and he said, "Bring this gear and go to the hole."

29. Q. Where did you pick up the gear?

A. I believe the gear was at the entrance of the barracks where the Englishman was.

30. Q. How many of you left with the Englishman?

A. Nakamura, Nakamura's orderly, Ajioka, Yamada, and myself.

31. Q. How about the Englishman?

A. Yes, he went along.

32. Q. What happened then?

A. After we came to one place in the jungle I was asked, "Where is the hole?" But the day when we dug the hole I went to shoot the pigeons so I was not sure where the hole was and I said, "I will first go and find the hole." So I went out to find the hole.

33. Q. Who asked you where the hole was?

A. Ajioka.

34. Q. Did you volunteer to go look for the hole or were you ordered to go? *JK*

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

The judge advocate withdrew the question.

35. Q. Whose idea was it that you go look for the hole?

A. The reason I was made to go with this gear was that I was to lead them to this hole, but I was not sure that I could lead them to this place for

when we dug the hole I went to shoot the pigeons and I did not know where the entrance was. Therefore, I said that I would first go and look for the hole.

36. Q. Did you look for the hole?

A. Yes, I did. I couldn't find the hole because the position of the hole was different from the road we went into and I looked for the hole for about an hour.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

Stewart R. Smith, yeoman first class, U. S. Navy, reporter. JX

No witnesses not otherwise connected with the trial were present.

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

(Direct-examination continued.)

37. Q. When you left to go look for this hole, what did you do with the possessions of the Englishman?

A. I left it where everybody was waiting.

38. Q. When you say where everybody was waiting, who was there?

A. All the other fellows who were with me, except myself.

39. Q. Did you find the hole?

A. No, I couldn't find the hole and as this jungle was very dense I got lost. I did not know where the entrance was and I got lost and it took lots of time and I thought I heard someone call, so I went in that direction.

40. Q. Whom did you hear call?

A. I believe it was the voice of Yamada.

41. Q. What was he calling?

A. He was calling, "Uemura, Uemura!"

42. Q. About how long did you spend searching for this hole?

A. I think I took about one hour.

43. Q. After you heard Yamada calling you, did you rejoin the party?

A. I was hunting for this hole through the jungle and when I came out of the jungle I was perspiring and I was scolded by Warrant Officer Ajioke. I felt discouraged and my feelings were unsettled.

The accused moved that this answer be stricken out on the ground that it was not responsive.

The commission directed that that portion of the answer following and including the words, "when I came out of the jungle I was perspiring" be stricken out. JX

44. Q. When you rejoined this party, how many people were there?
A. Warrant Officer Ajioke, First Lieutenant Nakamura, his orderly and Yamada.

45. Q. Wasn't this Englishman there?
A. No.

46. Q. Do you know what became of the Englishman?
A. No.

47. Q. Have you ever seen the Englishman since that day?
A. No.

Cross-examined by the accused:

48. Q. Had you ever seen an Englishman before you saw this person at Gasupan?
A. No.

49. Q. Who told you, then, that he was an Englishman?
A. I do not recall from whom I heard it.

50. Q. Did he look different from the other natives there?
A. Yes.

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

The witness said that he had nothing further to state. JW

The witness was duly warned and withdrew.

The judge advocate requested that the commission adjourn until 9 a.m., tomorrow, Friday, December 19, 1947, because the prosecution's last witness, Commander H. L. Ogden, would not be available until that time.

The request of the judge advocate was granted.

The commission then, at 4 p.m., adjourned until 9 a.m., tomorrow, Friday, December 19, 1947.

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, December 19, 1947.

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. Garberino, Coast Artillery Corps, United
States Army,
Major Andrew I. Lyman, U. S. Marine Corps,
Lieutenant Commander John S. Cheredas, Medical Corps, 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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name and rank?
A. Herbert L. Ogden, Commander, U. S. Navy.
2. Q. If you recognize the accused will you tell us their names and ranks?
A. Warrant Officer Ajioka and Sergeant Yamada.
3. Q. To what office are you attached?
A. Director War Crimes, Pacific Fleet.
4. Q. What are your duties in that office?
A. Investigator.
5. Q. Do you have in your possession any papers dealing with the issues
involved in this trial?
A. I have.
6. Q. Are you the legal custodian of these papers?
A. I am.
7. Q. Will you tell the commission how these papers came into your posses-
sion?
A. These papers were forwarded to our office from our liaison office in
Tokyo.

8. Q. And after you received these papers, what action, if any, did you take with reference to them?

A. I took these statements of the accused to the stockade and interrogated the accused further regarding the truth of the statements which they had made in Japan. I had them read the statements which they had made in Japan and I also had our interpreter read to them in Japanese the translation of these statements. I asked them if these statements which they had made were true and correct statements and if the translation was a correct translation. I then had them sign and swear to the translation.

9. Q. On what date was this done?

A. December 9, 1947.

10. Q. Did they swear to the truth of these statements in your presence?

A. They did.

11. Q. Did they sign these affirmations in your presence?

A. They did.

12. Q. Before these statements were signed or at any time did you make any promises of any kind to these accused?

A. I did not.

13. Q. Before these statements were signed or at any time did you use any duress of any kind on these accused?

A. I did not.

The documents produced by the witness were submitted to the accused and to the commission and by the judge advocate offered in evidence.

The accused requested permission to cross-examine this witness before the introduction of the documents.

The commission announced that the request of the accused was granted.

Cross-examined by the accused:

14. Q. Are you a licensed attorney?

A. I am.

15. Q. Are you an experienced investigator?

A. I have had considerable experience in investigating.

16. Q. Do you understand Seldon's Principle of Mental Agitation?

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

The accused made no reply.

The commission announced that the objection was sustained.

17. Q. Were these two alleged confessions, which you have testified to, made by Ajioke and Yamada under the excitement of impending prosecution for a crime?

A. The original statements were not made in my presence.

18. Q. The confessions that you obtained, what about those?

A. The accused were being held on Guam as accused at the time.

19. Q. Is it true that these two confessions which are offered into evidence were made by Ajioke and Yamada under the excitement of prosecution in a pending trial?

A. They were made pending prosecution.

20. Q. When did you receive these papers from your liaison office in Tokyo?

A. I do not know the exact date without reference to our office files.

21. Q. Were they received on the same day as you interrogated these two accused?

A. They were received some time prior to that date.

22. Q. How many days prior would you say?

A. I am unable to answer that.

23. Q. You interrogated the accused on December 9th. Is that true?

A. That is correct.

24. Q. Do you know when they were served with the charges and specifications?

A. I know that they had not been served at the time I took the statements.

25. Q. You do know that they were served on the same day, don't you?

A. I don't know. I had nothing to do with the serving of the charges and specifications.

26. Q. Who was the translator?

A. Frederick Savory.

27. Q. Is he available for questioning?

A. He is.

28. Q. When the translator translated these documents, isn't it true that Mr. Savory read only the English translation to Ajioke?

A. That is true but at the same time the accused was holding the original Japanese statement.

29. Q. But the accused doesn't understand English, does he?

A. The translation was read to the accused in Japanese.

30. Q. So in the case of Yamada the translation that was read to Yamada was the English translation of it?

A. The translator read the English translation but he read it in Japanese.

31. Q. Were you present when the original confessions were obtained?

A. They were obtained in Japan. I was not present.

32. Q. Were these original statements ever signed by the two affiants in your presence?

A. The original Japanese statements were not signed by the accused in my presence.

33. Q. Didn't Ajioke object to signing this confession because he didn't understand English?

A. No objection was made to the signing of these verifications by either of the accused. They were entirely voluntary.

34. Q. Do you know whether these original confessions were obtained by reasons of questioning of either one of these affiants by an officer while they were confined in Sugamo?

A. I only know what the accused told me regarding this matter.

35. Q. Did the accused say that they were obtained in that way?

A. The accused stated that they were interrogated by an officer and were told to write a statement regarding the matters which they had been questioned about. They told me that these statements were made by them in Japan voluntarily.

36. Q. Didn't both Ajioke and Yamada say that the officers that questioned them at Sugamo also told them that it would go easier with them if they did sign these statements?

A. They did not.

37. Q. You said that you questioned or interrogated them. Did you caution them before you questioned and interrogated them?

A. I did not.

38. Q. You didn't caution and warn the affiants that any statements made by them would be used against them?

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

The accused made no reply.

The commission announced that the objection was sustained.

39. Q. Did you inform Ajioke or Yamada that they were not obliged to say anything unless they desired to do so and if they did say anything it would be taken down in writing and used against them in any future trial?

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

The accused did not reply.

The commission announced that the objection was sustained.

40. Q. But didn't you inform them before they made these statements and give them clearly to understand that they had nothing to hope from any promise of favor, nothing to fear from any threat which may have been held out to them, to induce them to make any admission or confession of guilt?

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

The accused made no reply.

The commission announced that the objection was sustained.

41. Q. Did this examination and interrogation partake of the nature of a cross-examination?

A. My interrogation was limited to having the accused verify the truth of the previous statements. There was no cross-examination.

42. Q. What about the examination and interrogation in Sugamo Prison? Do you know about that?
A. I do not know.

43. Q. Do you know whether these two accused, Ajioke and Yamada, ever had counsel while they were in Sugamo Prison?

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

The accused made no reply.

The commission announced that the objection was sustained.

44. Q. Do you know whether they had counsel when you interviewed them here at the stockade?
A. I do not know.

45. Q. Was counsel present at the time you had them sign these confessions?
A. No defense counsel was present.

46. Q. Was Ajioke examined apart from Yamada?
A. He was.

47. Q. When Ajioke and Yamada were examined, isn't it true that they were civilians?
A. I understand that they were demobilized military personnel.

48. Q. You don't know who was present when these original documents were signed at Sugamo Prison, do you?
A. I do not know.

49. Q. You don't know how long they were held in confinement before they signed them at Sugamo?
A. I do not know.

50. Q. Before you asked them to sign these confessions, did you inform them that they were involved to such an extent that charges were going to be preferred against them?

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

The accused made no reply.

The commission announced that the objection was sustained.

51. Q. Had the charges and specifications already been prepared against Ajioke and Yamada before you asked them to sign these confessions?

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.

Commander Martin E. Carlson, a counsel for the accused, made the following objection to the introduction of the documents in evidence by the judge advocate:

The accused objects to the introduction of these two documents into evidence on the ground that they were not obtained, nor has there been any showing by the prosecution that they were obtained, in accordance with due process of law. We hold, therefore, that these two statements were not made voluntarily by either Yamada or Ajioka. The prosecution has not shown this by this witness. This witness can only testify as to what he did on December 9th. The original statements which were signed by the accused Yamada and Ajioka were made at Sugamo Prison, not in the presence of this witness. He knows nothing of what took place up there and he can not testify as to what took place when the original confessions were made there. What the prosecution is attempting to prove here is simply that this witness, by what he did on December 9th, 1947, incorporated into the statements which he had Ajioka and Yamada sign - the original confessions, which were signed at Sugamo Prison and which we say were not signed under due process of law nor were they signed voluntarily at Sugamo Prison.

The judge advocate replied.

The commission announced that the objections were not sustained and the statements would be received in evidence.

Reexamined by the judge advocate:

52. Q. Will you read the statement of Ajioka?

The witness read the statement of Ajioka, Misao, in English, appended, marked "Exhibit 3."

An interpreter read the statement in Japanese, appended, marked "Exhibit 4."

53. Q. Will you read the statement of Yamada?

The witness read the statement of Yamada, Kiyoshi, in English, appended, marked "Exhibit 5."

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.

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

No witnesses not otherwise connected with the trial were present.

Commander Herbert L. Ogden, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony. *OK*

(Reexamination continued.)