

HARA, CHUICHI

(27 OCT 1948)

(VOL. III)

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0972

Case of
HARA, Chuichi
October 27, 1948

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
convened at
United States Pacific Fleet
Commander Naval Forces, Marianas
Guam, Marianas Islands,
by order of
The Commander Naval Forces, Marianas

VOLUME 3

0973

THIRTY-SECOND DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, December 16, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination concerning the testimony of Tanaka, Masaharu from
the record of the trial of Tanaka, Masaharu et al continued.)

77. Q. Will the witness read question and answer number 26 from the testi-
mony of Tanaka?

The witness read from the testimony of Tanaka, Masaharu as follows:

"26. Q. Were there any staff officers during the air raid who
neglected their duties?

A. I do not think so. I am here concerning this incident on
a charge of neglect of duty. On this point, in view of my
position, I would like to say a few words and I wish you would
understand my way of thinking. When I first entered the Navy,
I was taught the Japanese penal code. In there it is stated
that during operations, if there was anybody who disobeyed he
would be put to death. What I was told by my superiors was
absolutely obeyed and anything ordered, whether it was good or
bad, should be executed immediately. As a result of this,
whatever responsibility which may come out shall rest upon the
superiors. This I was told. I think this is also the rule in
International Law. This was always in mind and actually

whenever I came into contact with my subordinates this was the manner with which I dealt with them. According to these rules, a superior officer during operations has very great power and when an order is given a subordinate, it is absolutely obeyed. Moreover, it goes further than absolutely, being just blind obedience to the orders. All the judgement is left up to the superior officer. Whenever orders are given to the people below them, they are followed blindly and obediently and if this is not complied with a war can never be won. As a result, whether it is good or bad, the senior officer should carry the responsibility."

The accused requested permission of the commission to offer into evidence portions of the testimony of Wakabayashi, Seisaku from the trial of Tanaka, Masaharu, et al in order to refute certain testimony of Tanaka brought out in the cross-examination by the judge advocate.

The judge advocate objected to this request by the accused for special permission to offer in evidence the testimony of Wakabayashi, Seisaku from the trial of Tanaka, Masaharu et al, on the grounds that it was not the best evidence since Wakabayashi, Seisaku is available on Guam to appear as a witness, and is in fact listed as a witness for the defense in their order of proof.

The commission announced that the objection was sustained.

Examined by the accused concerning the offer in evidence of the testimony of Taneda, Yasuo from the record of the trial of Iwanami, Hiroshi, et al:

78. Q. Have you a complete record of the War Crimes Trial of Iwanami, Hiroshi, et al, tried by a military commission on Guam starting in June 1947?
A. I have the Commander Marianas copy of that record.

79. Q. Does that record show that Surgeon Captain Taneda, Yasuo testified as a witness at that trial?
A. It does.

80. Q. Was he duly sworn?
A. He was.

81. Q. Do you know the present whereabouts of Captain Taneda?
A. He was returned to Japan at the termination of the Iwanami case and I believe he is presently in Japan.

The accused submitted to the judge advocate and to the commission the record of the trial of Iwanami, Hiroshi, et al and offered in evidence so much thereof as contains the testimony of Taneda, Yasuo.

Cross-examined by the judge advocate concerning the offer in evidence of the testimony of Taneda, Yasuo from the record of the trial of Iwanami, Hiroshi, et al:

82. Q. Does this testimony relate to an incident involving Iwanami and other personnel at the Fourth Naval Hospital on July 20, 1944 in which prisoners of war were executed?
A. It does.

83. Q. Does this testimony relate to the bayoneting, spearing, or beheading of prisoners of war on that date?

A. It does.

There being no objection, it was so received.

Examined by the accused concerning the testimony of Taneda, Yasuo from the record of the trial of Iwanami, Hiroshi, et al:

84. Q. Will the witness read the following questions and the answers thereto: 1, 3, 4, 5, 20, 21, 22, 24, 26, 27, 29, 30, 31, 32, 33, and 34?

The witness read from the testimony of Taneda, Yasuo as follows:

"1. Q. State your name and former rank.

A. Taneda, Yasuo, Surgeon Captain, Imperial Japanese Navy."

AB

"3. Q. Did you ever serve at Truk Atoll?

A. Yes.

4. Q. Where there did you serve?

A. Fourth Naval Hospital, Dublon.

5. Q. Between what dates did you serve at that hospital?

A. From February 1944 till the end of August 1946."

"20. Q. Where did you first see these prisoners?

A. From the veranda in front of the head of the hospital's room.

21. Q. Were you alone when you first saw them?

A. Together with myself there were three.

22. Q. Will you tell us who they were?

A. Vice Admiral Hara, the head of the hospital and myself."

"24. Q. Where were the prisoners when you first saw them?

A. I saw the prisoners for the first time when the truck with the prisoners went up the road from in front of the veranda."

AB

"26. Q. Can you tell us the names of any of the persons who were on the truck with the prisoners?

A. I heard later the names of some of the persons who were on the truck but at that time I was surprised by seeing the prisoners and I did not notice who else was on the truck.

27. Q. From whom did you hear the names of the persons who were on the truck with the prisoners?

A. I heard from Petty Officer Ikeya."

"29. Q. Did you hear it from anyone else beside Ikeya?

A. No.

30. Q. When did you hear this from Ikeya?

A. Sometime after the investigation of the incident had begun.

31. Q. While you were standing on the veranda with Admiral Hara and Captain Iwanami, did anything happen?

A. The talk that was held with the vice admiral was concerned merely with the conditions of the officers who were sick in the hospital, and also miscellaneous items. After the admiral had returned I told Captain Iwanami that about thirty minutes previously the prisoners had gone by on a truck.

32. Q. Before the conversation between yourself, Hara and Iwanami had ceased were you approached by anyone?

A. A considerable time after the prisoners had passed in front of me, the time was about thirty minutes, the Adjutant Kamikawa came toward the veranda from the entrance of the administration building and about one-half way between the entrance and the veranda saluted and returned.

33. Q. When he saluted you, did you do anything?

A. At this time Captain Iwanami, Vice Admiral Hara and myself were talking and bananas had been put up and we were eating them and when the adjutant approached I put up my hand and told him to come closer but he saluted and left.

34. Q. After Admiral Hara had gone did you report to anyone that Lieutenant Commander Kamikawa had approached?

A. As I stated before I told the head of the hospital that a long time previously the prisoners had passed by and he made a gesture as if he was surprised and he said, 'Is that so?' and then I asked him, 'Are you going to do something with the prisoners as you were saying several days ago?', and he said, 'Yes.' I told him the adjutant had come toward the room and I had motioned for him to come forward but he had saluted and gone back, then the head of the hospital said, 'The preparations have all been made.' Then I said, 'That must be it, the adjutant came and saluted twice.'

Cross-examined by the judge advocate concerning the testimony of Taneda, Yasuo from the record of the trial of Iwanami, Hiroshi, et al:

85. Q. Will the witness read questions 12, 13, 14, 15, 16, 75, 76, and 77 and the answers thereto?

The witness read from the testimony of Taneda, Yasuo as follows:

"12. Q. Did you have a conversation with anyone concerning prisoners of war a few days before you saw those prisoners?

A. I do remember having a conversation.

13. Q. With whom did you have this conversation?

A. The head of the hospital, Captain Iwanami.

14. Q. Will you tell us where you had this conversation?

A. At the officers' wardroom.

15. Q. Tell the commission what you remember about this conversation, what you said to him and what he said to you.

A. It was the noon meal, Captain Iwanami said, 'There are prisoners which I wish to dispose of, do you want to perform any experiments?' and I said, 'No, I do not want to perform any experiments.'

16. Q. Were there any other officers present when you had this conversation?

A. Almost all the officers were present."

"75. Q. You testified that four or five days before the incident, during the evening meal, the head of the hospital said, 'Would you like to experiment with prisoners?' Were you the only one that this was asked of, or were there others?

A. At first, I was sitting in front of the head of the hospital, and he asked me this.

76. Q. Did the head of the hospital ask any of the others?"

This question and line of questioning was objected to by the accused on the ground that it went beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness continued to read from the testimony of Taneda, Yasuo as follows:

" A. He also asked the others.

77. Q. Whom did he ask?

A. As I recall, the only ones he asked personally were Surgeon Captain Shiota, Surgeon Commander Okamura, and Surgeon Lieutenant Nabetani, and as no one was willing, he asked the persons assembled if anyone would like to do so."

86. Q. Will the witness read questions 39 and 40 and the answers thereto?

The witness read from the testimony of Taneda, Yasuo as follows:

"39. Q. Before Iwanami said to you, 'Let us go up the hill', did you say anything to him?

A. I asked him what are you going to do and how are you going to do it.

40. Q. And how did he answer?

A. He said he was going to do it with bayonets and spears."

87. Q. Will the witness read questions and answers numbered 53, 60, 61 and 62?

The witness read from the testimony of Taneda, Yasuo as follows:

"53. Q. Who did the stabbing?

A. The petty officers and seamen of the hospital. The persons who did the stabbing were persons who were not officers of the hospital."

"60. Q. About how many men were in this line of stabbers?

A. When I am asked how many were in the lines I can only say that when I came to the scene and looked toward where the enlisted men were, I just felt that the front part of the group are lined up pretty well and also noticed that there were some people armed that were grouped in front, and I also noticed that there were some people who were in the middle who were in fairly good order. In this group were about sixteen

to twenty persons. I do not remember if all of them were armed and as I recall, those in that group were not the only ones who were armed but there were others elsewhere.

61. Q. How many men on that hill were armed?

A. As I recall about sixteen to twenty as I stated before.

62. Q. With what were they armed?

A. There were some who had bayonets and some who had spears."

88. Q. Will the witness read questions and answers numbered 43, 104 and 107?

The witness read from the testimony of Taneda, Yasuo as follows:

"43. Q. Did you go up the hill with Captain Iwanami?

A. I was following the head of the hospital up the hill but in the Japanese Navy if there was a general assembly it is impolite to reach the general assembly after the department head, so I passed him and went on ahead of him."

"104. Q. You testified that the head of the hospital said, 'Let's go up the hill together.' At first you were following the head of the hospital up, but as it was a general assembly, you thought it was impolite to assemble after the head of the hospital, so you passed the head of the hospital and went up the hill. Is this correct?

A. This is correct."

"107. Q. When did you hear about this general assembly?

A. It was during the conversations just before I went up the hill with the head of the hospital."

Examined by the accused concerning the offer in evidence of the testimony of Iwanami, Hiroshi from the record of the trial of Iwanami, Hiroshi, et al:

89. Q. Is this the trial in which Iwanami was tried for the killing of two American prisoners of war on July 20, 1944 at Dublon Island on Truk?

A. That was one of the incidents charged against him.

90. Q. Was Iwanami, Hiroshi duly sworn, and did he testify voluntarily as a witness in his own behalf during the trial at his own request?

A. He did. ⁵

91. Q. Do you know where Surgeon Captain Iwanami, Hiroshi is and what his present status is?

A. He is presently confined at the War Crimes Stockade on Guam as a war criminal.

The accused submitted to the judge advocate and to the commission the record of the trial of Iwanami, Hiroshi, et al, previously identified, and offered in evidence so much thereof as contains the testimony of Iwanami, Hiroshi relating to the seating arrangements on the veranda, the conversation regarding the arrival of the prisoners, when Iwanami found out the prisoners arrived at the hospital, and how he secured the prisoners from Lieutenant Commander Nakase. The accused referred the commission to Section 464, Underhill's Criminal Evidence, particularly footnote 48, Levi v. State.

The judge advocate objected to this offer in evidence of the testimony of Iwanami, Hiroshi from the trial of Iwanami, Hiroshi, et al, on the grounds that it was not the best evidence since Iwanami was available as a witness, had already appeared as a witness for the prosecution, and further that Iwanami had been made available as a witness for the defense, and was in fact listed as a witness in their order of proof.

The accused replied.

The commission announced that the objection was sustained.

Examined by the accused concerning the offer in evidence of defense document #15:

92. Q. Have you a complete record of the War Crimes Trial of Kobayashi, Masashi, tried on Guam?

A. I have the Commander Marianas certified copy of that record.

93. Q. Was Admiral Kobayashi tried for an offense relating to prisoners of war in the Southwest Pacific including prisoners of war on Jaluit?

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.

94. Q. Was there introduced and accepted into evidence as Exhibit 57, C.L.O. No. 2976 relating to regulations concerning military punishment in the Marshall Islands?

A. That is correct.

95. Q. Has the witness in his possession a certified copy of this document marked defense document number 15?

A. I have, here it is.

96. Q. Does this document also contain in paragraph 2c thereof the portion relative to martial law as applicable in the Marshall Area?

A. It does.

97. Q. Does paragraph 2b(2) indicate that there were any Combined Fleet military regulations regarding punishment?

A. It does.

Defense document number 15, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

The judge advocate objected to the ^{receipt} offer in evidence of this document on the ground that it contained irrelevant and immaterial matter.

The accused replied.

The commission announced that the objection was not sustained. There being no further objection, the document was so received, and is appended marked "Exhibit 39".

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Examined by the accused concerning Exhibit 39:

98. Q. Will the witness read from Exhibit 39, paragraph 2b(2)?

(The witness read from Exhibit 39 as requested.)

The judge advocate moved to strike out this answer on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the motion was not sustained.

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the judge advocate concerning Exhibit 39:

99. Q. Will the witness read paragraph 2 b 1 of this document by K. Asakai?

(The witness read from Exhibit 39 as requested.)

100. Q. Is there anything in this document which indicates in any way that the alleged information contained in this document is from the personal knowledge of the person making this document?

A. There is none.

101. Q. Was this document prepared by a branch of the Japanese Government?

A. It was prepared by the Central Liaison Office of the Japanese Government.

102. Q. Is this the liaison office from which other defense documents and other documents from the Japanese Navy have been obtained?

A. That is correct.

103. Q. Did this witness read questions 131, 132, 133, and 134 from the testimony of Furuki, Hidesaku, the second in command of Jaluit Atoll and commander of the Army unit on Jaluit Atoll during the tour of duty of Admiral Masuda?

A. That is correct.

104. Q. Did this testimony of the ranking army officer and second in command on Jaluit state that no martial law had been proclaimed on Jaluit Atoll?

A. As I recall the witness so stated.

AB

105. Q. Will the witness read paragraph 2c of this Exhibit 39?

(The witness read from Exhibit 39 as requested.)

Examined by the accused concerning the offer in evidence of defense document #16: AB

106. Q. Have you in your possession an authentic copy of the War Crimes Act of 1945 of the Commonwealth of Australia published by authority of L. F. Johnston, Commonwealth Government Printer, Canberra?

A. I have.

107. Q. Is this document from the official files of the Director War Crimes?

A. It is.

108. Q. Does the act provide for the trial and punishment of War Criminals for War Crimes committed during World War II against persons resident in Australia or against certain other persons? AB

A. It does.

109. Q. Is this War Crimes Act of 1945 the authority under which the Australian War Crimes trials, records introduced by you as a prosecution witness at this trial, were convened and held, said records being Exhibits 13, 14, 15, 16, 17, 18, 19, and 20?

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

The accused replied.

The commission announced that the objection was sustained.

110. Q. Do you have in your possession a certified copy of this document?

A. Yes.

Defense document number 16, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

The judge advocate objected to the receipt in evidence of this document on the ground that it was immaterial unless the accused was trying to attack the jurisdiction of the Australian courts.

The accused replied, stating that he was attacking the jurisdiction of the Australian courts.

The commission announced that the objection was not sustained. There being no further objection, the document was so received, and is appended marked "Exhibit 40".

Examined by the accused concerning Exhibit 40:

111. Q. Will the witness read the heading down through paragraph 2 and then paragraph 5a only?

(The witness read from Exhibit 40 as requested.)

Cross-examined by the judge advocate concerning Exhibit 40:

112. Q. Will the witness read the definition of War Crimes as it appears in section 3 of this Act?

(The witness read from Exhibit 40 as requested.)

Examined by the accused concerning the offer in evidence of defense documents #17 and 18:

113. Q. Has the witness in his possession certain surrender documents from the official files of Director War Crimes?

A. I have photostatic copies of the instrument of surrender of Japanese troops on Nauru and Ocean Islands on September 13, 1945 and also the instrument on Ocean Island on October 1, 1945.

114. Q. Are these documents sealed authentic copies of the original documents?

A. They are certified by the Archivist of the United States as true copies.

Defense documents number 17 and 18, produced by the witness, were submitted to the judge advocate and to the commission, and by the accused offered in evidence.

Cross-examined by the judge advocate concerning the offer in evidence of defense documents #17 and 18:

115. Q. On what date does this certified copy indicate that this surrender at Ocean Island took place?

A. At 1600 on 16 August 1945.

116. Q. Will the witness reexamine page three of this document and indicate what date the surrender took place?

A. Page three of the document indicates that the document was signed on October 1, 1945.

117. Q. Then the witness' previous answer is inaccurate. It was ^{not} ~~on~~ the surrender which took place earlier?

A. That is correct. The latter answer applied to the surrender on Ocean.

118. Q. Will the witness examine the other document of surrender relating to both Nauru and Ocean Islands and state when this document of surrender of the Japanese forces on Nauru and Ocean Island took place?

A. 13 September 1945.

There being no objection, the documents were so received and are appended marked "Exhibit 41" and "Exhibit 42".

Examined by the accused concerning Exhibit 41:

119. Q. Will the witness read Exhibit 41:

(The witness read Exhibit 41.)

120. Q. Did the witness read the entire document of Exhibit 41?

A. Yes.

Cross-examined by the judge advocate concerning Exhibit 41:

121. Q. Under the provisions of Exhibit 41 which you have read, on what date did Captain Soeda surrender?

This question was objected to by the accused on the ground that the document speaks for itself.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. On 13 September 1945.

122. Q. What islands did he surrender?

A. Nauru and Ocean Islands.

123. Q. Does the acceptance of this surrender by Brigadier J. R. Stevenson, DSO, show that it was on behalf of the American Theatre Commander and of the Commander in Chief Pacific and Pacific Ocean Areas?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It does.

The witness was duly warned.

The commission then, at 11:25 a.m., took a recess until 2:05 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the accused concerning Exhibit 42:

124. Q. Will the witness read from Exhibit 42 down to and including paragraph one and then paragraph ten?

(The witness read from Exhibit 42 as requested.)

Cross-examined by the judge advocate concerning Exhibit 42:

125. Q. On what date was this document of surrender signed by the commanding officer of the Japanese forces on Ocean Island?

A. On the first day of October 1945.

126. Q. Was this surrender accepted by Brigadier Stevenson as representative of the United States Theater Command on behalf of the Commander in Chief Pacific and Pacific Ocean Areas on the first day of October 1945?

A. It was.

The accused did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.

A. Maurice E. Currie.

2. Q. What is your rank and to what office are you attached?

A. Commander, USNR, attached to the office of the Director War Crimes.

3. Q. If you recognize the accused, state as whom.

A. Former Vice Admiral Chuichi Hara.

Examined by the accused:

Examined by the accused concerning the offer in evidence of defense document #21:

4. Q. Where were you and what was your station on November 11, 1948?

A. I was with the Commander Marianas Liaison Office, Tokyo, Japan.

5. Q. While you were at the Commander Marianas Liaison Office did you receive interrogatories to be propounded to the Director of the Second Demobilization Bureau, Japanese Government?

A. Yes.

6. Q. Did you interrogate the Director Second Demobilization Bureau according to these interrogatories?

A. I did.

7. Q. Have you in your possession interrogatories propounded to the Director of the Second Demobilization Bureau, Japanese Government, and a deposition in answer thereto marked as defense document #21?

A. I do.

8. Q. Are these interrogatories signed by the parties concerned?

A. They are.

9. Q. In what language was this deposition written?

A. In English.

10. Q. Was the deposition signed by the deponent and the parties concerned?

A. It was.

Defense document number 21, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

There being no objection, it was so received and is appended marked "Exhibit 43."

Examined by the accused concerning Exhibit 43:

11. Q. Will the witness read Exhibit 43?

(The witness read Exhibit 43.)

Examined by the accused concerning the offer in evidence of defense document #22:

12. Q. Does the witness have in his possession interrogatories propounded to the Director of the Second Demobilization Bureau, Japanese Government, and which is marked as defense document #22, and the deposition in answer thereto?

A. I do.

13. Q. Are these interrogatories signed by the parties concerned?

A. Yes.

14. Q. Was this deposition signed by the deponent and other parties concerned?

A. It was.

Defense document number 22, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

There being no objection, it was so received and is appended marked "Exhibit 44".

Examined by the accused concerning Exhibit 44:

15. Q. Will the witness read Exhibit 44?

(The witness read the first through the sixth interrogatories and the answers thereto.)

The judge advocate moved to strike out the answer to the sixth interrogatory on the ground that it was speculative.

The accused made no reply.

The commission directed that the answer to the sixth interrogatory be stricken out.

(The witness read the seventh and eighth interrogatories and the answers thereto.)

The judge advocate moved to strike out the answer to the eighth interrogatory on the ground that it was speculative.

The accused replied.

The commission directed that the words "Therefore, such matter might have been taken up as a subject for discussion in the Cabinet Ministers' Meeting or others" be stricken out of the answer to the eighth interrogatory.

(The witness read the ninth and tenth interrogatories and the answers thereto.)

The judge advocate moved to strike out the tenth interrogatory and the answer thereto on the ground that it was incompetent, irrelevant, immaterial, and an opinion of the deponent.

The accused replied.

The commission directed that the words "Chuichi for truthfulness" in the tenth interrogatory and the words "His general reputation for truthfulness has been very good" in the answer to the tenth interrogatory be stricken out.

The commission then, at 3:10 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Maurice E. Currie, 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.)

Examined by the accused concerning the offer in evidence of defense documents #23A and #23B:

16. Q. When you were the Commander Marianas Liaison Officer in Tokyo, Japan, did you serve interrogatories to Shigetaro Shimada?

A. I did.

17. Q. Have you in your possession interrogatories propounded to Shigetaro Shimada, and the deposition thereto?

A. I have.

18. Q. How many copies of the documents do you have?

A. I have two documents.

19. Q. These two sets of interrogatories; are they signed by the parties concerned?

A. Yes.

20. Q. Are these two depositions signed by the deponent and the parties concerned?

A. Yes.

Defense documents number 23A and number 23B, produced by the witness, were submitted to the judge advocate and to the commission, and by the accused offered in evidence.

There being no objection, they were so received and are appended marked "Exhibit 45" and "Exhibit 46".

Examined by the accused concerning Exhibit 45:

21. Q. Will you read Exhibit 45?

(The witness read Exhibit 45.)

Examined by the accused concerning Exhibit 46:

22. Q. Will you read Exhibit 46?

(The witness read the first interrogatory of Exhibit 46.)

The first interrogatory was objected to by the judge advocate on the ground that it was irrelevant and immaterial and called for an opinion of the deponent.

The accused replied.

The commission announced that it would hear the answer before ruling.

(The witness read the answer to the first interrogatory.)

The judge advocate moved to strike out this answer on the ground that it was irrelevant and immaterial and an opinion of the deponent.

The commission directed that the first interrogatory and the answer thereto be stricken out.

(The witness read the second and third interrogatories and the answers thereto.)

The judge advocate moved to strike out the answer to the third interrogatory on the ground that it was incompetent, irrelevant, immaterial, and an opinion of the deponent.

The accused replied.

The commission directed that the words "for truthfulness" from the third interrogatory, and the words "He is known as a most truthful man and for that reason among other things, he has enjoyed a splendid reputation" from the answer to the third interrogatory, be stricken out.

Examined by the accused concerning the offer in evidence of defense document #24:

23. Q. When you were the Commander Marianas Liaison Officer in Tokyo, did you interrogate one Hosogaya, Boshiro?

A. I did.

24. Q. Have you in your possession interrogatories propounded to Hosogaya, Boshiro, and the deposition thereto?

A. I have.

25. Q. Are these interrogatories signed by the parties concerned?

A. They are.

26. Q. Is this deposition signed by the deponent and other parties concerned?

A. It is.

Defense document number 24, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence. There being no objection, it was so received, and is appended marked "Exhibit 47".

Examined by the accused concerning Exhibit 47:

27. Q. Will you read Exhibit 47?

(The witness read the first through the seventh interrogatories and the answers thereto.)

The judge advocate moved to strike the last three sentences beginning with the sentence "It was rumored" through the remainder of the answer to the seventh interrogatory on the ground that they were opinions of the deponent.

The accused made no reply.

The commission directed that the sentences be stricken out.

Examined by the accused concerning the offer in evidence of defense document #25:

28. Q. When you were at Commander Marianas Liaison Office in Tokyo, Japan, did you interrogate Aihara, Aritaka?

A. I did.

29. Q. Have you in your possession interrogatories propounded to Aihara, Aritaka, and the deposition thereto?

A. I have.

30. Q. Were these interrogatories signed by the parties concerned?

A. Yes.

31. Q. Is this deposition signed by the deponent and other parties concerned?

A. It is.

32. Q. In what language is this deposition written?

A. In English.

Defense document number 25, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence. There being no objection, it was so received, and is appended marked "Exhibit 48".

Examined by the accused concerning Exhibit 48:

33. Q. Will you read Exhibit 48?

(The witness read Exhibit 48.)

Cross-examined by the judge advocate concerning Exhibit 48:

34. Q. In the answer to the fifth interrogatory, does the deponent Aihara state that after he arrived on Truk he requested the Senior Commanding Officer of the armed forces to maintain the peace?

A. He states that "Concerning the maintenance of the peace, which considering broadly was a part of my administrative duties: after I arrived on Truk, as transportation and communication were insufficient and as the police power was very feeble, I felt that by myself I was unable to handle emergency situations such as uprisings among the natives and trouble arising during an enemy attack. In such situations I thought there was nothing else to do but request the senior commander of the armed forces on the island to maintain the peace. I also thought that even if I did not request this, he would do it anyway".

35. Q. Does the deponent state in his second interrogatory when he arrived on Truk?

A. He states "I arrived at headquarters on Truk to assume my duties on 20 November 1943".

36. Q. According to Aihara's answer to the seventh interrogatory, who did he consider the senior officer, Kobayashi, or Mugikura?

A. He states "During the time that Kobayashi was the commander, Lieutenant General Mugikura was the junior in rank".

37. Q. Does Aihara, the deponent, in any place in this deposition state that he ever requested Mugikura to assume the maintenance of peace and order?

A. I believe the only reference to this was in the fifth interrogatory, when he stated "I felt that by myself I was unable to handle emergency situations such as uprisings among the natives and trouble arising during an enemy attack. In such situations, I thought that there was nothing else to do but request the senior commander of the armed forces on the island to maintain the peace. I also thought that even if I did not request this, he would do it anyway".

38. Q. Is there anything in the interrogatory which states that the Navy did not have power to maintain peace and order in Truk?

A. In answering the ninth interrogatory, Aihara states "I do not know whether the Commander-in-Chief of the Fourth Fleet had any commanding authority regarding the administration and maintenance of peace or not".

Reexamined by the accused concerning Exhibit 48:

39. Q. In answer to the eighth interrogatory, does the deponent state who was in charge of the maintenance of peace?

A. In answer to the eighth interrogatory the witness Aihara states "I do not recall having received any orders from Hosogaya, Governor of the South Sea Islands Government Office; however, I did receive some orders from the army commander, Lieutenant General Mugikura, concerning the maintenance of peace. I did not receive any orders from Mugikura concerning general administration" and he added "These orders stated that the army would maintain the peace and order".

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Friday, December 17, 1948.

THIRTY-THIRD DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, December 17, 1948.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the accused concerning the offer in evidence of defense
document #26:

40. Q. Do you have in your possession interrogatories propounded to Soeda,
Hisayaki, and the deposition in answer thereto?
A. I do.

41. Q. Did you propound interrogatories to this Soeda, Hisayaki?
A. I did.

42. Q. Are these interrogatories signed by parties concerned?
A. Yes.

43. Q. In what language is this deposition written?
A. In English.

44. Q. Is this deposition signed by the deponent and other parties
concerned?
A. It is.

45. Q. Are the interrogatories and deposition marked as defense document
26?
A. It is.

Defense document number 26, produced by the witness, was submitted to
the judge advocate and to the commission and by the accused offered in
evidence. There being no objection the document was so received and is
appended marked "Exhibit 49".

Examined by the accused concerning Exhibit 49:

46. Q. Will the witness read Exhibit 49?

(The witness read Exhibit 49.)

Examined by the accused concerning the offer in evidence of defense document #27:

47. Q. Do you have in your possession interrogatories propounded to Taneda, Tsuneco, and the depositions in answer thereto?

A. I do.

48. Q. Did you interrogate Taneda?

A. I did.

49. Q. Are these interrogatories signed by parties concerned?

A. They are.

50. Q. In what language is this deposition written?

A. In English.

51. Q. Is this deposition signed by deponent and other parties concerned?

A. It is.

52. Q. Is the interrogatory and deposition marked as defense document 27?

A. It is.

Defense document number 27, produced by the witness, was submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, the document was so received and is appended marked "Exhibit 50".

Examined by the accused concerning Exhibit 50:

53. Q. Will the witness read Exhibit 50 except interrogatory 14, since interrogatories 13 and 14 are entirely identical?

(The witness read the first, second, third, fourth, fifth, sixth and seventh interrogatories and the answers thereto, and the eighth interrogatory.)

The eighth interrogatory was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

(The witness read the answer to the eighth interrogatory.)

The judge advocate moved to strike out the first and last sentences from the answer to the eighth interrogatory on the ground that they were an opinion of the witness.

The accused made no reply.

The commission directed that the last sentence of the answer to the eighth interrogatory be stricken.

(The witness read the ninth, tenth, eleventh, twelfth, and thirteenth interrogatories and the answers thereto, and the fifteenth interrogatory.)

The fifteenth interrogatory was objected to by the judge advocate on the ground that it was irrelevant, immaterial, incompetent, hearsay, and called for a self-serving statement.

The accused replied.

The commission announced that the objection was not sustained, subject to a motion to strike.

(The witness read the answer to the fifteenth interrogatory.)

The judge advocate moved to strike out the answer to the fifteenth interrogatory on the ground that it was hearsay, self-serving, immaterial and incompetent.

The accused made no reply.

The commission was cleared.

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

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

The commission directed that the fifteenth interrogatory and the answer thereto be stricken out.

Examined by the accused concerning the offer in evidence of defense document #28:

54. Q. Do you have in your possession interrogatories propounded to Kawamura, Torao and a deposition in answer thereto?

A. I do.

55. Q. Did you interrogate Kawamura, Torao?

A. I did.

56. Q. Are these interrogatories signed by the parties concerned?

A. They are.

57. Q. In what language is this deposition written?

A. English.

58. Q. Is this deposition signed by the deponent and other parties concerned?

A. It is.

59. Q. Is the interrogatories and deposition marked as defense document number 28?

A. It is.

Defense document number 28, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence. There being no objection, it was so received and is appended marked "Exhibit 51".

Examined by the accused concerning Exhibit 51:

60. Q. Will the witness read Exhibit 51?

(The witness read Exhibit 51.)

The witness was duly warned.

The commission then, at 11:20 a.m., took a recess until 2:05 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the accused concerning the offer in evidence of defense document #29:

61. Q. Have you in your possession interrogatories propounded to Shoji Takashi marked as defense document number 29?

A. I do.

62. Q. How did you come to possess this interrogatory of Shoji Takashi?

A. Both the defense and the prosecution in the present case prepared interrogations that they wanted propounded to Shoji Takashi. These questions were prepared as interrogatories and cross-interrogatories and forwarded to the Australian Government which designated a person to question Shoji Takashi. These same questions were propounded to Shoji, the answers were taken down in question and answer form and returned through official channels to the office of the Director of War Crimes Pacific Fleet.

63. Q. Does the defense document number 20 contain original interrogatories which were propounded by the defense to Shoji Takashi?

A. We have copies of the original questions that were prepared by the defense and prosecution. The original was not returned from the Australian Government.

64. Q. Are the questions of the interrogatory which was received from the Australian authorities the same as the interrogatories propounded by Headquarters Commander Naval Forces Marianas?

A. Yes.

65. Q. Where is Shoji Takashi residing now?

A. At the War Criminals Compound, Rabaul, New Britain.

66. Q. Who interrogated Shoji Takashi?

A. Representatives of the Australian Government.

67. Q. Did Shoji Takashi duly take oath before being interrogated?

A. He did.

68. Q. In what language is the interrogation written?
A. English.

69. Q. Is this interrogation signed by Shoji Takashi and other parties concerned?
A. It is.

Defense document number 29 produced by the witness, was submitted to the judge advocate and to the commission, and by the accused, offered in evidence. There being no objection, it was so received and is appended marked "Exhibit 52".

Examined by the accused concerning Exhibit 52:

70. Q. Will the witness read Exhibit 52?

(The witness read Exhibit 52 as requested.)

Examined by the accused concerning the offer in evidence of defense document #30:

71. Q. Have you in your possession an interrogation and deposition of Sakamoto Takaharu which is marked as defense document number 30?
A. I do.

72. Q. How did you come to possess this interrogatory?
A. Questions were prepared by the defense in this case to be propounded to Sakamoto Takaharu. They were forwarded to the Australian Government who designated a person to propound these questions to Sakamoto Takaharu. These same questions were propounded to Sakamoto Takaharu; the answers were taken down in question and answer form and returned through official channels to the office of the Director of War Crimes Pacific Fleet.

73. Q. Was Sakamoto duly sworn before being interrogated?
A. He was.

74. Q. In what language is this interrogation written?
A. In English.

75. Q. Is this interrogation signed by Sakamoto and other parties concerned?
A. It is.

Defense document number 30 produced by the witness, was submitted to the judge advocate and to the commission, and by the accused, offered in evidence. There being no objection, it was so received and is appended marked "Exhibit 53".

Examined by the accused concerning Exhibit 53:

76. Q. Will the witness read Exhibit 53?

(The witness read Exhibit 53 as requested.)

Examined by the accused concerning the offer in evidence of defense document #31:

77. Q. Have you in your possession interrogatories propounded to the Director of the Second Demobilization Bureau, Liquidation Division, Japanese Government, and the deposition in answer thereto?

A. I do.

78. Q. Are these interrogatories signed by the parties concerned?

A. They are.

79. Q. In what language is this deposition written?

A. In English.

80. Q. Is this deposition signed by the deponent and other parties concerned?

A. It is.

Defense document number 31 produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence. There being no objection, it was so received and is appended marked "Exhibit 54".

The witness was duly warned.

The commission then, at 3 p.m., adjourned until 9 a.m., tomorrow, Saturday, December 18, 1948.

THIRTY-FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, December 18, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United
States Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-third day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

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

Examined by the accused concerning Exhibit 54:

81. Q. Will the witness read Exhibit 54?

(The witness read the first through the ninth interrogatories and the
answers thereto.)

The judge advocate moved to strike out the words "He believed that such
a dispatch was presumably not sent, judging from the nature of the content of
such a dispatch" on the ground that it was an opinion and speculative.

The accused replied.

The commission directed that the words "Although" and the words "he
believes that such a dispatch was presumably not sent, judging from the
nature of the content of such a dispatch" be stricken out. AB

(The witness read the tenth through the twelfth interrogatories, the
answers thereto, and annex A.)

The judge advocate moved to strike out the third paragraph of annex A
on the ground that it was an opinion.

The accused replied.

The commission announced that the motion was not sustained.

(The witness concluded the reading of Exhibit 54.)

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 10:05 a.m., took a recess until 10:30 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and former rank in the Japanese Naval service?

A. Arima, Kaoru, vice admiral.

2. Q. Where are you presently residing?

A. At the War Criminal Witness Camp, Guam.

3. Q. If you recognize the accused, state as whom.

A. Hara, Chuichi.

Examined by the accused:

4. Q. While you were in the navy were you in any way connected with the education and training for naval personnel? If you were, please state briefly.

A. When I was lieutenant commander I was an instructor at the Naval Academy for two and one-half years. Also when I was lieutenant commander I was on board a training ship for one year instructing the midshipmen. When I was commander I was attached to the Naval General Staff for three years and carried out training and instructions and maneuvers. When I was captain I was attached to the Navy Ministry as section chief of the Education Bureau. Also when I was captain I was instructor at the Naval Staff College. When I was rear admiral I supervised midshipmen for three months as captain of the training ship. When I was rear admiral I was Vice-president of the Naval Academy for eight months. That is all.

5. Q. Were you ever attached to a naval establishment on Truk? If so, state the period.

A. Yes, I was. From February 23, 1944 till August 17, of the same year.

6. Q. What was your position during your tour of duty on Truk?

A. Commandant of the Fourth Base Force and Chief of Staff of the Fourth Fleet.

7. Q. Were you assigned to the posts at the Fourth Base Force and the Fourth Fleet concurrently?

A. I held both posts during March 30, 1944 till April 30, 1944.

8. Q. Who did you relieve when you became Commandant of the Fourth Base Force?

A. Vice Admiral Wakabayashi.

9. Q. Were you briefed by Wakabayashi when you relieved him?

A. Yes, I was.

10. Q. When you were briefed by Wakabayashi, were there any matters pertaining to prisoners of war?

A. No, there were none.

11. Q. In what manner were you briefed by Wakabayashi?

A. At that time he was sick and I was briefed by him while he explained from a written document.

12. Q. Who did you relieve when you became Chief of Staff of the Fourth Fleet?

A. I relieved Rear Admiral Sumikawa.

13. Q. Were you given a briefing when you relieved Sumikawa?

A. No, there was none.

14. Q. When you relieved Sumikawa, did he give you a briefing on prisoners of war?

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

The accused replied.

The commission announced that the objection was not sustained.

A. No, there was none.

15. Q. State briefly what you know regarding the kind of education given to naval personnel in the navy regarding prisoners of war.

A. At the Naval Academy the students are taught as part of the instructions, international law, general idea regarding prisoners of war. In the first period of the midshipmen's curriculum international law is taught and a copy of the Navy Regulations are given them. The captain of a ship teaches the young officers on the ship international regulations. At the Naval Staff College the students are given lessons on international law from academic authorities on international law. Regarding international law, the Navy Ministry distributes reference books on international law to the various units, and sometimes appoints lecturers to the various units to lecture on international law.

16. Q. During your tour of duty on Truk, did you know of any arrival of prisoners of war on Truk?

A. I recall there were one or two, but I am not definite.

17. Q. When you say "one or two", do you mean one or two persons, or one or two occasions?

A. I mean one or two persons on one or two occasions.

18. Q. Which was the unit that confined the prisoners who were either captured on Truk or who arrived on Truk?

A. The Headquarters of the Forty-first Naval Guard Unit.

NS

19. Q. Who was the Commanding Officer of the Forty-first Naval Guard Unit during your tour of duty on Truk?

A. Captain Asano.

20. Q. Did you receive a report around June 1944 from anyone regarding the death of POW's who were in custody of the Forty-first Guard Unit?

A. No, I did not.

21. Q. Who was the Head of the Fourth Naval Hospital in July 1944?

A. Surgeon Captain Iwanami.

22. Q. Around July 1944, did Iwanami talk to you about prisoners of war?

A. No, he did not.

23. Q. Do you know whether Vice Admiral Hara went to the Fourth Naval Hospital around July 20, 1944?

A. Vice Admiral Hara used to go occasionally to the hospital but I do not recall when.

24. Q. Do you know for what purpose Vice Admiral Hara went to the hospital?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness, and was irrelevant and immaterial as no time was specified.

The accused made no reply.

The commission announced that the objection was not sustained.

A. At one time Vice Admiral Hara used to go there to have his teeth treated but he used to go frequently to visit the patients.

25. Q. Around the 20th of July 1944 did you hear from Vice Admiral Hara regarding an incident concerning prisoners of war at the Fourth Naval Hospital?

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

The accused replied.

The commission announced that the objection was not sustained.

A. No, I did not.

26. Q. Around that time did you hear that an experiment with spears was conducted at the Fourth Naval Hospital.

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

The accused withdrew the question.

27. Q. Around July 20, 1944 did you know there was an experiment with spears at the Fourth Naval Hospital?

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

The accused replied that the experiment with spears is a problem at issue.

The commission announced that the objection was not sustained.

A. I did not hear.

28. Q. When you were Commandant of the Fourth Base Force, what were the islands under your command?

A. Truk, Ponape and Melein of the East Carolines, and Nauru and Ocean Islands.

29. Q. What measures were taken to exercise command authority over Nauru and Ocean?

A. Due to the fact that transportation by ships was impossible, there was no other way but to communicate by wireless and even this was very inadequate and it was very difficult to exercise my command. AB

30. Q. If you know the general reputation of Hara and his traits in regard to the supervision of his subordinates, and protection of POW's and natives, please state briefly.

This question was objected to by the judge advocate on the ground that it was multiple, and also on the ground that no foundation was laid and the witness has not been qualified to answer the question regarding reputation and traits of the accused.

The accused made no reply.

The commission announced that the objection was not sustained.

A. The general reputation of Vice Admiral Hara was that he was a very sympathetic man towards his subordinates, lower people and the weak, and took care of them very earnestly.

Cross-examined by the judge advocate:

31. Q. You testified that you heard of the arrival of prisoners of war at Truk; how did you learn of the arrival or capture of these prisoners of war?
A. I recall that it was one time in the battle report from the Forty-first Naval Guard Unit.

32. Q. To whom were these battle reports addressed?

A. Naturally it is a report to the Commander in Chief Vice Admiral Hara.

33. Q. Were these reports seen by Vice Admiral Hara as well as yourself to the best of your knowledge?

A. As a rule the reports are shown to the commander in chief, but I can not say whether this specific report was shown to the vice admiral.

34. Q. Did you recall that it was two battle reports in which prisoners of war were mentioned or merely one battle report?

A. It is not clear as I stated previously, I recall, I recollect that there were one or two occasions.

35. Q. Was there a regular form in which these battle reports were always prepared?

A. There is a form in the general report used by the navy which states the result of the battle, the consumption of ammunition and casualties. Under the result of the battle this item is included.

36. Q. Now at the time you received this report, this battle report from the Forty-first Guard Unit, was the Fourth Base Force still in existence?

A. I am not clear whether this was during the time I was Commandant of the Fourth Base Force or Chief of Staff of the Fourth Fleet.

37. Q. What happened to the units under the Fourth Base Force when it was dissolved?

A. They came directly under the Fourth Fleet.

38. Q. Now you've testified that during your tour of duty you heard of the arrival of prisoners of war on one or two occasions; did you ever hear of any prisoners of war being sent to Japan during your tour of duty?

A. I do not recall hearing that, but I assumed that they were sent back.

The judge advocate moved to strike the words "But I assumed that they were sent back" out of the answer on the ground that they were the opinion of the witness.

The commission directed that the words be stricken out.

39. Q. Were Japanese naval personnel trained that a man who was taken a prisoner of war had lost all honor and all right to be treated as a human being?

A. As I did not actually take part in the instructions regarding international law, I can not say, but I can say that when a Japanese naval personnel is captured as a prisoner of war, then he'll be punished under the Japanese Naval Criminal Code.

40. Q. When you assumed your duty as Commandant of the Fourth Base Force and later as Chief of Staff of the Fourth Fleet, you learned of no standing order regarding prisoners of war, is that correct?

A. There was a regulation on the treatment of prisoners issued by the Navy Ministry.

41. Q. Were these regulations brought to the attention of the forces under your command during your tour of duty either as Commandant of the Fourth Base Force or during your tour of duty as Chief of Staff of the Fourth Fleet?

A. Quite obviously they should have known about it, so I did not bring it to their attention.

Reexamined by the accused:

42. Q. By what channels is the general battle report received from the Forty-first Naval Guard Unit?

A. The report from the Forty-first Naval Guard Unit will be taken down by the telephone operator and this will be sent to the staff officer who will then take it to the chief of staff and to the commander in chief.

43. Q. You testified that there was a clause in the Naval Criminal Code where it is punishable for any Japanese naval personnel to be captured as prisoners of war. Do you know if there is a clause saying that at any occasion Japanese naval personnel will be punished when he becomes a prisoner of war?

This question was objected to by the judge advocate unless the accused is trying to impeach his own witness.

The accused made no reply.

The commission announced that the objection was not sustained.

A. Accurately stating, it means when a Japanese naval personnel for no reason becomes a prisoner of war.

44. Q. During your tour of duty as Commandant of the Fourth Base Force and Chief of Staff of the Fourth Fleet you testified that you did not bring the regulations to the treatment of prisoners of war to the attention of the subordinate units. Did you have any reason for that?

A. At that time the air raid had become very intense and I was very busily occupied and I believe that this sort of regulation was presumably issued by the previous commander in chief or the commandant if necessary, and I did not bring it to their attention.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 11:45 a.m., adjourned until 9 a.m., Monday, December 20, 1948.

THIRTY-FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, December 20, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-fourth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Higuchi, Nobuo, a witness for the prosecution, was recalled as a
witness for the defense, and was warned that the oath previously taken by him
was still binding.

Examined by the accused:

1. Q. Please state your name?
A. Higuchi, Nobuo.
2. Q. Have you previously testified as a witness for the prosecution on
the twenty-first day of this trial?
A. I do not recall the date, but I did take the stand as a witness.
3. Q. Please state once more your tour of duty as Senior Staff Officer of
the Fourth Base Force and as Assistant Senior Staff Officer of the Fourth
Fleet.
A. Senior Staff Officer of the Fourth Base Force from October 1943 to
April 1944. Assistant Staff Officer of the Fourth Fleet from May 1944 to
March 1945.
4. Q. When you were Assistant Senior Staff Officer of the Fourth Fleet,
was the accused Hara Commander in Chief of the Fourth Fleet?
A. Yes.
5. Q. During the period you were Assistant Senior Staff Officer, who was
the Chief of Staff of the Fourth Fleet?
A. First it was Rear Admiral Arima, and later it was Rear Admiral Sumikawa.
6. Q. If you know the period that these two admirals were chief of staff,
please state the period.

A. Rear Admiral Arima was the Chief of Staff of the Fourth Fleet from March 1944 to August 1944. Rear Admiral Sumikawa was the Chief of Staff of the Fourth Fleet from that time to the end of the war.

7. Q. Who was the Senior Staff Officer of the Fourth Fleet?

A. First it was Captain Inoue, next Captain Imazato, and next I was the Senior Staff Officer.

8. Q. Please state the tour of duty of these persons as Senior Staff Officer of the Fourth Fleet?

A. Captain Inoue was the Senior Staff Officer of the Fourth Fleet up through May 1944. Captain Imazato was the Senior Staff Officer of the Fourth Fleet from that time till March 1945 and I was the Senior Staff Officer of the Fourth Fleet from that time until the end of the war.

9. Q. Do you know the situation of the Fourth Fleet when Admiral Hara took command?

A. I do.

10. Q. Please state briefly what the situation was.

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. When Commander in Chief Hara took command it was right after the task force raid on Truk and Truk was in a state of confusion. Almost all the war ships under its command were destroyed by this raid and I recall that there were no war ships that were able to operate. It was the same for air planes.

11. Q. During the time you were staff officer of the Fourth Fleet, what was the usual procedure followed when members of the staff wished to submit a report or request to the Commander in Chief?

A. It was done through the Chief of Staff.

12. Q. When you assumed your post as Assistant Senior Staff Officer of the Fourth Fleet, were there headquarters senior to the Fourth Fleet?

A. There was.

13. Q. What was this?

A. Central Pacific Area Fleet and Combined Fleet.

14. Q. Of these two, which is the senior?

This line of questioning was objected to by the judge advocate on the ground that it was repetitious and immaterial.

The accused withdrew the question.

15. Q. When was this Central Pacific Area Fleet organized?

A. I believe it was in March 1944.

16. Q. Until when did it function?

A. Until July of the same year when it was annihilated on Saipan.

17. Q. Do you know what the mission of the Central Pacific Area Fleet was?
A. Yes, I do.

18. Q. Please state it.

A. The main mission of the Central Pacific Area Fleet was to defend the Central Pacific Area.

19. Q. Is that all?

A. The Central Pacific Area Fleet Headquarters was established at the same time the 31st Army was established and one reason for its establishment was to unify the commands. AB
AB

20. Q. Were there any other direct subordinate units of the Central Pacific Area Fleet other than the Fourth Fleet?

A. Yes, there were.

21. Q. What were the subordinate units of the Central Pacific Area Fleet?

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

The accused replied.

The commission announced that the objection was not sustained.

A. In the Army there was the 31st Army - in the Navy there were the Fifth Base Force and the Thirtieth Base Force.

22. Q. During your tour of duty as staff officer of the Fourth Fleet did the Fourth Fleet exercise judicial and administrative authority; that is for example, to maintain peace and order, protection of civilians and natives in all the area under the jurisdiction of the Fourth Fleet?

This question was objected to by the judge advocate on the ground that it was leading and multiple.

The accused reframed the question.

23. Q. During your tour of duty as staff officer of the Fourth Fleet, did the Fourth Fleet exercise judicial and administrative authority in the area under the jurisdiction of the Fourth Fleet?

A. No, it did not.

24. Q. Do you know who exercised these authorities?

A. I am not definite as to this point, but I believe the Central Pacific Area Fleet were these authorities.

25. Q. Do you know who possessed the authority to maintain peace and order in all the areas under the jurisdiction of the Fourth Fleet?

A. I believe I know.

26. Q. Who had this authority?

A. On Truk, the Commanding General of the Army, Lieutenant General Mugikura possessed this authority. In the same way I believe on all the various islands the senior army officer had this authority.

27. Q. Do you know who actually exercised the judicial and administrative authority in the area under the jurisdiction of the Fourth Fleet?

A. I believe I know.

28. Q. Who actually exercised this authority?

A. At first the Governor of the South Sea Government actually exercised the civil administration of the whole area and later I recall that the Senior Commanding Officer of each island exercised these authorities.

29. Q. Do you know how the Senior Commanding Officer of the various islands came to possess this authority?

A. I do know.

30. Q. Please state it.

A. I recall that Senior Commanding Officer of each island received this authority from the Commander in Chief of the Central Pacific Area Fleet.

31. Q. Were there any kempeitai in the area of jurisdiction of the Fourth Fleet?

A. Yes, there was.

32. Q. Did the Fourth Fleet have jurisdiction and control over these kempeitai?

A. No, they did not.

33. Q. Please state who had this jurisdiction and control if you know.

A. In the South Sea Islands there was a South Seas Kempeitai, and this kempeitai received over-all instructions directly from the Kempeitai Headquarters in Tokyo. Locally they received command from the Army Units.

34. Q. The guards of the Construction Corps, could they exercise their power given to them to all personnel?

This question was objected to by the judge advocate on the ground that the witness was not qualified to answer this question.

The accused replied.

The commission announced that the objection was not sustained.

A. It was restricted to the personnel employed by the Construction Corps.

35. Q. What were the restrictions as to place imposed on the Civil Naval Guards of the Construction Corps in the execution of their duties?

This question was objected to by the judge advocate on the ground that the witness had not been qualified as to knowledge of internal administration or authority of the Fourth Construction Corps.

The accused made no reply.

The commission announced that the objection was not sustained.

A. They were restricted to the compound of the Construction Corps.

36. Q. During your tour of duty as staff officer of the Fourth Fleet, did you ever see or witness any prisoners of war?

A. No, I have never seen any.

37. Q. Do you know whether there were any prisoners confined at the Forty-first Naval Guard Unit around June 1944?

A. I did not know.

38. Q. Did the Fourth Fleet Headquarters receive a report from the Forty-first Naval Guard Unit as to the death of five prisoners of war or later the death of three of the prisoners, and then of two of the prisoners?

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

The accused reframed the question.

39. Q. Do you know whether the Fourth Fleet received any report from the Forty-first Naval Guard Unit concerning the death of five prisoners of war?

A. As far as I know the Fourth Fleet Headquarters did not receive such a report.

40. Q. Do you know whether the Fourth Fleet received a report from the Guard Unit as to the death of three prisoners of war around June 1944?

A. No.

41. Q. Do you know whether the Fourth Fleet received a report concerning the death of two prisoners of war?

A. No, they did not receive any such reports.

42. Q. Do you know whether there were two prisoners of war confined at the Forty-first Naval Guard Unit in July 1944?

A. After the termination of the war I heard there were, but during that time I did not know.

43. Q. Do you know whether the Fourth Fleet Headquarters received a report from the Fourth Naval Hospital as to the death of two prisoners of war around this time?

A. No, they did not receive such a report.

44. Q. Please state briefly the report you heard after the termination of the war?

A. It was that two prisoners of war which were confined at the Naval Guard Unit were taken to the hospital and executed.

45. Q. Is that all?

A. Yes.

46. Q. Did you know whether or not there was an espionage incident concerning two missionaries and four Nauruan natives?

A. At that time I did not know, but I heard about it after the termination of the war.

47. Q. What did you hear after the termination of the war?

A. I heard that a native on Uman in the Truk Atoll communicated with the American submarine.

48. Q. Is that all?

A. And that the missionaries were involved in this incident.

49. Q. Is that all?

A. Yes.

50. Q. Did you hear whether this incident was true or that this incident never existed?

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

The accused reframed the question.

51. Q. In what you heard, did you hear whether or not that these suspicions were true or false?

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

The accused withdrew the question.

52. Q. Do you know or did you know about the food incident concerning one Nauruan native around September 1944?

A. I do not know and I did not know.

53. Q. About this time do you know whether the Fourth Fleet received any report concerning this incident?

A. The Fourth Fleet did not receive such a report.

54. Q. Do you know or did you know of an incident concerning food which involved one Chinese who was a resident of Nauru Island?

A. I do not know and I did not know.

55. Q. Did you know whether the Fourth Fleet received any reports from the subordinate units on Nauru or Ocean around December 1944 concerning the incident of one Chinese native, a resident of Nauru, relative to a food incident?

A. No such report was received.

56. Q. Do you know whether or not there was a unit other than the navy unit at Jaluit around April 1945?

A. I do know.

57. Q. What unit was this?

A. It was an army unit commanded by Major Furuki.

58. Q. Do you recall the name of this unit?

A. I believe it was a part of the First South Sea Detached Unit.

59. Q. Do you know or did you know whether or not there were two spy incidents concerning seven Jaluit natives and one Jaluit native around April 1945?

This question was objected to by the judge advocate on the ground that it was multiple and leading.

The accused reframed the question.

60. Q. Do you know or did you know whether there was a spy incident concerning seven Jaluit natives around April 1945?

This question was objected to by the judge advocate on the grounds that it was multiple and leading.

The accused made no reply.

The commission announced that the objection was not sustained.

A. At that time I did not know, but after arriving on Guam Major Furuki was tried and through the Guam News I came to know that there was an incident on Jaluit but I did not know how many natives were involved.

The judge advocate moved to strike the words "but after arriving on Guam Major Furuki was tried and through the Guam News I came to know that there was an incident on Jaluit but I did not know how many natives were involved" out of the answer on the ground that it was irrelevant and immaterial.

The accused announced that he had no objection to the striking.

The commission directed that the words be stricken out.

The commission then, at 10:20 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Higuchi, Nobuo, 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.)

61. Q. Do you know, or did you know, whether there was a spy incident around April 1945 concerning one Jaluit native?

A. No, I did not know.

62. Q. Do you know whether the Fourth Fleet received a report from the subordinate unit on Jaluit concerning these incidents around April 1945?

A. No such reports were received.

63. Q. Do you know, or did you know, about a spy incident involving two Marshall natives which took place around August 1945?

A. No, I did not.

64. Q. Do you know whether the Fourth Fleet received a report from the subordinate unit on Jaluit around August 1945 concerning a spy incident involving two Marshall natives?

A. No such reports were received.

65. Q. Did you know whether the Fourth Fleet received any reports from the subordinate unit on Ocean concerning the deaths of two hundred natives of Gilbert and Ellice Islands around August 1945?

A. No such reports were received.

66. Q. Do you know what the wireless communication conditions between Fourth Fleet Headquarters and Nauru-Ocean area were around August 1945?

A. As no dispatches were received from Nauru and Ocean area I think that transmitting facilities on Nauru and Ocean were not in commission.

The judge advocate moved to strike the words "as" and "I think that transmitting facilities on Nauru and Ocean were not in commission" out of the answer on the ground that they were speculative and an opinion of the witness.

The accused made no reply.

The commission directed that the words "as" and "I think that transmitting facilities on Nauru and Ocean were not in commission," be stricken out.

67. Q. Do you know anything else concerning the wireless communication between Truk and Nauru-Ocean area?

A. No.

68. Q. Does the witness know whether Nauru and Ocean were frequently attacked by American Task Forces because Nauru and Ocean Islands were on the road through which the American Task Forces came to attack Truk?

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

The accused withdrew the question.

69. Q. Do you know for an actual fact what the battle condition of Nauru-Ocean area was around August 1945?

A. Nauru and Ocean Islands were damaged to an extent that they could not even send any dispatches. I do not know anything about the bombings.

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

The accused made no reply.

The commission announced that it would rule on the motion after the next question and answer.

70. Q. How do you know that Nauru-Ocean area were damaged to extent that they could not send any dispatches?

A. As no reports concerning the battle conditions of the Nauru-Ocean area were received by the Fourth Fleet I presumed that the transmitter was destroyed.

The commission directed that the two previous answers be stricken out.

71. Q. Did you or did you not for an actual fact know that the code book of the Japanese Navy fell into the hands of the Americans about this time?

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 not sustained.

A. I do not know.

72. Q. Do you know what the general reputation of Vice Admiral Hara, the commanding officer of the Fourth Fleet, was concerning the supervision and control of his subordinates?

A. Admiral Hara's control, supervision, and instruction of his subordinates were laudable. The fact that he was very kind to individuals was known by all on Truk. Especially he was very kind to patients in the hospital and persons suffering from malnutrition. These facts were laudable and known by all on Truk.

Cross-examined by the judge advocate:

73. Q. Did the Fourth Fleet exercise judicial and administrative authority regarding the personnel under its command?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. The Fourth Fleet Headquarters command the subordinate navy personnel and gunzokus concerning military administration and in case of commission of unlawful acts the navy criminal code and navy disciplinary punishment ordinance were applied.

74. Q. Did the Fourth Fleet Headquarters through its subordinate unit, the Fourth Construction Department, exercise this authority over the civilian personnel of the Fourth Construction Department?

A. If they were gunzokus we had the authority.

75. Q. Were the naval civil guards of the Fourth Construction Department gunzokus?

A. Yes.

76. Q. Does the witness know whether the Fourth Construction Department employed Nauruan natives?

A. I do know.

77. Q. Did they?

A. I believe they employed them.

78. Q. Did the Fourth Construction Department gunzokus have authority over these Nauruan natives?

A. I believe the gunzokus did not have any authority over natives.

79. Q. Did you previously testify on direct examination that the Fourth Construction Department guards had authority over persons employed by the Fourth Construction Corps?

A. It is true with civil guards, but not true with the gunzokus.

80. Q. Did the civil guard section of the Fourth Construction Department have authority to investigate crimes committed by Nauruan employees of the Construction Department?

This question was objected to by the accused on the ground that it was vague and too general in scope.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I do not possess a complete knowledge as to whether the civil guard unit of the Fourth Construction Department possessed this authority to natives locally employed.

81. Q. Did you testify this morning that you did not know that there were prisoners of war confined at the guard unit in July 1944?

A. That is so.

82. Q. Did you also testify that you did not know that prisoners of war had been killed at the hospital until after the war?

A. That is not so. I learned of this execution at the hospital at the cognizant commanding officers' conference which was held in September, but I did not know whether there were any prisoners confined at the Guard Unit in July until after the war.

83. Q. Did you testify on the twenty-first day of the proceedings of this case?

A. Yes, I did testify.

84. Q. Were you asked the following question and did you give the following answer "About July of 1944 did any prisoners of war arrive on Truk?" and you answered "Yes."?

A. I do know.

85. Q. Were you asked the following question and did you give the following answer, "53. Q. How did you learn of their capture?" "A. I learned of their capture through the commanding officer on Puluwat Island."?

A. Yes.

86. Q. Did you see this dispatch after it arrived?

A. I recall seeing it.

87. Q. Then when you testified today that you did not know at that time that these prisoner had arrived in July you were in error. Is that true?

This question was objected to by the accused on the ground that it misquoted testimony of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I only saw this dispatch and I do not know whether these prisoners arrived on Truk because I did not receive or see any report.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Higuchi, Nebue, 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.)

88. Q. You testified that you did not receive any report that the prisoners of war arrived at the Forty-first Guard Unit in July of 1944, is that correct?

A. Yes.

89. Q. Do you know if the Fourth Fleet Headquarters received a report of the arrival of these prisoners of war at the Guard Unit?

A. I do not recall that it received such a report.

90. Q. Do you know if during the tour of duty of the accused Hara the Fourth Fleet Headquarters received any report concerning the arrival or capture of any prisoners of war at Truk?

A. From my recollection I recall that the Fourth Fleet Headquarters received a report of the capture of one prisoners of war in the Truk Atoll in January 1945.

91. Q. Do you recall if the Fourth Fleet received any other reports concerning the arrival or capture of prisoners of war during the tour of duty of the accused Hara?

A. I was not aware of it.

92. Q. Then, during the tour of duty of Hara did you know of the arrival or capture of any other prisoners of war on Truk Atoll other than the one in January of 1945?

This question was objected to by the accused on the ground that it was vague and general, repetitious and called for a speculative answer and an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I believe it was on the 24th or 25th of February 1944 that one American flier of the Task Force was captured in Truk Atoll and confined at the Forty-first Naval Guard Unit.

93. Q. Was he confined at the Forty-first Guard Unit on Dublen after the accused Hara was Commander in Chief of the Fourth Fleet?

A. I believe it was so.

94. Q. Do you recall any other prisoners of war besides the one in January 1945 and the one after the February air raid in February 1944 arriving or being captured on Truk Atoll?

A. There was another one. I believe it was around March or April 1944 one American flier was captured on Hotaru Island in Truk Atoll and confined at the Guard Unit.

95. Q. Then you recall the prisoners of war in January 1945, in February 1944, and in March of April 1944, is that correct?

A. Yes.

96. Q. And these prisoners of war arrived on Truk, is that correct?

A. Yes.

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

The judge advocate replied.

The commission announced that the motion was not sustained.

97. Q. On the twenty-first day of the proceedings of this court and in this case were you asked the following questions and did you give the following answers: "48. Q. During the tour of duty of Vice Admiral Hara, do you know if any prisoners of war arrived on Truk Atoll? A. I do not know." "50. Q. Was the arrival and confinement of prisoners of war on Dublon Island reported to the Fourth Fleet? A. I do not recall having received such a report."?

This question was objected to by the accused on the ground that it was irrelevant and immaterial unless the judge advocate was laying a groundwork for impeaching the testimony of his own witness on the twenty-first day of this trial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not recall exactly how I answered.

98. Q. While you were senior staff officer of the Fourth Base Force were reports concerning the arrival of prisoners of war made by the Guard Unit to the Fourth Base Force?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not recall having received the report concerning the arrival of prisoners of war from the Guard Unit.

99. Q. The question is do you know if those reports were sent from the Guard Unit to the Fourth Base Force not whether you personally received them or not?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know.

100. Q. While you were assistant staff officer of the Fourth Fleet were reports of the arrival of prisoners of war made directly to the Fourth Fleet Headquarters?

A. From my recollection I recall there was this one report directly from the Guard Unit of the arrival of the prisoner of war captured in January 1945.

101. Q. Do you know if it was a practice of the Forty-first Guard Unit to report the arrival of prisoners of war, to the Fourth Fleet?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They should have according to regulations. I wish to change that word "regulations" to common sense.

102. Q. Do you know how in fact the reporting of arrival of prisoners of war was handled by the Forty-first Guard Unit?

A. As I have stated I only know of only one incident when the Forty-first Naval Guard Unit reported concerning the confinement of one American prisoner in January 1945.

103. Q. While you were with the Fourth Base Force didn't they report concerning this one prisoner captured during the February air raid?

A. I do not recall clearly whether there was a report or not concerning the confinement of that prisoner.

104. Q. Do you recall anything concerning how you learned of the arrival or capture of that prisoner of war?

A. I do not recall whether it was a report from the Forty-first Naval Guard Unit or whether I learned of this through other sources. I do not recall.

105. Q. Do you recall anything else in connection with this prisoner who was captured in February?

A. I recall hearing something to the effect that this prisoner was a Navy lieutenant commander.

106. Q. Did you participate in any way in the capturing of this prisoner of war or learn anything about him or the manner in which he was captured?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This happened after Rear Admiral Arima became Commandant of the Fourth Base Force. He ordered the investigation to be made through Truk Atoll and the persons who carried out this search were the Forty-first naval Guard Unit, and I recall that this prisoner was captured on an island situated in the north-west part of the atoll. AB

107. Q. Do you know if the Forty-first Guard Unit reported to the Fourth Base Force the capture of this prisoner of war and or his confinement?

A. I believe it naturally should be made, but I do not recall at present having seen such a report.

108. Q. Did you testify in effect that you did not know what the practice of the Guard Unit was with regard to the reporting of the arrival of prisoners of war?

A. I testified that in case the Guard Unit did confine a prisoner by common sense it should have reported to the higher echelon.

109. Q. At the War Criminal Stockade on May 1, 1948 did you make the following statement in the presence of Commander Ogden and Mr. Savory: "While the Fourth Base Force was still in operation I believe the 41st Guard Unit telephoned a report on the arrival and confinement of each prisoner of war, to the 4th Base Force Headquarters. As no specific staff officer was assigned to handle prisoner of war matters, these reports would go to the commandant either directly as written down by an enlisted man at the telephone, or through some staff officer who might receive the report or because of its importance, deliver it himself to the commandant. After the dissolution of the Fourth Base Force on 1st May 1944, its functions were absorbed by the 4th Fleet. Arima who had been the commandant of the 4th Base Force and concurrently Chief of Staff of the 4th Fleet continued as the Chief of Staff of the 4th Fleet after the 4th Base Force was dissolved. Handling of prisoners of war matters continued in much the same way as before except that reports were now made directly to the 4th Fleet. The 41st Guard Unit I believe continued to report when prisoners of war arrived and were confined at the Guard Unit and these reports were made directly to the 4th Fleet Headquarters. These reports were not addressed to any specific staff officer or the Commander in Chief but like regular reports to the 4th Fleet would be routed through staff officers to the Commander in Chief."? AB

This question was objected to by the accused on the ground that it was irrelevant and immaterial unless the judge advocate was going to introduce the statement into evidence, that the statement was made post litem motam, that it was untrustworthy, that it was made in a past period and had no claim to confidence, and that it was made with an idea to manufacture evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do recall making this statement.

110. Q. On that same day did you make a statement, with regard to the February air raid aviator, saying: "I remember that I wrote the order for the search that resulted in the capture of this aviator and signed it in Arima's name so I remember the approximate date. As in accordance with the regular procedure after being signed by me it was submitted to Arima and approved by him and issued as an order. The prisoner of war was later captured and brought in and confined at the 41st Guard Unit. The 41st Guard Unit telephoned the headquarters of the 4th Base Force and reported that the prisoner of war had been confined."?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall writing so.

Reexamined by the accused:

111. Q. You testified to the prosecution's question did the Fourth Fleet Headquarters through its subordinate the Fourth Construction Department exercise authority over the civilians of the Fourth Construction Department. To this question you replied it was so as to gunzokus. What do you mean by this authority?

A. I think that the Fourth Fleet Headquarters through the cognizant commanding officer of its subordinate units possessed authority over military personnel and gunzokus concerning military administration.

112. Q. These natives employed by the Fourth Construction Corps, were they gunzokus or not?

A. They were not gunzokus.

113. Q. You testified that you knew of the arrival of the prisoners in January 1945 and of one prisoner in February 1944 and one in March or April 1944, but during this February 1944 and March and April 1944 you were not a member of the staff of the Fourth Fleet were you?

A. I was not a staff officer of the Fourth Fleet up until through April 1944.

114. Q. Do you know what the degree of responsibility of the commanding officer of a guard unit has, especially the responsibility concerning the confinement and treatment of prisoners of war?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the cross-examination unless it was restricted to reports concerning prisoners of war.

88

The accused made no reply.

The commission announced that the objection was not sustained.

A. I do not know what degree of responsibility he possesses.

115. Q. Was the responsibility of the commanding officer of a guard unit concerning the confinement and treatment of prisoners of war limited or unlimited?

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

The accused reframed the question.

116. Q. Do you know whether or not the commanding officer of a guard unit possessed full responsibility concerning the confinement and treatment of prisoners of war?

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

The accused reframed the question.

117. Q. In a guard unit was there a person who bore part of the responsibility along with the commanding officer of the guard unit?

A. What I think personally I believe the commanding officer of the guard unit had the responsibility.

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

The accused replied.

The commission directed that the answer be stricken out.

118. Q. Did you see this prisoner of war, this flier who was supposed to be confined at the Guard Unit about February 24th and the prisoner of war that was captured about March 1, 1944 and this lieutenant commander?

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 only prisoner I actually saw was the only one that was captured in March or April 1944.

119. Q. Lieutenant Bolton asked you about a statement you made on May 1, 1948. What were the circumstances under which you made this statement such as were you being held in solitary confinement, did you volunteer the statement or did Lieutenant Bolton threaten you if you did not make the statement? Please state the circumstances under which you made this statement? AB

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

The accused replied.

The commission announced that the objection was sustained and stated that if the accused wanted to know if the witness made the statement voluntarily to so ask the question.

120. Q. Did you make this statement voluntarily - this statement of May 1, 1948?

A. It was not written by my own initiative.

The judge advocate moved to strike out this answer on the ground that it was not responsive. AB

The commission directed that the answer be stricken out.

Examined by the commission:

121. Q. In connection with the communications with Nauru and Ocean Islands, do you recall when the last radio message was received from Ocean Island, approximately when?

A. I do not recall.

Neither the accused, the judge advocate, 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 3:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, December 21, 1948.

THIRTY-SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, December 21, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States
Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-fifth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Ueno, Chisato, a witness for the prosecution, was recalled as a witness
for the defense and was warned that the oath previously taken, by him, was
still binding.

Examined by the accused:

1. Q. State your name.
A. Ueno, Chisato.

2. Q. Do you recall testifying on the twenty-fourth day of this trial as
a witness for the prosecution?
A. I do.

3. Q. State what period of time you served as Chief Surgeon of the Forty-
first Naval Guard Unit.

A. From May 17, 1944 till May 27, 1945 I was acting Chief Surgeon of the
Forty-first Guard Unit and on May 27, 1945 I was appointed Head of the Fourth
Detached Hospital at Fefan Island and I continued in this post until December
26, 1945. During this time I was nominally Chief Surgeon, but from December 26, 1945
till February 5, 1946 I was Chief Surgeon.

4. Q. As a prosecution witness you testified that on June 17, three prison-
ers of war died by bombing at the Forty-first Naval Guard Unit. Did you know
if the Forty-first Naval Guard Unit reported these deaths to the Fourth Fleet?

This question was objected to by the judge advocate on the ground that
it was repetitious and that the accused had questioned, and had full oppor-
tunity to question this witness on this subject during cross-examination
when the witness testified as a prosecution witness.

The accused replied.

The commission announced that the objection was not sustained.

A. I did not know.

5. Q. Do you know if the Forty-first Guard Unit reported to the Fourth Fleet the incident of the disposal of two surviving prisoners around June 20, 1944? The two prisoners are those who survived the bombing of June 17, 1944?

A. I did not know who reported or who did not report it. I did not know at all.

6. Q. Regarding the incident of the disposal of the two prisoners, were there any instructions or directions from Captain Asano?

A. There were.

7. Q. Please tell us what sort of instructions or directions they were.

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

The accused replied.

The commission announced that the objection was not sustained.

A. When I was in Fofan Island I was immediately called by the commanding officer and I heard the story from him in his room.

The judge advocate moved to strike out the answer on the ground that it was clearly hearsay, and incompetent.

The commission directed the witness to continue the answer.

(The witness continued his answer as follows:)

"Today I want to tell you about the disposal of prisoners of war in June at the Naval Guard Unit and I want your understanding and cooperation regarding this point" and he made the following statement: "1. Regarding the June prisoner of war disposal, this was done solely on the responsibility and judgment of Asano, myself alone, but I did something unforgivable to you gentlemen and I want your understanding, and I intended to report this to the headquarters immediately after the incident, but having postponed it day by day, I eventually forgot about it and for that reason I now feel that I should report and I went to the headquarters to investigate. I discovered that the headquarters were not aware of this incident and therefore I changed my mind and ordered my executive officer to go to the headquarters and other units to investigate. I, myself, undertook this also. As a result I was convinced that nobody knew about the June incident, consequently, should the June incident come to light it was apparent that the guard unit must alone take the responsibility and regarding this, I would like you to have in mind the following point: To keep the incident in strict secrecy, and hereafter to forget this problem of the prisoners of war altogether and not to discuss it even in conversation among the members of the guard unit. The higher ranking men should thoroughly indoctrinate and provide against any leakage of the secret by the subordinates. I also caution you to refrain from any discussion which might be liable to make them recall the incident. Regarding the members of the medical corps as compared with the other personnel, more intellectual. The intellectual are usually very weak-willed when they con-

AB

front difficulties. I desire that you call to the attention of your subordinates the necessities for prevention of leakage of information and abandon the idea of 'Everyone for himself'. If this incident should come to light we must expect a reprisal of great magnitude and I, Asano, am convinced that the prevention of leakage on information can be carried out successfully at the guard unit." That is what he said.

The judge advocate moved to strike out this answer on the ground that it was hearsay and incompetent and apparently made long after the incidents.

The accused requested permission of the commission to ask the witness one more question before ruling on the motion by the judge advocate.

The commission announced that the request was granted.

8. Q. When was the date when Asano gave this instruction.
A. I recall it was around ~~7~~ August 25, 1945.

The commission announced that the motion was not sustained, but that the witness' testimony would be given its proper weight by the commission.

The commission then, at 10:20 a.m., took a recess until 10:45 a.m., at which time it reconvened.

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

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

Ueno, Chisato, 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;)

9. Q. Who was present when Captain Asano gave these instructions as you testified previously?
A. I definitely know that only officers Nakase the executive officer, myself, surgeon lieutenant Kuno, and surgeon lieutenant (junior grade) Eriguchi were there.

10. Q. Was there anybody else?
A. I recall there were about two persons other than these.

11. Q. Where did it take place?
A. In the official room of the commanding officer.

12. Q. Do you know whether or not an investigation regarding prisoners was conducted around the middle of August 1945?

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

The accused withdrew the question.

13. Q. Do you know whether or not an investigation was conducted of prisoners of war which were under the custody of the Forty-first Guard Unit in the middle of August 1945?

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 not sustained.

A. I saw the memorandum regarding the confinement of prisoners at the Naval Guard Unit.

14. Q. Did you note something special in this memorandum?

A. I discovered that it was altogether different from our memory.

15. Q. Please state in what way it was so erroneous?

The judge advocate objected to continuation of this line of questioning regarding a memorandum unless it were established that the memorandum was competent and from whom and to whom it was written.

The accused withdrew the question.

16. Q. Who made this memorandum?

A. It was made in the name of the commanding officer of the Guard Unit.

17. Q. To whom was it addressed?

A. I recall that it was a memorandum to be submitted to the Fourth Fleet Headquarters.

18. Q. Did you or did you not discover wide discrepancies between this memorandum and actual fact?

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

The accused replied.

The commission announced that the objection was not sustained.

A. I discovered that there was a wide discrepancy.

19. Q. Please state briefly regarding this.

A. On the last day of May 1944, two prisoners of war were confined at the Naval Guard Unit and both were suffering from burns. I treated them for one week at the sick bay until they were completely recovered but this was not entered and instead it was entered in the April column which was prior to this. I did not assume office as yet in April and the five prisoners of war who were bombed in June air raid were not entered at all.

20. Q. Is that all?

A. That is all the errors which I learned of the prisoners of war during my tour of duty.

21. Q. During your tour of duty at the Guard Unit on how many occasions did you see prisoners of war?

A. On four occasions.

22. Q. When and how many and what happened to the prisoner or prisoners whom you saw on the first occasion?

A. On the first occasion it was two prisoners of war who were confined on May 29, 1944. They were suffering from burns on their faces and hands. They were treated for one week and recuperated completely. Soon after they were sent to the homeland via Saipan.

The judge advocate moved to strike out the words "Soon after they were sent to the homeland via Saipan." on the ground that they were an opinion.

The accused requested permission to propound an explanatory question prior to a ruling by the commission.

The commission announced that the request of the accused was granted.

23. Q. How do you know that those two prisoners were sent back to the homeland?

A. I was sick in bed around 3 June and on 8 June Eriguchi who was newly appointed came to Truk. After the courtesy call, in our conversations, Eriguchi said that on the seventh when he was in Saipan two prisoners of war came from Truk and during this conversation at the wardroom another officer said that the two prisoners who were at the Guard Unit were not there any more. The next batch of prisoners was the five prisoners who were captured in June and I am certain from this that those two prisoners had returned to the homeland. On the occasion when I went to the Guard Unit and saw the memorandum I went to the commanding officer and executive officer and pointed out the error in the memorandum and on that occasion I learned from them to the same effect.

The commission announced that the previous motion by the judge advocate was not sustained.

24. Q. How about the second group of prisoners of war?

A. The second occasion was the five prisoners of war who were confined in June 1944 which I have already testified.

25. Q. What about the next occasion?

A. On the third occasion it was the two prisoners who were confined at the Guard Unit in July 1944 and sent to the hospital.

26. Q. What about the last occasion?

A. The fourth occasion was one prisoner who was confined on February 2, 1945 and he was sent back to the homeland.

27. Q. Do you recall anything special regarding this one prisoner who was confined on February 2, 1945.

A. I saw this prisoner of war with four or five officers and the officers ordered the handcuffs taken from the prisoner and I heard them telling someone to bring tea and cigarettes to give them to the prisoner.

28. Q. Do you know the general reputation of the accused, Vice Admiral Hara, during his tour of duty, regarding his supervision and control over his subordinates?

A. The subordinates were very much attached to Vice Admiral Hara to the extent that instead of considering him as Commander in Chief, they would address him more intimately by saying Hara, San (TN. An expression of intimacy). I recall many occasions but in short his reputation was that of a man with a pure mind and he was renowned for his warm-hearted and sympathetic manner by all.

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the judge advocate:

29. Q. Since the conversation by Asano in August 1945 have you ever related this conversation to anyone?

A. When in the course of an interrogation by Lieutenant Bolton I believe I spoke to him about it. It wasn't all the contents but I told him to the effect that the commanding officer had forgotten to report it to the headquarters.

30. Q. Did you just prior to the commencement of this proceedings this afternoon sitting in that chair over there (indicating a chair at the back of the court room) tell Lieutenant Bolton that you did not tell this conversation to anyone until you spoke with defense counsel when they came to see you recently?

A. At the time when I was seated there I said that I did not speak to anyone, but I thought about it afterwards and recalling the fact that I spoke to Lieutenant Bolton, I at once returned and told him that I had spoke about it to him.

31. Q. In addition to Lieutenant Bolton who was present at the time you told Lieutenant Bolton about this conversation?

A. There were Commander Ogden and interpreter Savory.

32. Q. Do you recall that you told them anything about the contents of this alleged conversation after the war?

A. I recall that I spoke of that fact and I still remember the answers thereto.

33. Q. How much of that statement did you tell Lieutenant Bolton and Mr. Savory and Commander Ogden?

A. What I said at that time was that Asano said he had intended to make the report but postponed it day by day until eventually he completely forgot about it, and to this I was asked "Don't you realize that Asano knew that he was fabricating to you?" and that question put me off and made me reluctant to continue further.

34. Q. When did this alleged conversation take place with Lieutenant Bolton and Commander Ogden and Mr. Savory?

A. It was around April of this year when I was first examined by Lieutenant Bolton.

35. Q. Did you ever mention the conversation with Asano to anyone else?

A. I spoke about it to a question put forward by defense counsel Mr. Takano.

36. Q. To the best of your recollection did you speak to anyone else besides Lieutenant Bolton, Commander Ogden, Mr. Savory, and Mr. Takano about it?

A. After I had the conversation with Captain Asano before I returned to Fefan Island I spoke to my subordinates at the sickbay. I relayed to them the policy determined by the higher officers regarding the prevention of leakage of information and cautioned them to follow that policy and I returned to Fefan Island. I do not know if I am justified or not but I firmly believed in my superiors and considered that to bring up the incident after the cessation of the war was unnecessary and this is the first time that I testified regarding this incident after the cessation of the war on the witness stand. AB

37. Q. From the time you returned to Fefan Island to April 1948 did you discuss this Asano conversation with anyone?

A. I did not speak to anyone.

38. Q. Before you returned to Fefan Island did you know that there were concrete plans of the Fourth Fleet Headquarters to attempt to conceal from the American authorities all prisoner of war incidents?

A. I did not know.

39. Q. Then you knew nothing about conferences held in August 1945 which Asano attended at the Fourth Fleet Headquarters concerning prisoner of war matters?

A. I do not know.

40. Q. You testified regarding this alleged conversation with Asano, that he told you that the Fourth Fleet knew nothing about the June incident. At that time did you not know that Iwanami knew about your indiscreet operations in June?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. In the beginning of June when Iwanami came to the Guard Unit I recall him mentioning briefly that there had been an operation.

41. Q. Was it Iwanami who mentioned to you that there was an operation or was it you that mentioned to Iwanami that there had been an indiscreet operation?

A. I merely told Iwanami that I operated.

42. Q. Did you tell him that they were indiscreet operations on prisoners of war?

A. I did not say so.

43. Q. On the twenty-fourth day of these proceedings were you asked the following question: "Did you at any subsequent time inform the Chief Medical Officer of the Fourth Fleet that you had performed operations upon these prisoners of war?" and did you give the following answer: "I told the Chief Medical Officer after my conversation with him that I had conducted some indiscreet operations on a prisoner of war at an inopportune moment."?

A. I testified then that I operated on a prisoner of war at an inopportune moment. AB

44. Q. Did this conversation occur at a time when the Chief Medical Officer told you that he desired to conduct experiments on prisoners of war?

This question ~~was~~^{is} objected to by the accused on the ground that it was irrelevant and immaterial. 813

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He said to the effect that he wanted to examine something.

45. Q. Did he say he wanted to examine something on prisoners of war?

A. What Iwanami said at that time was that he wanted to examine the function of the kidney of the prisoners of war.

46. Q. Now, you have testified in considerable detail about this conversation with Asano. Are you sure about all the details of that alleged conversation?

A. It is accurate.

47. Q. And yet you did not speak to anyone about the incident from the period of August 1945 until April 1948, is that correct?

A. For a long period I have been interrogated and therefore I cannot say definitely.

48. Q. You said that you never testified in any trial about this conversation with Asano. In any trial have you ever been asked whether or not the Forty-first Guard Unit reported the June incident to the Fourth Fleet?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall that I wasn't asked.

49. Q. On the twenty-fourth day of this trial were you asked "Do you know if Commanding Officer Asano submitted any reports to the Fourth Fleet concerning your operation and the execution of the prisoners of war"?

A. I recall now that I was asked this question by the defense.

50. Q. At the time you were asked that question by the defense did you say anything about this alleged conversation with Asano in which Asano told you that he had not reported to the Fourth Fleet?

This question was objected to by the accused on the ground that it called for a repetitious answer.

The judge advocate replied.

The commission announced that the objection was ~~sustained~~^{sustained}. 86

51. Q. Was there an air raid at Truk around the end of May or beginning of June 1944?

A. I arrived on Truk from Japan on May 17, 1944. I was aware of the air raid before that time by reading the newspapers.

52. Q. During the time you were on Truk in May or June of 1944 was there an air raid?

A. There was.

53. Q. Now, you referred to two prisoners of war who were captured around that time, is that correct?

A. That is correct.

54. Q. You testified that after the war you heard that these two prisoners of war had been sent to Japan, is that correct?

A. Yes, I was able to confirm this after the war also. AB

55. Q. Do you recall if these are the two prisoners you referred to in a statement you made on March 24, 1947?

A. I do not clearly know.

56. Q. Did you on March 24, 1947 make a statement in which you said that you were informed that after an air raid two prisoners of war were tied to a tree and beaten to death at the Fourth Fleet Headquarters and were then put in a truck and taken to the hospital but they had already died?

A. Yes, I did write that I heard about this.

57. Q. With reference to the prisoners of war at the Guard Unit in June 1944, were they treated properly by the personnel of the Guard Unit prior to the time of the bombing?

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

The judge advocate replied.

The commission announced that the objection was sustained.

58. Q. Do you know of any mistreatment of American prisoners of war at the Guard Unit in June of 1944?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I testified that I heard that such a thing occurred.

59. Q. What did you testify that you heard concerning mistreatment of prisoners in June of 1944?

A. I testified.

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

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

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

No witnesses not otherwise connected with the trial were present.

Ueno, Chisato, 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.)

60. Q. Did you learn of any mistreatment to prisoners of war in June 1944, other than the operations, spearing, stabbing and beheading of these prisoners of war?

A. At that time I testified that I once heard from the prisoners of war that they were beaten.

61. Q. Was that the only source from which you heard that these POW's had been beaten?

A. I vaguely recall that there was such a rumor.

62. Q. Do you recall any specific individual informing you concerning the mistreatment of those prisoners of war besides the prisoners of war themselves?

A. I do not remember.

63. Q. Do you recall who beat or mistreated these prisoners of war?

A. I recall a person relating about this matter.

64. Q. Do you recall where you heard this matter related?

A. When I was resting on the veranda of the official wardroom I heard some persons pass by who were relating this matter.

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

The judge advocate replied.

The commission directed that the answer be stricken out.

65. Q. Do you know if this mistreatment of prisoners of war in June 1944 occurred prior to the bombing of the guard unit?

This question was objected to by the accused on the ground that it was vague and too general.

The judge advocate replied.

The commission announced that the objection was sustained.

66. Q. On 24 March 1947, did you make the following statement "Ensign SHIRAKUNI (construction), succeeded Ensign YOSHINUMA as head of construction at the 41st Guard Unit. In the Guard Unit there was the rumor that in the middle of June 1944, he did violence to American prisoners among those incarcerated at the 41st Guard Unit at that time. Even in the officer's mess hall it was easily discernible from his own words and behavior. The general opinion was against this whole business. Of the five incarcerated prisoners, three died from an explosion during an attack and two were left alive. We could presume that the surviving two prisoners of war were daily undergoing mistreatment by these people. However, I did not see this. I can only assume this through the words and behavior of SHIRAKUNI himself."

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

The judge advocate replied.

The commission announced that the objection was sustained.

67. Q. The next prisoners of war were the prisoners who were confined in the guard unit in July 1944; is that correct?

A. That is correct.

68. Q. And you testified that they were sent to the hospital. Do you know if they ever returned from the hospital?

A. They did not return from the hospital.

69. Q. You were asked the question "what about the last occasion" and you said "the last occasion was February 2, 1944". Wasn't there a prisoner of war confined at the guard unit in late January 1945?

A. I recall that it was late January or beginning of February.

70. Q. Now you testified that something special happened to this prisoner of war, namely that his handcuffs were removed and he was brought tea and cigarettes. Do you know why this prisoner of war received special treatment?

A. This is what I just saw and heard and on the same day much later at dinner Nakase, when we were at the table, said that there was a telephone call from the Fourth Fleet to the Commanding Officer instructing him that the prisoner should be sent to the homeland on the first available transportation and that special consideration should be accorded him and to be prepared so that no deficiency of cigarettes or other items.

71. Q. Was such a directive from the Fourth Fleet an unusual directive?

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

The judge advocate replied.

The commission announced that the objection was sustained.

72. Q. Were similar orders or instructions previously received from the Fourth Fleet?

A. I do not know of anything that occurred prior to this, but I recall Nakase saying that it was very unusual.

73. Q. Did Nakase do anything else or say anything else at the time he told you about this directive?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and called for a hearsay answer.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall that that was all he said.

74. Q. Do you know if he did anything else at the time or made any explanation concerning this directive?

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

The judge advocate withdrew the question.

75. Q. On the 30th of April 1948, did you make the following statement to Commander Ogden concerning this directive "this directive was so unusual that the executive officer laughed when he told us about it"?

A. I said as I previously testified, and I stated merely the facts which occurred. I did not make any other explanation.

Reexamined by the accused:

76. Q. The judge advocate has referred to the conversation between you and Asano, but was the conversation a "taiwa" (T.N. "conversation"), or was it an order or directive?

A. I received it as an order or directive.

77. Q. In the last question that the judge advocate put to you he referred to a statement that you made to Commander Ogden on the 30th day of April 1948; in the question that was put to you, was that what you stated to Commander Ogden on that date?

A. I stated that the executive officer laughed when he told us about it, but I did not put in any more explanation other than this, which I believe was included by the judge advocate.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, December 22, 1948.

THIRTY-SEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, December 22, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-sixth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and former rank in the Imperial Japanese
Navy?

A. Wakabayashi, Seisaku, former vice admiral, Imperial Japanese Navy.

2. Q. If you recognize the accused, state as whom.

A. Vice Admiral Hara.

Examined by the accused:

3. Q. Did you ever serve in a naval establishment on Truk? If so, state
the period.

A. I was Commandant of the Fourth Base Force from July 24, 1943 to
February 22, 1944.

4. Q. What Naval Guard Units were under your command when you were
Commandant of the Fourth Base Force?

A. Forty-first Naval Guard Unit, the Forty-second Naval Guard Unit at
Ponape, and another guard unit at Palau. These are the three Guard Units.

5. Q. Who was commanding officer of the Forty-first Guard Unit on
February 17, 1944?

A. Captain Tanaka, Masaharu.

6. Q. From the beginning of January 1944 until you were relieved from Commandant of the Fourth Base Force did you receive any report regarding the capture or arrival of prisoners of war on Truk?

A. At that time I was sick and did not receive any reports unless it was important. Such matters as arrival and capture of prisoners of war were not received.

7. Q. What was the period of time you were sick?

A. I was sick from January 18, 1944 until I left the post of Commandant of the Fourth Base Force.

8. Q. Did anything unusual occur on Truk on February 17, 1944?

A. There was an air raid by a United States Task Force.

9. Q. On that day did you assume command over your subordinate units? If so, how did you exercise your command?

A. At that time I was sick and was either in the sick room or in the air raid shelter adjacent to the official room of the Commandant and I only received reports from my staff officers regarding important matters and gave directions.

10. Q. On that day were you asked for directions from the Forty-first Naval Guard Unit regarding prisoners of war?

A. Absolutely not.

11. Q. Did you take the stand as a witness for the prosecution at the Tanaka trial?

This question was objected to by the judge advocate on the ground that it was incompetent, irrelevant and immaterial unless the accused were attempting to impeach his own witness.

The accused made no reply.

The commission announced that the objection was sustained.

12. Q. Was there a conference on that night at the Fourth Base Force Headquarters?

A. In order to hear the reports on damages sustained and for the preparation for future operations there was a conference on the war preparations.

13. Q. Were you present at this conference?

A. I was present during the time when important matters were discussed.

14. Q. Who attended this conference?

A. I recall that those attending were all my staff officers, three staff officers from the Fourth Fleet Headquarters, the various cognizant commanding officers and other cognizant commanding officers directly subordinate to the Fourth Fleet.

15. Q. Was Tanaka, Masaharu, commanding officer of the Forty-first Guard Unit, present at the conference?

A. He was.

16. Q. During the time you were present at the conference did Captain Tanaka make a report? If so, what report did he make?

A. At the conference Captain Tanaka made a report on the damages sustained by the air raid at the Forty-first Guard Unit and the report on supply of ammunition and reinforcements of personnel in preparation for the next battle.

17. Q. Did Captain Tanaka make a report concerning prisoners during the time you were present?

A. There was no such report.

18. Q. Did you ever receive any reports from the staff officer of an incident regarding prisoners on February 17 at the Naval Guard Unit?

A. I did not receive any report.

19. Q. From when did you know the accused Hara, Chuichi?

A. As Hara was my classmate at the Naval Academy I was acquainted with him from then on until the present, which is about forty years I have intimately known him.

20. Q. State, if you know, what general reputation of the accused, Hara, regarding his traits of protection of prisoners of war and natives in the occupied area.

A. I have known him for forty years and he is one of my dearest friends, and I am well acquainted with his private as well as his official life. He has a very good manner and a studious and inquiring mind. He was a good sportsman and was champion in the Japanese nation sport, of judo and of wrestling and was known throughout the Navy. In order to explain these points I felt the necessity for this brief explanation and I think that it is important that this should be stated before I go into the matter. As such he upheld the spirit of the Japanese Navy tradition and the concept of sportsmanship and he applied this to his subordinates as well as to matters involving international relations which I shall refer to later with precision and consistency. For example, I would like to refer to the Amoy incident in 1938 and 1939 when Hara was Supreme Commander of the Navy in Amoy. It was firmly reputed that the accused, Hara, took measures to take every precaution for the protection of natives and foreign residents in Amoy and gave this the highest priority. In 1940 when the Japanese Army entered French Indo-China Hara was Chief of Staff of the China Seas Fleet and at that time, conforming to the wishes of the Japanese people as well as the Navy, he opposed and ignored the Army there which desired to operate outside the scope of the Imperial headquarters' orders; and Hara, followed the orders of the Imperial headquarters, especially in regard to international relations. As I have stated in the above examples Hara was very careful in the matters of international law and took every precaution and measures to see that it was observed and he had every regard for international relations. On the other hand, he was well known as a fighting admiral in the Navy and as a champion of the weak.

The commission then, at 10:10 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the judge advocate:

21. Q. Did the Fourth Base Force receive reports concerning the capture or arrival of prisoners of war on Truk?

A. As far as I know I did not receive any reports but some of my staff officers might have received reports.

22. Q. When prisoners of war arrived at the Forty-first Guard Unit did the Fourth Base Force advise the Fourth Fleet that prisoners of war were confined there?

A. As a matter of course I believe that the staff officers would have reported to the Fourth Fleet.

23. Q. Did you ever receive a report regarding the arrival of the SCULPIN prisoners of war?

A. As I have stated before I received the report from Commanding Officer Minematsu.

24. Q. Where were prisoners of war confined at Truk?

A. At the Forty-first Guard Unit.

25. Q. Was this a subordinate unit of the Fourth Base Force which was your command?

A. That is right.

26. Q. Now, you have testified that you did not know anything about the incident that occurred on February seventeenth and did not receive any reports from any of your staff concerning this incident, is that correct?

A. That is so.

27. Q. Now, isn't the real reason why you testified you received no reports concerning this incident the fact that you wish to deny your personal responsibility for the mistreatment of prisoners of war that occurred?

A. I had absolutely no such idea.

28. Q. You realize that as commanding officer of the Fourth Base Force you had a responsibility to control the Forty-first Guard Unit and to protect prisoners of war?

A. The responsibility for the custody of prisoners at the Forty-first Guard Unit was the responsibility of the commanding officer of the Forty-first Guard Unit. My responsibility was to supervise the commanding officer of the Forty-first Guard Unit and to that effect I have repeatedly stated.

29. Q. Did you have a duty to instruct your subordinates - all of your subordinates?

A. Naturally I had the duties to control and instruct my subordinates.

30. Q. Did you have the duty to control and instruct them in regard to the treatment of prisoners of war?

A. Quite obviously so.

31. Q. Is the reason why you deny knowing about the February seventeenth incident your desire to protect Hara who also had the duty to control and instruct his subordinates with regard to the treatment of prisoners of war?
A. I absolutely have no such idea. It is as I have stated at my trial and in the statement I made.

32. Q. Do you refer to this statement of 16 March 1948, a portion of which reads as follows: "I realize and did realize that the 41st Guard Unit as the custodian of all prisoners of war had the duty to protect them, and that I, as superior officer, was responsible to control the actions of all of my subordinates including the 41st Guard Unit. I know that in military law, Japanese as well as all other military law, a superior officer is responsible for the control of the acts of all his subordinates, and that he had the duty to guide, instruct and control them. With regard to the question of responsibility for the mistreatment of prisoners of war. I do not believe that the full responsibility should fall upon me because I am the superior officer to the 41st Guard Unit. The actual policy of treatment of prisoners of war was an important function of the Commander in Chief of the Navy. The responsibility for the mistreatment of prisoners of war falls not only on me, but also on the Commander in Chief 4th Fleet and the Commander in Chief of the Combined Fleet who is the Commander in Chief of the Navy. The fact that the Combined Fleet and the 4th Fleet never issued any order specifically dealing with the treatment, protection, or safe guarding of prisoners of war, evidences a loose policy concerning the treatment of prisoners of war. The only order that was ever received directly concerning prisoners of war was the order that they should be temporarily confined at the Guard Unit and then sent to Japan. This order did not specify that the prisoners of war should be humanely treated or protected from abuse. The failure to issue specific instructions for the protection and handling of prisoners of war indicates to some degree that the policy of the higher echelons was to disregard the problem of protection or treatment of prisoners of war. In my opinion the failure to establish definite instructions for protecting and handling prisoners of war was largely responsible for the numerous instances of mistreatment of prisoners of war. For this reason I believe that the responsibility should not only rest on the 41st Guard Unit and other units directly involved in the mistreatment of prisoners of war and upon myself as their superior officer, but also must be placed upon the Commander in Chief of 4th Fleet and even on the Combined Fleet. I studied International Law at the Japanese Naval College, and later when I was a Member of the Bureau of Military Affairs of the Naval Ministry. I also attended lectures on International Law at war college. Because of this training I am familiar with the responsibilities and duties under International Law to protect prisoners of war and to treat them humanely. I swear that the foregoing is true to the best of my knowledge, recollection and belief, and is voluntarily made by me, and I have not been induced to make this statement by the use of any force, threats, promises of reward or other inducements."?

This question was objected to by the accused on the ground that it was irrelevant and immaterial, and that the statement was an opinion of the witness and that the statement was a self serving statement made by the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not mean this statement. Regarding the statement the judge advocate read, I was induced by Lieutenant Bolton and Commander Ogden to write this. I made objection regarding the words "loose policy" and "my opinion" but that objection was not accepted and it was left without corrections and I cannot approve the whole of this statement.

The accused moved to strike out this question and the answer thereto on the ground that they were irrelevant and immaterial in view of the witness' answer regarding the circumstances under which he was induced to make the statement.

The judge advocate replied.

The commission directed that the question and the answer thereto be stricken out.

33. Q. When did you leave Truk?

A. I left Truk on February 26, 1944 on a hospital ship.

34. Q. On what day were you officially relieved as commanding officer of the Fourth Base Force?

A. I recall it was February 26, 1944.

35. Q. From February 17th to February 26th were you still sick and incapacitated for much of your duties?

A. Since the twenty-second I went to the hospital and I did not carry out any duties but from the seventeenth to the twenty-second in my sick bed, I carried on my duties.

36. Q. Did you handle all of your duties from February 17th to February 22nd or did you merely concentrate on the more important duties during that period?

A. I was receiving reports regarding important matters from my staff officers, but as a commandant I still had the duties of general supervision and control.

37. Q. You say you received the important reports, did you receive the unimportant reports as well?

A. I cannot say specifically what is important and what is unimportant, but what I received I regarded as important.

Reexamined by the accused:

38. Q. Regarding your actual assumption of duties as Commandant of the Fourth Base Force, you testified in the direct examination to the effect that it was until February 22nd; is that correct?

A. That is so.

39. Q. Then is it incorrect when you said that you assumed duties 'till the 26th of February in your cross-examination?

This question was objected to by the judge advocate on the ground that it was a misstatement of the witness' testimony.

The commission announced that the objection was not sustained.

A. In the cross-examination I testified that I was sick from the twenty-second to the twenty-sixth and I carried on my duties until the twenty-second.

40. Q. State what day you completed your briefing to your successor as the Fourth Base Force Commandant.

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.

41. Q. When were you relieved by your successor?

A. On February 22, 1944.

42. Q. Were you ever officially relieved of any of your duties or command responsibility during your sickness while Commandant of the Fourth Base Force until you were relieved officially by your successor on February 22, 1944?

A. No, I was not.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 11:15 a.m., adjourned until 9 a.m., tomorrow, Thursday, December 23, 1948.

THIRTY-EIGHTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, December 23, 1948.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-seventh day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank in the Imperial Japanese Navy.
A. Former Lieutenant Commander Nakase, Shohichi.
2. Q. If you recognize the accused, state as whom.
A. Former Commander in Chief of the Fourth Fleet, Vice Admiral Hara.

Examined by the accused:

3. Q. Did you ever serve on a Japanese Naval Installation on Truk? If so,
please state the period you served there.
A. I have. I served at the Forty-first Naval Guard Unit on Truk from about
November 7, 1943 to the end of the war.
4. Q. What was your position while serving at the Forty-first Naval Guard
Unit?
A. My positions were acting Executive Officer of the Forty-first Naval
Guard Unit, Chief of the Land Defense Department, Section Officer of the
guards, and division head. During that period from the beginning of May 1944
to the middle of July 1944 I was relieved as executive officer, and Commander
Akutagawa became the executive officer.
5. Q. When you arrived at the Forty-first Naval Guard Unit to take up
your duty, were you briefed by your predecessor?
A. I was briefed.

6. Q. In this briefing was there anything concerning the handling of prisoners of war; if so, please state what it was.

A. There was. In the briefing there was mentioned about the handling of prisoners of war. It was as follows: When there are prisoners of war they were to be temporarily protected at the guard unit until such time as transportation to Japan was available and at which time they were to be sent back to Japan.

7. Q. During your tour of duty on Truk, did you ever receive instructions concerning the policy of treatment of prisoners of war from higher authority; if so, please state what these instructions were?

A. I did receive. I recall that it was in the latter part of December 1943 or the beginning of January 1944 that a rear admiral or a vice admiral of the Navy Ministry in Tokyo came to Truk and after instructing us on various matters he instructed us concerning the handling of prisoners of war as follows: When prisoners of war were captured at the front they are to be sent back to Tokyo as soon as possible because at Tokyo there are systematic facilities to investigate these prisoners and as there are no other ways to get any information, please send the prisoners of war captured at the front to Japan as soon as possible. That was the instructions.

8. Q. When this rear admiral or vice admiral gave this instruction, were you present there and heard it yourself?

A. Yes, I was there.

9. Q. Who was at the scene when this admiral gave the instructions?

A. Other than myself, all the cognizant commanding officers on Truk and the executive officers, and the Commandant of the Fourth Base Force was also there, and I recall that the Staff Officers of the Fourth Base Force were also present.

10. Q. Have you ever had a conversation with the members of the Fourth Fleet Headquarters concerning the treatment of prisoners of war after 23 February 1944?

This question was objected to by the judge advocate on the ground that it was too broad in scope.

The accused reframed the question.

11. Q. Have you ever had a conversation with the members of the Fourth Fleet Headquarters concerning the treatment of prisoners of war after February 23, 1944; if so, please state when this conversation took place.

A. I frequently had conversations with members of the Fourth Fleet Headquarters concerning the treatment of prisoners of war, whenever there was an opportunity to send the prisoners of war back to Japan, they should be sent back as soon as possible.

The judge advocate moved to strike the words "whenever there was an opportunity to send the prisoners of war back to Japan, they should be sent back as soon as possible" out of the answer on the ground that they were not responsive.

The commission directed that the words be stricken out.

12. Q. Please state the contents of the conversation you had with the members of the Fourth Fleet Headquarters concerning the treatment of prisoners of war?

This question was objected to by the judge advocate on the ground that it called for a hearsay answer.

The accused reframed the question.

13. Q. With whom did you have the conversation?

A. I had this conversation with the transportation staff officer of the Fourth Fleet Headquarters.

14. Q. Please state the contents of the conversation you had with this transportation staff officer of the Fourth Fleet?

A. Paymaster Officer Arakawa of the guard unit was promoted around November of 1944 and was assigned to a new post in Japan, therefore I went to see the transportation staff officer to request that he be sent back as soon as possible. The transportation staff officer told me that there was a submarine and an airplane leaving very soon that could take him back to Japan. Later I was notified by the transportation staff officer that Arakawa would be sent back on a submarine. I told this to Arakawa and Arakawa requested that he be sent back on a plane for his health was not very good.

The commission directed the witness to come to the point and answer the question which deals with prisoners of war rather than Arakawa.

(The witness continued his answer.)

Therefore I requested of the transportation staff officer that he be sent back by plane, but the transportation staff officer said that the prisoners of war had to be sent back on the plane and that Arakawa would not be able to take the plane, and the staff officer told me to put Arakawa on the submarine. This plane did reach Japan, but the submarine which Arakawa was aboard, I heard that it sunk off Saipan.

The judge advocate moved to strike the last sentence out of the answer on the ground that it was irrelevant and immaterial.

The commission directed that the last sentence be stricken out.

Cross-examined by the judge advocate:

15. Q. You have testified that you were briefed and received instructions that prisoners should be temporarily protected at the Guard Unit, is that correct?

A. I received briefing, but not instructions.

16. Q. Did you consider that one of the functions at the guard unit was the protection of prisoners of war that were in its custody?

A. It is so, it was to confine and protect the prisoners of war temporarily until such time as they were sent back to Japan. AB

17. Q. Do you know if this function of the guard unit with the protection of prisoners of war was carried out on February 17, 1944 at the time of the air raid?

A. On that date I had amoebic dysentery and was hospitalized at the isolation ward, so I do not know about anything that happened about this time.

18. Q. To the best of your knowledge, during the time you were executive officer of the Forty-first Guard Unit, did the Forty-first Guard Unit protect the prisoners of war in its custody?

A. Since I arrived on duty at the guard unit, I had everything done that I could for the prisoners of war. I swear this before God.

19. Q. Were you in fact, not only the executive officer, but also head of the specific unit that was in charge of guarding the prisoners of war?

A. Yes.

20. Q. Do you know that during the air raid on February 17, 1944, seven prisoners of war were executed at the guard unit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. On the 5th of March I was released from the isolation ward and at this time I heard what had happened.

21. Q. Now on February 17, did you in any way carry on your duties as executive officer of the Forty-first Guard Unit?

A. As I was a patient in the isolation ward I did not perform the work of the executive officer.

22. Q. Did you leave the isolation ward in the hospital on the 17th of February for any purpose during the air raids?

A. I did leave the isolation ward.

23. Q. Briefly, what did you do when you left the isolation ward?

A. I was in the air raid shelter during the first and second raids, but I believe it was around eleven o'clock when the preparations for land warfare was ordered, so I was head of the Land Defense Section went out to command the Land Combat Units.

24. Q. Now Nakase, when you learned what happened to these prisoners of war during the air raid that you stated you learned on March 5, did you issue any instructions to the guards who were guarding these prisoners not to permit more violence on prisoners of war?

A. I did not give any instructions. The reason is that these guards were well trained from before in the treatment of prisoners of war.

25. Q. Were all your guards at the Forty-first Guard Unit similarly trained in the treatment of prisoners of war?

A. I did train the guards in general.

26. Q. Now, on March 5 you learned of the incident that occurred on February 17; how did you learn about the incident?

A. I learned of this after March 5 through rumors.

27. Q. Now on June 19th or 20th, were there any prisoners of war at the guard unit?

A. There were.

28. Q. Did you know anything about the mistreatment of these prisoners of war by Doctor Ueno on June 19th or 20th?

This question was objected to by the accused on the ground that it was outside the scope of the direct examination, and also as to the form of the question.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Around June 19th or 20th there was no such thing.

29. Q. Now on June 19th or 20th, did you hear of any other type of mistreatment of these prisoners of war who were in your guard unit?

A. I do not know.

The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Nakase, Shohichi, 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.)

30. Q. In June 1944 did you know anything of the bayoneting and beheading of the prisoners of war at the Guard Unit near the dispensary?

A. I learned the details of this incident in this court room and I believe it took place around the early part of July.

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

The judge advocate replied.

The commission announced that the motion was not sustained.

31. Q. Could prisoners be moved from the Guard Unit without your permission as the executive officer or without the permission of the commanding officer?

A. Permission of the commanding officer is necessary to move prisoners of war. Prisoners of war can not be moved even with the permission of the executive officer.

32. Q. On June 19, or 20 did you know that there were prisoners of war present at the Guard Unit and guarded by your own unit?

A. I do.

33. Q. After the prisoners had been there several days did you learn that the prisoners were missing and were no longer there?

A. I know for an actual fact that the prisoners were there until the twenty-ninth of June. I do not know how many days after that but I heard later that several days after that they were operated on at the sick bay.

The accused moved to strike out the words "I heard later that several days after that they were operated on at the sick bay, " on the ground that they were hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

34. Q. In June or early July, shortly after the day that you say that the prisoners were in the Guard Unit did you learn that they were no longer in the Guard Unit?

A. I am certain that there were five prisoners of war at the Guard Unit until 29 June and after that the three died by bombing and there were two who were wounded seriously and I know that these two surviving prisoners of war were at the Guard Unit about four or five days after this time.

35. Q. Four or five days after you knew these two prisoners were at the Guard Unit, did you then learn what happened to them?

A. After this time from rumors circulating in the Guard Unit I heard that these two prisoners of war were operated on at the dispensary and later died and I also heard this from the commanding officer.

36. Q. Where were you during this entire period from approximately June 19 through June 29? A8

A. I was at the Guard Unit.

37. Q. And where were you from June 29 to the time you heard this rumor that the prisoners of war were killed?

A. I was at the Guard Unit, but I may have been another place than the Guard Unit headquarters because I was carrying out my duties.

38. Q. On July 1944 did you know about the incident which occurred at the Fourth Naval Hospital involving the prisoners whom it was your duty to protect?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination and called for hearsay testimony.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do know.

39. Q. When did you learn about it?

A. I do not recall when I heard this but I heard that something happened at the hospital.

40. Q. Did you know that the prisoners of war who were killed at the hospital at that time were the prisoners of war who had been confined at the Guard Unit?

This question was objected to by the accused on the ground that the judge advocate was interjecting testimony into the question.

The judge advocate replied.

The commission announced that the objection was sustained.

41. Q. Did the Fourth Naval Hospital receive these prisoners from the Forty-first Guard Unit?

A. What do you mean by these prisoners?

42. Q. These prisoners who were killed at the hospital in July 1944?

This question was objected to by the accused on the ground that the judge advocate was interjecting evidence into the question.

The judge advocate made no reply.

The commission announced that the objection was sustained.

43. Q. In July 1944 did the Fourth Fleet Hospital obtain any prisoners from the Guard Unit?

A. Yes, two were turned over to them.

44. Q. Were they ever returned to the Forty-first Guard Unit?

A. No, they were not returned.

45. Q. You have testified that after March 5, 1944, after you returned to the Guard Unit from your illness, you heard of the incident which occurred on February 17. Did you, at that time, also hear of the incident that occurred at the hospital in late January or early February, 1944?

A. I do not know for an actual fact whether I heard it at this time or not, but at present I know there was an incident.

46. Q. Did you make a statement on 15 April 1948 in the presence of Commander Ogden, Lieutenant Bolton, and Mr. Savory?

A. I do not recall what date, but I recall that I made one.

47. Q. I show you this statement and ask if this is the statement you made?

A. That is what I wrote.

48. Q. In this statement did you state "With regard to the experimenting with POW's which occurred at the 41st *Guard Unit dispensary and the 4th Naval Hospital around the end of January, 1944, I did not know about this when it happened but definitely learned of it when I left the dispensary in March, 1944. I learned at that time that POW's had been disposed of at the hospital and that the medical officers were involved."?

A. Yes, I did write that.

49. Q. You testified that you did not know about the killing at the time of the killing of the prisoners in July. Isn't it true that Captain Iwanami phoned you and asked for the prisoners of war and told you that he had obtained the approval of the Fourth Fleet Headquarters?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, it is.

50. Q. When you heard these various rumors that prisoners of war had been disposed of, did you make any report to the Fourth Fleet Headquarters?

A. No.

51. Q. Did you make any reports to the Fourth Fleet from the Forty-first Guard Unit concerning prisoners of war?

A. Yes.

52. Q. What reports did you make to the Fourth Fleet?
A. When they were confined and when they were sent back to Japan.

53. Q. You heard various rumors concerning these incidents. Did you ever hear about any Japanese naval personnel being punished for any of these incidents?
A. Where?

54. Q. At Truk?
A. I never heard of this.

The accused moved to strike out this answer on the ground that it was irrelevant, immaterial, and hearsay.

The judge advocate replied.

The commission directed that the answer be stricken out.

Reexamined by the accused:

55. Q. You testified that you were at the isolation ward suffering from amoebic dysentery but please state the period you were in this isolation ward. AB
A. I was at the isolation ward from 25 January 1944 to March 5, 1944.

56. Q. While you were at this isolation ward was there anyone who acted in your place as acting executive officer?
A. Lieutenant Commander Ishii, who was the next in rank to me, acted as senior officer.

57. Q. You testified that during the February 17 air raid you took command of the landing party unit, but where were you when you took this command?
A. The command post of the landing party unit was on the slope of the hill and was located to the east of the guard unit headquarters. I was at this command post and took command.

58. Q. You testified that these five prisoners were definitely at the Guard Unit until 29 June. What is your basis for this?
A. On the twenty-ninth of June there was an air raid and the Guard Unit was bombed at this time and three of the prisoners of war died at this bombing and two sustained severe wounds. At the same time a sailor named Saito who was the guard of these prisoners died, so I know definitely that it was on this date.

59. Q. Concerning what you testified concerning the three prisoners of war who died on the June 29 raid and the two who died after the operation at the dispensary in the early part of July, did you yourself report this to the Fourth Fleet Headquarters?
A. Right after the air raid, by telephone I reported that three of the prisoners of war died as a result of the bombing and two were wounded. But the two who died after the operation at the dispensary I did not report this to the headquarters.

60. Q. Did you ever attempt to report this?

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

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Nakase, Shohichi, 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.

(Reexamination continued.)

61. Q. On cross-examination you testified that you trained the guards. Will you tell in what way you trained these guards?

A. I was the officer of the guards and below me there was a deputy officer of the guard, and I gave instructions to him to train the guards. I instructed as follows: I instructed that the prisoners of war should be treated humanely and that inhumane acts should not be perpetrated. Prisoners of war are here after putting up a brave fight. They had fought until their spears had splintered and swords broken, therefore do not consider them as an enemy and do as much as you can for them as you would do our own men.

62. Q. This deputy officer in charge of the guards, what was his name?

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. Ensign Kawaharazaki.

63. Q. Now, in addition to you and Ensign Kawaharazaki, did the duty officer have any duty in connection with the supervision of these guards on the day that he had the duty?

A. The officer of the guard and the deputy officer of the guard is responsible for the training of the guards. The officer of the day has the duty to see that the guards carry out their duties that day.

64. Q. Was the officer of the day always a commissioned officer?

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 officer of the day is an officer above the rank of warrant officer.

65. Q. Now, when Iwanami, Hiroshi, the commanding officer of the hospital, phoned you that day, what did he say to you and what did you say to him regarding those two prisoners of war the hospital took that day?

A. I received a telephone call from Iwanami stating that he would like to perform a health examination, so "will you please let me have the two prisoners of war at the Guard Unit?" As the commanding officer was not at the Guard Unit at that time I asked Iwanami whether he had the permission of the headquarters and Iwanami answered that he had an understanding, therefore I turned over the prisoners.

66. Q. What headquarters did he say to you he had the understanding with?

A. He did not specify which headquarters; he just said headquarters.

67. Q. Was there more than one headquarters?

A. There was the Fourth Base Force Headquarters and also the Fourth Fleet Headquarters.

68. Q. Did you turn them over without the authority of Captain Asano?

A. As Commanding Officer Asano was away on another island and as I was the next senior and when he left he told me "I will leave everything in your care" therefore I handed the prisoners over without Asano's permission and after Commanding Officer Asano came back that evening I reported to him.

69. Q. Now, you testified that the Guard Unit made reports to the Fourth Fleet regarding prisoners of war. What specifically did the Guard Unit report regarding these prisoners of war?

A. It was reported when the prisoners were confined and when they were sent back to Japan. Other than this I do not recall.

70. Q. Do you know to whom these reports to the Fourth Fleet went?

A. I personally did not make this report, so I do not know. I had the officer of the day make this report to the Fourth Fleet Headquarters by telephone, so I do not know to whom it was made.

71. Q. Were these reports also made to the Fourth Base Force?

A. Yes, they were made to the Fourth Base Force also. When the Fourth Base Force was in commission I had the report made directly to the Fourth Base Force and the report was not made to the Fourth Fleet Headquarters. After the Fourth Base Force was dissolved the reports were made to the Fourth Fleet Headquarters.

72. Q. Were these reports made in accordance with orders from the Fourth Base Force?

A. The report was not made because we were ordered, but as it was our duty to report what went on and the result at the Guard Unit, we made the reports.

73. Q. Do you remember when you made the report regarding the confinement of the five prisoners, two of whom you said you heard died as a result of an operation, when were those two and the other three that were killed in the explosion, captured and when was the report made and to whom, of their capture and confinement?

A. I do not recall the date these prisoners were confined, but I am definite they were not confined all at once, probably one at a time and the report was submitted when each prisoner was confined.

74. Q. To whom were the reports submitted?

A. I had the officer of the day report this to the headquarters.

75. Q. Which headquarters?

A. I do not recall the date these prisoners were confined, but as I stated before they were not confined all at once, and about the beginning of May the Fourth Base Force was dissolved and the Fourth Fleet became our superior, therefore I do not know but I think that some of these reports were made to the Fourth Base Force and some to the Fourth Fleet Headquarters.

76. Q. Do you know if the death of three of the prisoners by bombing and the death of two of them as you heard by operation was reported?

A. I had the officer of the day report the three who died of the bombing stating that two others were wounded. As to the two who died after the operation at the dispensary I did not report this. It was on the seventeenth or eighteenth of August 1945 the commanding officer and I discussed matters concerning prisoners of war and at that time the commanding officer said that no one other than the Guard Unit personnel knew as to the incident or of the two prisoners of war, so not to report this. I rejected this clause from the report, and also the three who died by bombing was not reported at that time.

The judge advocate moved to strike the words "It was on the seventeenth or eighteenth of August 1945 the commanding officer and I discussed matters concerning prisoners of war and at that time the commanding officer said that no one other than the Guard Unit personnel knew as to the incident or of the two prisoners of war, so not to report this. I rejected this clause from the report and also the three who died by bombing was not reported at that time" out of the answer on the ground that they were beyond the scope of the question and of the cross-examination, and hearsay.

The accused replied.

The commission directed that the words be stricken out on the ground that they were not responsive.

77. Q. Do you know whether any report was made regarding these two prisoners that you turned over to Captain Iwanami?

This question was objected to by the judge advocate on the ground that it was too broad and too general.

The accused withdrew the question.

78. Q. Do you know when these two prisoners of war you turned over to Captain Iwanami were captured and confined at the Guard Unit?

A. These two prisoners were sent by the Army unit at Puluwat to the Army Unit on Truk and then were brought to the Guard Unit. I do not recall when but I recall that it was sometime in July.

79. Q. Do you recall whether Captain Asano made a report to the Fourth Base Force after you had told him you had turned these two prisoners over to the hospital?

A. He did not make this report in my presence.

80. Q. Do you know whether he made a report?

A. No, I do not.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement: "It does not pertain to anything I have testified to in this court up to now, but it deals with the attitude which Admiral Hara had towards the natives which I saw with my own eyes, and I would like to state it at this time."

The judge advocate objected to the witness' stating anything regarding specific incidents, on the ground that with regard to general character and reputation testimony, the relation of specific incidents not otherwise connected with the charge, are inadmissible and irrelevant and immaterial.

The commission announced that the objection was sustained and directed the witness to confine his statement to the general reputation of the accused.

The witness continued his statement as follows: The Commander in Chief Hara associated with us and even with the natives as though we were related to him by blood ties. This relationship was in no way affected by the surrender. We all felt, especially after the American forces came to Moen Island, that the good will of the natives towards the Japanese increased. To back this up since I came to Truk and until I left Truk, no incidents occurred.

The witness was duly warned and withdrew.

The commission then, at 3:10 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, a witness for the defense, was recalled and warned that the oath previously taken by him was still binding.

Examined by the accused:

Examined by the accused concerning the offer in evidence of defense document #32:

1. Q. Have you in your possession a document C. L. O. number 4172 paren three point one paren dated 20 December 1948?
A. I have.
2. Q. Is this from the official files of the Director War Crimes, Pacific Fleet?
A. It is.
3. Q. How was it received, and from whom?
A. At the request of counsel for the accused, it was obtained from the Central Liaison and Coordination Office through SCAP.
4. Q. Does this document relate to information concerning an Imperial message and important orders with regard to cessation of hostilities?
A. It does.

Defense document number 32, produced by the witness was submitted to the judge advocate and to the commission, and by the accused, offered in evidence.

Cross-examined by the judge advocate concerning the offer in evidence of defense document #32:

5. Q. Were the English and the Japanese copies both received from the Central Liaison and Coordination Office at the same time?

A. They were.

6. Q. I observe that the transmittal of December 20, 1943, the English copy, is signed by "K. Yoshida", but the certificates by "Kawai Iwao" are not signed by him. Are the Japanese of these certificates by Kawai Iwao signed or otherwise sealed by him?

A. They purport to be, and I am advised that they are.

There being no objection, the document was so received, and is appended marked "Exhibit 55" (Japanese) and "Exhibit 55a" (English translation).

Examined by the accused concerning Exhibit 55:

7. Q. Will the witness read Exhibit 55?

(The witness read Exhibit 55.)

Examined by the accused concerning Exhibit 16:

8. Q. I hand you Exhibit 16 of this trial, the Australian trial of Lieutenant Commander Suzuki, Naoomi and Lieutenant Nara Yoshio. Does page 51-9 of this exhibit show that Lieutenant Commander Suzuki, Naoomi was duly sworn as a witness?

A. It does.

9. Q. Will the witness read from page 51-12, the first question asked by the defending officer of Lieutenant Commander Suzuki and the answer thereto in the reexamination?

The witness read from Exhibit 16 as follows:

"Q. What is the relationship between the HQ of 67 Naval Garrison Unit at Nauru and the Superior HQ at Truk.

A. In Aug 45 the Ocean and neighbouring islands were entirely independent and that was ordered by the HQ in Feb 44."

Cross-examined by the judge advocate concerning Exhibit 16:

10. Q. Will the witness read from page eleven the question beginning "Where was your superior headquarters" and the answer, X and the following three questions and answers thereto?

The witness read from Exhibit 16 as follows:

"Q. Where was your superior HQ.

A. It was at Truk.

Q. Were your superior HQ not at Nauru.

A. Up until the fall of the Marshall Islands it was under the supervision of Nauru Island but after the fall it came under the 4th Fleet.

Q. Was the 67 Naval Garrison Unit on Nauru also.

A. Yes, that is so.

Q. And was the HQ of the 67 Naval Garrison Unit on Nauru.
A. For normal business it was supervised by Nauru HQ."

11. Q. Are those questions and answers also part of the testimony of Suzuki Naoomi?

A. They are.

The accused did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Friday, December 24, 1948.

THIRTY-NINTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, December 24, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-eighth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

The accused was, at his own request, duly sworn as a witness in his
own behalf.

Examined by the judge advocate:

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

Examined by the accused:

2. Q. State your name and former rank?
A. Hara, Chuichi, vice admiral, Imperial Japanese Navy.
3. Q. Did you, at one time, serve as the Commander in Chief of the Fourth
Fleet?
A. Yes.
4. Q. Please state your tour of duty as Commander in Chief, Fourth Fleet.
A. I served as Commander in Chief, Fourth Fleet from 23 February 1944 until
the termination of the war.
5. Q. You use the term "termination of war". Will you fix a date signi-
fying this term?
A. September 2, 1945. I will determine this date as September 2, 1945, the
day on which the Japanese forces surrendered to the Americans.

6. Q. Please state the circumstances under which you assumed command of the Fourth Fleet. What the circumstances in the area of jurisdiction at that time were.

A. It was at a time when the Americans had acquired supremacy of the air and sea in the Marshall Area. They had occupied Kwajalein and had commenced offensive operations in the Eastern Carolines and the Marianas. On the Japanese side the First Air Fleet had started operations in the Marianas from February 20, 1944. When I arrived on Truk it was immediately after the first air raid on Truk by an American Task Force. Damages sustained on Truk were great. The air and surface combat strength of the Fourth Fleet, as also the transports, had almost completely been annihilated and Truk itself was in a state of chaos. The sea and air supremacy in the Marshalls and Eastern Carolines had passed completely into the hands of the Americans and surface and air transportation to these areas were severed and communication with these areas were almost impossible.

AB

7. Q. Where did you serve as Commander in Chief, Fourth Fleet?

A. On Dublon Island, Truk Atoll.

8. Q. When did you relieve your predecessor?

A. As I recall at 1500, 23 February 1944.

9. Q. Who was your predecessor?

A. Vice Admiral Kobayashi.

10. Q. Were you briefed by your predecessor on your duties?

A. I received a briefing in accordance with Naval customs and usage.

11. Q. What sea-going units did you have in your command when you were briefed on 23 February 1944?

A. I had only the cruiser NAGARA which, at that time, was undergoing repairs in Japan.

12. Q. You testified that you served as Commander in Chief, Fourth Fleet. Where was the headquarters of the fleet?

A. Dublon Island, Truk Atoll.

13. Q. What was the mission of the Fourth Fleet when you became its Commander in Chief?

A. The mission of the Fourth Fleet was to control the seas in the Marshall, Eastern and Western Carolines, and Marianas Area from bases on the islands in these areas and the defense of these islands on which these bases were located. But, unfortunately, I did not have under my command sea-going units to realize this mission.

14. Q. Were there any changes in the mission of the Fourth Fleet during your tour of duty as Commander in Chief of that fleet?

A. There were changes. By this, I do not mean that the mission of the fleet changed, but that there were changes in the area of jurisdiction of the fleet.

15. Q. Will you state the area of jurisdiction of the Fourth Fleet when you assumed command and the changes that occurred in that jurisdiction subsequently?

A. When I assumed command the area of jurisdiction of the Fourth Fleet embraced the Marshalls, Marianas, Eastern and Western Carolines. However, with the formation of the Central Pacific Area Fleet, this whole area was placed under the jurisdiction of this fleet and the Marshalls and Eastern Carolines were assigned to the Fourth Fleet under its jurisdiction.

16. Q. Who were the Chiefs of Staff during your tour of duty?

A. From the time I assumed command until the latter part of March, 1944 Rear Admiral Sumikawa was my Chief of Staff. From that date until the middle part of August, Rear Admiral Arima was my Chief of Staff and from the middle part of August until the end of the war Rear Admiral Sumikawa was again my Chief of Staff.

17. Q. What procedure was followed when staff officers and other officers wished to report to the Commander in Chief?

A. As provided in the Fleet Ordinance they were to submit their reports via the Chief of Staff.

18. Q. When you assumed command of the Fourth Fleet were there any commands superior to the Fourth Fleet in the southwestern and Central Pacific areas?

A. The headquarters which was immediately superior to myself was the Combined Fleet.

19. Q. Do you know the mission of the Combined Fleet? If so, please state.

A. Its mission was to coordinate and assume command of all the fleets.

20. Q. Were there any changes during your tour of duty in the commands superior to yourself?

A. There were changes.

21. Q. What changes?

A. In the early part of March 1944 the Central Pacific Area Fleet was newly organized and the Fourth Fleet was placed under its immediate command.

22. Q. Do you know the reason why the Central Pacific Area Fleet was established and what its mission was? If so, please state.

A. The object in organizing the Central Pacific Area Fleet was to coordinate the army and navy commands in face of the American offensive that I have referred to previously and to consolidate the defense of the Central Pacific Area.

23. Q. Until what date did this Central Pacific Area Fleet continue in existence?

A. As I recall we received the last dispatch from the Central Pacific Area Fleet stating "We are about to launch our last attack" around the middle of July 1944. I do not know the facts, but I conclude that the Central Pacific Area Fleet ceased to exist in the latter part of July or the early part of August 1944. My conclusion is based on the fact that even in the event of death of the commander in chief his next in command would succeed his command and therefore I stated that it probably existed until the early part of August.

24. Q. Who was the Commander in Chief, Central Pacific Area Fleet?

A. Vice Admiral Nagumo, Chuichi, Imperial Japanese Navy.

25. Q. Where was the headquarters of the Central Pacific Area Fleet located?

A. It was located on Saipan.

26. Q. Was the headquarters of the Central Pacific Area Fleet located on Saipan until the latter part of July or early part of August 1944, which dates were just mentioned by you?

A. I presume so. I did not state that absolutely.

27. Q. What was the area of jurisdiction of the Central Pacific Area Fleet?

A. The area of jurisdiction of the Central Pacific Area Fleet covered the Marshalls, Eastern and Western Carolines, and the Marianas.

28. Q. Were there units other than the Fourth Fleet subordinate to the Central Pacific Area Fleet?

A. There were under the command of the Commander in Chief, Central Pacific Area Fleet, the Fourteenth Air Fleet, the 31st Army, the Fourth Fleet, and other organizations.

29. Q. Do you know when the 31st Army which you stated as being one of the subordinates of the Central Pacific Area Fleet, was organized?

A. It was organized in the early part of March, 1944.

30. Q. Please state, if you know, the mission of this 31st Army.

A. The 31st Army had subordinate units on all of the islands in the area of jurisdiction of the Central Pacific Area Fleet and its main function was the land defense of these islands.

31. Q. Who was the Commanding General of the 31st Army?

A. Lieutenant General Obata.

32. Q. Do you know until when the 31st Army continued in existence?

A. It was in commission until the termination of the war.

33. Q. Where was the headquarters of this 31st Army?

A. It was on Saipan.

34. Q. Were there any command relationships between Fourth Fleet and the 31st Army?

A. The Commanding General of the 31st Army commanded all army units. The Commander in Chief, Fourth Fleet commanded Navy units in the area of jurisdiction of the Fourth Fleet. Consequently there were no command relations between the two commands.

35. Q. Did you then, as Commander in Chief, Fourth Fleet, have authority to command Army units within the area of jurisdiction?

A. On principle I did not have this authority. If the Commander in Chief of the Central Pacific Area Fleet were to delegate his authority to myself I naturally would then have the authority to command Army units, however during my tour of duty such authority was not delegated to me.

36. Q. Were there Army units on Truk during your tour of duty?

A. Yes, there were.

37. Q. What was the designation or designations of the Army unit or units at Truk?

A. The 52nd Division was the nucleus of the Army units on Truk.

38. Q. If you know state the mission of the 52nd Division.

A. Its mission was the defense of Truk and neighboring islands.

39. Q. What was the name of the Commanding General of this division and his former rank?

A. Lieutenant General Mugikura.

40. Q. Where was the headquarters of the 52nd Division located?

A. Dublon Island, Truk Atoll.

41. Q. Who was senior, the Commanding General of the 52nd Division or yourself?

A. Lieutenant General Mugikura was senior to me.

42. Q. Did you ever receive any orders from the Central Pacific Area Fleet in regard to command of army and navy units in the area of jurisdiction of the Fourth Fleet?

A. The Commander in Chief, Central Pacific Area Fleet issued the following order immediately after he assumed command "The senior commanding officer, (Army or Navy) on the island shall command all army and navy units in the event of invasion by American forces."

The commission then, at 10:20 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

43. Q. You did not mention Nauru and Ocean Islands when you stated the islands in your area of jurisdiction. Were these islands in the area of jurisdiction of the Fourth Fleet?

A. I omitted by mistake these two islands; Nauru and Ocean were in the area of jurisdiction of the Fourth Fleet.

44. Q. You testified that Lieutenant General Obata was the Commanding General of the 31st Army. Did he continue in command right up to the end?

A. Lieutenant General Obata died in combat in the Marianas. The date of his death is not definite. After it was ascertained that Lieutenant General Obata was deceased, the Commanding General of the 52nd Division, Lieutenant General Mugikura, at Truk, was officially appointed Commanding General of the 31st Army. As I recall, Lieutenant General Mugikura was officially designated Commanding General of the 31st Army in March or April of 1945, and as I recall until the death of Lieutenant General Obata at the 31st Army Headquarters was made definite, Lieutenant General Mugikura as second in command of the 31st Army, was acting in the capacity of Commanding General.

45. Q. What happened to the Commanding General of the 52nd Division?

A. Lieutenant General Mugikura became the Commanding General of the 31st Army, concurrently holding the position of Commanding General of the 52nd Division.

46. Q. What were the major units of the Fourth Fleet when you became the Commander in Chief, Fourth Fleet?

A. The Fifth Base Force, the Thirtieth Special Base Force, and the Fourth Base Force, the Sixty-second, Sixty-third, Sixty-fourth, Sixty-fifth, and Sixty-sixth Naval Guard Units, and on Truk the Fourth Construction Department, the Fourth Naval Hospital, the Fourth Supply Depot, and the Fourth Repair Department, and there were four or five other units besides.

47. Q. Of these subordinate units what was the mission of the base forces?

A. A base force is composed of two or more naval guard units, and its main function is to command the operations of the naval guard units. The special base force was a base force which was composed of one naval guard unit of unusual strength, and as a rule a chief of staff is assigned to this special base force. A6

48. Q. Where was the Fifth Base Force located?

A. It was located on Saipan.

49. Q. Do you recall who the Commandant of this base force was?

A. Rear Admiral Sujimura.

50. Q. Where was the Thirtieth Special Base Force?

A. It was located in the Palaus.

51. Q. Who was the Commandant?

A. It was Vice Admiral Ito.

52. Q. Where was the Fourth Base Force?

A. It was located on Dublon Island, Truk Atoll.

53. Q. Who was the Commandant of the Fourth Base Force?

A. Rear Admiral Arima.

54. Q. Did the Fourth Base Force continue in existence throughout your tour of duty?

A. No, it did not.

55. Q. What happened to it and when the change, if any, occur?

A. The Fourth Base Force was deactivated on the first of May 1944.

56. Q. During the time that the Fourth Base Force was in existence, did it have units subordinate to itself?

A. It did.

57. Q. What were the subordinate units of the Fourth Base Force?

A. The units were the Forty-first Naval Guard Unit, the Forty-second Naval Guard Unit at Ponape, Sixty-seventh Naval Guard Unit on Nauru and Ocean. Besides the above there were the Harbormaster's Office and the Fourth Communication Corps.

The commission then, at 11 a.m., adjourned until 9 a.m., Monday, December 27, 1948.

FORTIETH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, December 27, 1948.

The commission met at 9:20 a.m.

Presents:

Rear Admiral Arthur G. Robinsen, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Belten, U. S. Navy, judge advocate.
Paul F. Ceste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the thirty-ninth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the
adjournment was taken resumed the stand as a witness in his own behalf. He
was warned that the oath previously taken was still binding, and continued his
testimony.

(Examination continued.)

58. Q. What happened to the Headquarters of the Fourth Fleet after the
deactivation of the Central Pacific Area Fleet?

A. The Combined Fleet then became its immediate superior headquarters.

59. Q. What happened to the subordinate units of the Fourth Base Force
after its deactivation at the end of April 1944?

A. These units became immediate subordinates of the Fourth Fleet.

60. Q. What were the duties of the Naval Guard Unit?

A. Its main function was to defend the installations, et cetera, at the
naval bases.

61. Q. What was the scope of the authority and responsibility of the
Commanding Officer of the Naval Guard Unit?

A. Similar to the captain of a ship he had full authority and a complete
organization. Therefore in accordance with Naval Regulations, the commanding
officer had the absolute responsibility in regard to the fulfillment of the
duties of the guard unit, to see that the Naval Guard Unit was functioning to
its fullest capacity, that it carried out the duties assigned it, and he also
had full responsibility in regard to education, training, morale, and military
discipline of the subordinates and personnel under his command.

62. Q. Where was the Forty-first Naval Guard Unit located?

A. It was in Dublen Island, Truk Atoll.

63. Q. Who was the Commanding Officer of the Forty-first Naval Guard Unit during your tour of duty?

A. Asano, Shimpei, Captain, Imperial Japanese Navy.

64. Q. Were there subordinate units of the Fourth Fleet on Jaluit Island?

A. Yes, there was.

65. Q. What was the designation of this unit?

A. The Sixty-second Naval Guard Unit.

66. Q. Who was the Commanding Officer of the Sixty-second Naval Guard Unit during your tour of duty?

A. Masuda, Nisuki, Rear Admiral, Imperial Japanese Navy.

67. Q. Were there Army Units on Jaluit Island during your tour of duty?

A. There was.

68. Q. What was the designation, if you knew, of this Army Unit?

A. As I recall, it was a unit from the First South Seas Detachment.

69. Q. Was this Army Unit on Jaluit Island under the command of the Fourth Fleet or not?

A. It was not under the command of the Fourth Fleet.

70. Q. If you knew, state under whose command this Army Unit was.

A. It was under the command of the 31st Army.

71. Q. Were there subordinate units of the Fourth Fleet on Nauru and Ocean Islands?

A. There were.

72. Q. What were these units?

A. It was the Sixty-seventh Naval Guard Unit.

73. Q. Where was this Sixty-seventh Naval Guard Unit? Was it on Nauru or was it on Ocean?

A. The Headquarters of the Sixty-seventh Naval Guard Unit was on Nauru and a detachment of this Naval Guard Unit was stationed on Ocean.

74. Q. Who was the Commanding Officer of the Sixty-seventh Naval Guard Unit during your tour of duty?

A. Captain Seeda, Imperial Japanese Navy.

75. Q. Who was the Commanding Officer of the Detachment on Ocean Island?

A. I did not know his name during my tour of duty, but at my trial I was made aware from the charge and specifications that his name was Lieutenant Commander Suzuki.

76. Q. You testified that there was the Fourth Naval Hospital under the command of the Fourth Fleet; where was this Fourth Naval Hospital located?

A. On Dublen Island, Truk Atoll.

77. Q. Did this Fourth Naval Hospital continue in existence until the termination of the war?

A. It did.

78. Q. If you knew, will you state the mission of this Fourth Naval Hospital?

A. It was a place where patients were treated.

79. Q. Who was the Head of the Fourth Naval Hospital during your tour of duty?

A. Iwanami, Hiroshi, Surgeon Captain, Imperial Japanese Navy.

80. Q. You testified that the Fourth Construction Corps was a subordinate unit of the Fourth Fleet; where was this construction corps located?

A. The Headquarters of this Fourth Construction Corps was located on Dublon Island, Truk Atoll. AB

81. Q. State briefly the mission of the Fourth Construction Corps, if you knew.

A. The Fourth Construction Corps was composed of approximately ten thousand laborers, and its mission was to construct and engineer naval installations.

82. Q. Who was the Commanding Officer of the Fourth Construction Corps during your tour of duty?

A. Captain Harada, Imperial Japanese Navy.

83. Q. When you became Commander in Chief of the Fourth Fleet, did you have the administrative and judicial authority, and authority to maintain peace and order, and authority to protect natives in the area of jurisdiction of the Fourth Fleet?

A. These authorities and duties were vested in the Governor of the South Seas Government Office and I did not have any authority nor duty nor responsibility in regard to these matters.

84. Q. You testified just now that the administration and judicial authority to maintain peace and order and the authority and responsibility to protect natives were vested in the Governor of the South Seas Government Office; were there any changes in these authorities during your tour of duty as Commander in Chief of the Fourth Fleet?

A. There was a change.

85. Q. What sort of change occurred?

A. After the organization of the Central Pacific Area Fleet, the Commander in Chief of this fleet issued the following order: 1. The Senior Commanding Officer of the Islands within the area of jurisdiction (the senior army or navy commanding officer) in case of necessity shall command officials of the South Seas Government Office in matters pertaining to administration and the judiciary. 2. Maintenance of peace and order will be assigned to the Army. The above matters were decided at a cabinet conference. Besides the above the Governor of the South Seas Government Office issued instructions to the officials in his office which was in effect that subordinate officials of the South Seas Government Office place themselves under the command of the senior military or naval commander of the military office in matters pertaining to administrative and judicial matters in case of necessity.

86. Q. You have testified to this order issued by the Central Pacific Area Fleet, but did the senior commanding officer of these islands actually put into effect what was set forth in the order and exercise administrative and judicial authority?

A. I do not know how this order was put into execution in the islands, whether such authority was exercised or not. On Truk I was in no way connected with the administration and judiciary, but I was aware of the fact that the Governor of the South Seas Government Office on Truk was receiving orders from Lieutenant General Mugikura, the senior commanding officer on Truk. AB

87. Q. Who then, had the responsibility to maintain peace and order and to protect the natives on Truk?

A. The senior commanding officer on Truk, Lieutenant General Mugikura, controlled such matters.

88. Q. When was this order referred to, issued by the Central Pacific Area Fleet?

A. As I recall, it was around March or April 1944.

89. Q. Were kempeitai stationed within the area of jurisdiction of the Fourth Fleet?

A. Yes, they were.

90. Q. What was the mission of the kempeitai?

A. Their mission is that of military police.

91. Q. Did the Fourth Fleet have authority to command these kempeitai?

A. The Fourth Fleet had absolutely no relations with the kempeitai after I assumed my command.

92. Q. If you know, state who commanded the kempeitai and where his headquarters was?

A. The senior local Army commanding officer commanded the kempeitai. Kempeitai Headquarters was located in Tokyo. The organization of the kempeitai was highly complicated and I do not know of its organization.

93. Q. Will you state briefly and clearly how the conditions were as to transportation between the islands in the area of jurisdiction of the Fourth Fleet during your tour of duty as Commander in Chief of the Fourth Fleet.

A. The transportation conditions within Truk Atoll, especially in reference to Dublon Island: After I assumed command of the Fourth Fleet heavy damages were sustained on Truk Atoll because of the daily and nightly air raids by American Army planes and by U. S. Task Force attacks and transportation on the islands forming Truk Atoll, especially Dublon Island, was immobilized and was put into a state of chaos very frequently. Next on the transportation of the inter-islands: The sea and air supremacy of the Marshall and Eastern Caroline Islands had completely fallen into the hands of the Americans and transportation to and from these islands was completely severed. Consequently, it was not possible to supply these islands with food or ammunition and as a result the subordinate units on these islands were suffering from great shortage of food. According to the American wireless after the termination of the war there were from five to six thousand subordinates on these islands suffering from malnutrition. Further the transportation between Truk and the Japanese homeland was severed.

94. Q. State clearly and briefly the communications conditions existing within the area of jurisdiction during your tour of duty as Commander in Chief of the Fourth Fleet.

A. First on the transmission and reception of wireless on Truk: it is my belief that in the fall of the Marianas Islands, the objective of the Americans was to destroy Truk as a Naval Base and to cease its functions as such. The wireless transmitting and receiving installations sustained considerable damage. These installations, however, barely managed to function until the termination of the war. However, in the whole period, there were two or three days when they did not function. Next on the communications conditions on the various islands: owing to the bombing and to the natural deterioration of the wireless equipment, the capacity for communication on these islands fell off considerably. As to the conditions of the transmitting condition on the islands in the Marshalls and in this, I include Nauru Island, according to the report of the

Commanding Officer of the Communication Unit, the transmission conditions on the islands in the Marshall area, and in this I include Nauru, was almost impossible from the latter half of 1944, with the exception of Jaluit Island. Consequently, these islands in that area maintained communications through Jaluit, however I heard that commencing with the year 1945 transmitting on Jaluit had terminated and communication became difficult.

The judge advocate moved to strike the last sentence from the answer on the ground that it was incompetent and hearsay.

The commission announced that it would rule on the motion after hearing the next question and answer.

95. Q. From whom did you hear this?

A. It was related to me by the Commanding Officer of the Communication Unit.

The commission announced that the motion was not sustained.

The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

96. Q. Will the witness continue his answer?

A. Next, I will state on the condition regarding code. Very soon after I assumed command of the Fourth Fleet I received the following report from my Chief of Staff: "It appears that when Kwajalein fell the enemy took possession of our code and therefore precautions have to be taken in sending secret code messages to the islands because there is danger that these messages be decoded." The Chief of Staff further reported after the fall of the Marianas that from the estimate of the situation based on the observation of the battle conditions, it appeared that the Americans may have possession of the newer code books; that therefore secret code messages should be restricted to those which would not effect the situation even if they were decoded by the enemy. And the gist of this was relayed to all the islands. I failed to mention this but as to the reception of messages at all the islands, the hours were designated - one or two hours a day - when they would be open to reception.

97. Q. What were the communication conditions between Truk and Nauru and Ocean in particular?

A. Nauru was in the radio network of Truk but Ocean was a detachment of the Nauru garrison and therefore was not within this network. When the communication was maintained through Jaluit as I previously testified, even during that time I believe it was difficult for Nauru to maintain communication with Jaluit on account of the distance in between.

98. Q. You testified previously that transportation with the Japanese homeland had been severed but was there not some other means of transportation?

A. When I said transportation was severed I meant surface transportation. Submarines and flying boats were in operation once or twice a month.

99. Q. When you were briefed by your predecessor were you briefed on matters relating to prisoners of war?

A. I was absolutely not briefed on matters relating to prisoners of war.

100. Q. When you assumed your duties as Commander in Chief of the Fourth Fleet did you receive reports or were you submitted representations concerning prisoners of war by your staff officers or other officers?

A. No, I absolutely did not receive reports nor was I submitted representations.

101. Q. When you assumed your command were you submitted reports or representations by your subordinate cognizant commanding officers or did you become aware of reports concerning prisoners of war or were you made aware of or did you hear of matters concerning prisoners of war?

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

The accused withdrew the question.

102. Q. When you assumed your command did you receive reports concerning incidents involving prisoners of war from your subordinate cognizant commanding officers or did you learn of such incidents?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did not receive reports or hear of this.

103. Q. What were your duties prior to your assumption of command of the Fourth Fleet?

A. I was, prior to assuming the command of the Fourth Fleet, Commandant of the Air Training Command. My duties involved the basic training of flyers and ground crews of the Navy. There were between 120,000 and 130,000 naval men under my command and it was a purely educational and training mission that I then had.

104. Q. Had you heard of any incidents involving prisoners of war before you assumed command of the Fourth Fleet?

A. As I just now testified my duties were those connected with a purely training and educational organization and it was entirely unconnected with combat and therefore I did not hear of such matters.

105. Q. Did you see prisoners of war after you assumed command at Truk during your tour of duty?

A. No. I never saw any prisoners of war.

106. Q. Did you, around March of 1944, know that there were prisoners of war confined at the Sixty-second Naval Guard Unit on Jaluit?

A. No, I did not know such a thing.

107. Q. Did you, around March of 1944, receive a report from the Sixty-second Naval Guard Unit at Jaluit to the effect that three prisoners of war who were fliers had died?

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

The accused withdrew the question.

108. Q. Did you receive, around March of 1944, a report from the Sixty-second Naval Guard Unit concerning the deaths of three prisoners of war?
A. I did not.

109. Q. Was Truk subjected to a heavy bombing raid around June of 1944?

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

The accused withdrew the question.

110. Q. Did anything unusual occur on Truk around June of 1944?
A. I do not understand the counsel when he says "anything unusual".

111. Q. Was there not an air raid on Truk around June of 1944?
A. There was an air raid. Truk was subjected to continued severe bombings.

112. Q. Did you know that in June of 1944 there were prisoners of war confined at the Forty-first Naval Guard Unit at Truk?
A. No, I did not know.

113. Q. Did you receive a report from the Forty-first Naval Guard Unit around June of 1944 to the effect that these prisoners had died at the Guard Unit due to the bombings?

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

The accused withdrew the question.

114. Q. Did you, around June of 1944, receive a report from the Forty-first Naval Guard Unit concerning prisoners of war?
A. No, I did not receive a report.

115. Q. Did you, around June of 1944, receive a report from the Forty-first Naval Guard Unit concerning the deaths of two prisoners?

This question was objected to by the judge advocate on the ground that it was leading and repetitious. 98

The accused replied.

The commission announced that the objection was sustained.

116. Q. Did you know, around July of 1944 whether two prisoners of war were confined at the Forty-first Naval Guard Unit?
A. No, I did not.

117. Q. About July 1944 were there requests submitted either by the Fourth Naval Hospital or by the Forty-first Naval Guard Unit in regard to two prisoners of war?
A. No, such a situation did not arise.

118. Q. Did you, in July of 1944 know that there were prisoners of war in the custody of the Fourth Naval Hospital?

A. Such a situation is impossible from the standpoint of the mission of the hospital.

The commission stated that the answer was not responsive and directed the witness to answer the question.

The question was repeated.

A. No, I did not know.

119. Q. Did you, around July of 1944, entertain suspicions that there might be prisoners of war at the Fourth Naval Hospital?

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

The accused withdrew the question.

120. Q. Do you recall Surgeon Captain Iwanami, the Head of the Fourth Naval Hospital, testifying as a witness for the prosecution on the twenty-sixth day of this trial?

This question was objected to by the judge advocate on the ground that it makes reference to prior testimony in this current trial.

The accused withdrew the question.

121. Q. Did you, around July of 1944, visit the Fourth Naval Hospital?

A. I did.

122. Q. Do you have a recollection of having visited the hospital on the twenty-third of July 1944?

A. It was my custom to visit the patients at the hospital once or twice a month, however I do not have a definite recollection of having been at the hospital on the specific date of 23 July.

123. Q. Did you ever hold conferences with Iwanami and one other person at the Fourth Naval Hospital when you were visiting there on a veranda?

A. Yes, I recall such a conference.

124. Q. Who was this third person of this group? The person other than Iwanami?

A. As I recall, it was Surgeon Captain Taneda.

125. Q. While you were in conference on the veranda did you see a truck pass in front of the hospital?

A. No, I do not have such a recollection.

126. Q. Did you see prisoners of war in or about the hospital on a visit to the hospital in the month of July?

A. I have absolutely no recollection of having seen prisoners of war at the naval hospital.

127. Q. Did you receive a report concerning the death of two prisoners of war from the Fourth Naval Hospital around July 1944?

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

The accused withdrew the question.

128. Q. Did you, around July of 1944, receive a report from the Fourth Naval Hospital which related to prisoners of war?

A. No such report was received.

129. Q. Subsequent to that date did you receive any report from the Head of the Fourth Naval Hospital concerning prisoners of war?

A. Surgeon Captain Iwanami came after the termination of the war to report and apologize in that he had executed two prisoners of war.

130. Q. Was a conference held at the Fourth Fleet Headquarters in the early part of September 1944?

A. Yes, a conference was convened.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

131. Q. What type of conference was it which was convened in the early part of September 1944 at the Headquarters of the Fourth Fleet?

A. It was a conference of the cognizant commanding officers.

132. Q. Did you attend this conference of the cognizant commanding officers?

A. I did.

133. Q. What were the main topics discussed at this conference?

A. They were mainly concerned with the defense of Truk.

134. Q. Who presided at this conference?

A. Chief of Staff Sumikawa presided.

135. Q. Who attended this conference? State the names of those you recall.

A. There were staff officers of the Fleet present besides myself and the Chief of Staff, and there were the following officers: Transportation Department Head Kojima, Head of the Naval Hospital Iwanami, Commanding Officer of the Forty-first Naval Guard Unit Asano, Head of the Repair Department Morita, Head of the Munition Depot Kofu, Commanding Officer of the Fourth Communication Corps Kaneko, Head of the Air Repair Shop Miyazaki, and Senior Staff Officer of the Twenty-second Air Group Tamura. Those are the names I recall.

136. Q. Did Iwanami speak about prisoners at this conference?

A. He did.

137. Q. Please give the substance of what Iwanami said at this conference.

A. I heard Iwanami say that they had stabbed two prisoners of war at the hospital.

138. Q. On hearing Iwanami state this what judgment did you draw?

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 it would hear the answer before ruling.

A. I thought it a strange story. The hospital was by international law a neutral zone and it was the only peaceful haven on Truk. Furthermore Iwanami was a quiet and kind man and previous to this he had told me on several occasions that at his previous post at Ofuna he had treated prisoners of war with kindness and consideration and this statement coming from Iwanami I thought that he had become unbalanced.

The judge advocate withdrew the objection.

139. Q. Did you say anything in view of this statement?

A. I had heard at this conference that persons had been wounded in fights over foodstuffs and I felt that the personnel on Truk were victimized by fear and excitement and as the Chief of Staff offered me the opportunity to address the conference before the conference dispersed, I addressed the conference and my instructions were in substance as follows: "Truk is facing imminent death at the present moment. Two months more however and the food situation will be eased and the defenses will be completed, if cognizant commanders will see to it that the personnel under them not excite themselves and that they act with fortitude and resolution and that they retain the resolution to act righteously and that they fight with true courage. It is not my policy that illegal unlawful acts be done to weak prisoners of war and that food be produced from natives, et cetera. In particular you as cognizant commanders will not talk about prisoners of war in a manner to provoke your subordinates". That is the substance of what I told them. A8

140. Q. Did facts come to light later which in any way was connected to these instructions that you issued?

A. Several days later Chief of Staff Sumikawa, who concurrently held the post as Commandant of the Twenty-second Air Squadron, spoke to me as follows: "The talk on prisoners of war brought up at the conference came up at the headquarters of the Twenty-second Air Squadron and I, Sumikawa, strictly forbade this discussion to go on".

141. Q. Did you, on the basis of this statement by Iwanami, conduct any investigation?

A. After the conference I debated with myself and gave great thought to this matter and resolved that although under the existing circumstances on Truk, I would postpone the investigation till some other date, I would see to it that no recurrence of such an incident would occur on Truk, and it was my judgment that there would be no fliers from larger type of aircraft who would be taken prisoner in the future.

142. Q. What were your reasons for judging that no crew members from larger type of aircraft would be taken prisoner in the future?

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

The accused reframed the question.

143. Q. Why had you judged that there would be no prisoners taken from American aircraft in the future?

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

The accused replied.

The commission announced that the objection was sustained.

144. Q. Were the circumstances then prevailing such that it made possible the capture of prisoners of war?

A. Anti-aircraft ammunition had almost been spent and ammunition for larger type of aircraft, by which I mean those flying at higher altitudes, was absolutely gone, and the Americans while conducting their air raids on Truk had stationed submarines in the waters around Truk which very successfully rescued the fliers from planes which had been downed by the Japanese. There were five or six fighter planes which could be used to intercept the larger type of American aircraft, but I had issued orders that they do not attack these planes because they were to be saved to attack the American aircraft carriers in the event that these aircraft carriers participated in an invasion operation directed against Truk.

145. Q. You testified that American submarines rescued downed fliers. Did you actually see such an operation on their part?

A. Yes, these submarines were witnessed by the Japanese and it was judged that if these submarines were to be systematically attacked, the air raids on Truk would diminish and such a plan by use of seaplanes was attempted although I do not recall the exact date of this attempt. The results did not show anything tangible but as a result of this attempt there was a week's lull in the American air raids. The Americans changed their tactics and attacked our seaplane base on a large scale and as a result of which our seaplanes sustained great damages and as a result of this it was decided not to attempt any more attempts by seaplanes. The American attacks were again renewed.

146. Q. Were prisoners of war ever captured after that date?

A. I believe it was around January of 1945 when one prisoner of war was captured.

147. Q. What happened to this prisoner?

A. He was sent to the Japanese homeland.

148. Q. Did you confirm the fact that he was sent to the Japanese homeland?

A. He was a flier from a fighter plane. May I tell the circumstances under which this flier was captured?

The judge advocate objected to the witness' continuing his answer with regard to the circumstances of this capture on the ground that anything further would be irrelevant and immaterial.

The commission announced that the objection was sustained.

(The witness continued his answer as follows:)

I did confirm the fact.

149. Q. Were prisoners ever captured after that date, meaning January 1945?

A. I believe it was around June of 1945 that an English Task Force attacked Truk and during the shelling and bombing which I observed from a hill, I noticed that one fighter plane was downed. Search was made for the pilot but he was not discovered. In short there were no prisoners after January of 1945.

150. Q. Did you around August of 1944 know of a suspected espionage incident in which were involved two missionaries and four Nauruan natives?

A. I did know of an espionage incident at that time, but whether it involved missionaries and Nauruan natives I did not know.

151. Q. Under what circumstances did you come to know about this incident?

A. It was through a report made by Harada, the Head of the Fourth Construction Corps. The report was to the effect that civil guards of the construction corps stationed on Uman Island, Truk Atoll, had heard of an espionage incident and had handed it over to the kempeitai, but as a result of subsequent investigation, the incident had been proved as having been groundless.

152. Q. Did you receive further reports on this incident from the Fourth Construction Corps?

A. No, I did not.

153. Q. Did you know around September of 1944 of an incident on Nauru Island concerning foodstuffs involving one Nauruan native?

A. I did not.

154. Q. Did you around that time, that is September of 1944, receive a report from the Sixty-seventh Naval Guard Unit on Nauru concerning an incident of foodstuffs involving one Nauruan native? A6

A. I did not receive this report.

155. Q. Did you know of an incident concerning foodstuffs which occurred on Nauru around December of 1944 and which involved one Chinese national who was a resident of Nauru?

A. I did not know.

156. Q. Did you around that time, December of 1944, receive a report from the Sixty-seventh Naval Guard Unit at Nauru concerning an incident of foodstuffs involving one Chinese national who was a resident of Nauru?

A. I did not receive a report.

157. Q. Did you know what the food situation was on Nauru Island in the period between September and December of 1944?

A. As I did not receive reports on the food situation I did not know, but as no foodstuffs had been sent to that island since I had assumed command of the Fourth Fleet, I firmly believe that Nauru was in great difficulty in connection with food.

The judge advocate moved to strike the words "I firmly believe that Nauru was in great difficulty in connection with food" out of the answer on the ground that they were an opinion of the witness.

The commission announced that the motion was not sustained.

158. Q. Did you know in April of 1945 of an espionage incident on Jaluit involving seven natives?

A. I did not know.

159. Q. Did you receive a report or reports from the Sixty-second Naval Guard Unit on Jaluit concerning a native espionage incident on that island around April of 1945?

A. I did not receive any reports.

160. Q. Did you around April of 1945 know of an espionage incident involving one native on Jaluit?

A. I did not.

161. Q. Was there a report submitted by the Sixty-second Naval Guard Unit on Jaluit concerning an espionage incident on Jaluit involving one native around April of 1945?

A. I did not receive a report.

162. Q. Did you know of an espionage incident involving two natives around August of 1945 on Jaluit?

A. I did not know.

163. Q. Did you receive a report or reports from the Sixty-second Naval Guard Unit on Jaluit concerning a spy incident on Jaluit around August of 1945?

A. No, I did not receive any reports.

164. Q. During your tour of duty as Commander in Chief of the Fourth Fleet did you ever meet your subordinate commanding officers of Jaluit, Nauru, and Ocean garrisons at Truk?

A. No, I never met them.

165. Q. Did you know of an incident in which approximately 200 natives were killed which occurred on Ocean Island around August of 1945?

A. I did not know.

166. Q. Did you ever receive a report from Nauru or Ocean concerning an incident in which were killed approximately 200 natives around August of 1945?

A. I never received such report.

The commission then, at 3:10 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

167. Q. Did anything unusual occur in Japan around the 15th of August 1945 concerning the termination of the Pacific war?

A. It did.

168. Q. What occurred?

A. At noon on August 15, 1945 the following order was promulgated by the Emperor of Japan: "The acceptance of the provisions of the Potsdam Declaration, the cessation of hostilities and surrender".

169. Q. When did you learn of this Imperial Rescript?

A. I learned of it at noon August 15, 1945.

170. Q. Did you receive instructions from the Central authorities concerning cessation of hostilities and surrender?

A. I received orders from the Chief of Naval General Staff which ordered the cessation of hostilities in the name of the Emperor after hearing the Imperial Rescript, following which I received an Imperial order which was in substance as follows: The Emperor's words expressed gratitude to personnel of the army and navy for services rendered in face of the surrender and they stated that the surrender be carried out smoothly.

171. Q. Did you relay this Imperial order or instructions from the Central authorities to your subordinate units of the Fourth Fleet?

A. I did so immediately.

172. Q. Will you state the substance of your message, the method by which you relayed it, and the time when you did so?

A. I relayed the order from the Central authorities as it stood and added the following as the message from the Commander in Chief of the Fourth Fleet: "In the name of the Emperor, as Commander in Chief of the Fourth Fleet I order the surrender and express gratitude for services rendered. Cognizant commanders will effect the surrender smoothly and expediently." And after this order, I lowered my flag. (T.N. the flag of the Vice Admiral)

173. Q. Did you or did you not issue an order to your subordinate units on Nauru and Ocean Island which was contradictory in its substance to the Imperial order or instructions for the Central authorities?

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

The accused reframed the question.

174. Q. Did you issue orders to subordinate units on Nauru and Ocean which were different from orders that you issued to your other subordinate units?

This question was objected to by the judge advocate on the ground that it was leading and counsel was attempting to coach the witness.

The accused made no reply.

The commission announced that the objection was sustained.

175. Q. Did you issue instructions to your subordinate units on Nauru and Ocean Islands which were similar to those issued to your other subordinate units?

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

The accused reframed the question.

176. Q. What instructions did you issue to your subordinate units on Nauru and Ocean?

A. I did not issue orders other than those which I have just previously testified to.

177. Q. Will you state briefly and clearly the course of events leading up to the surrender?

A. As I recall it was on the 18th of August 1945 that I received the following order from the United States Marianas Commander: "Show by white crosses on all air strips that you are prepared to surrender - I shall ascertain this from the air". After discussing the matter with Lieutenant General Mugikura we placed these signs on the air strips. Soon thereafter American planes appeared over Truk and ascertained these signs and I relayed the fact to my subordinate units the fact that Commander Marianas had ascertained our will to surrender, at the same time reporting to the Central authorities this fact. Following this, around the 20th of August 1945 Brigadier General Hermle, U. S. Marine Corps came to Truk aboard the United States Ship "Stack" and he negotiated the preparations for the surrender on September 2, 1945. That is all.

178. Q. When was the surrender of Truk effected and who represented the Japanese Armed Forces?

A. The surrender was effected on 2 September 1945. Representing the Japanese - Lieutenant General Mugikura and myself, the Governor of the South Seas Government was present also.

179. Q. Who represented the United States Government?

A. Vice Admiral Murray, United States Navy was representative for the United States in behalf of the Commander of the United States Pacific Fleet.

180. Q. You have just now testified to the surrender and how it was effected on Truk; how were the surrenders on the other islands under the command of the Fourth Fleet effected? A8

A. Each island surrendered by themselves to commanding officers in the United States Armed Forces. As I recall the units in the Marshall area surrendered to the United States Commander at Kwajalein, those in the Eastern Carolines surrendered to Commander Marianas, those in the Western Carolines to the United States Commander at Peleliu, and as I recall the units on Nauru and Ocean surrendered to an Australian Commanding Officer.

181. Q. By whose order did these units surrender separately to these separate commanders?

A. There were instructions to that effect both from the Central authorities in Japan and from Commander Marianas.

182. Q. What were the terms of the surrender?

A. The terms were as Commander in Chief of the Fourth Fleet to represent the Fourth Fleet and commanding the naval personnel on Truk to surrender unconditionally. There were other provisions on the terms relating to disposal of arms and munitions, control of communications, policing of Truk, et cetera. Besides the above it was permitted that Fourth Fleet Headquarters could retain its function as a headquarters.

183. Q. Did you ever report to your superiors the situation of the Fourth Fleet as to its ability to carry out its mission, particularly such islands as Jaluit, Ocean and Nauru?

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

The accused replied.

The judge advocate withdrew the objection.

A. I reported the above condition to the Chief of Staff of the Central Pacific Area Fleet when he came to Truk around the middle of March 1944.

184. Q. What, if anything did the Commander in Chief of the Central Pacific Area Fleet, or the Chief of Staff say to you at that time when you made your report?

A. Generally speaking, the Chief of Staff outlined the operational policy of the Commander in Chief of the Central Pacific Area Fleet: In the event of American invasion in the Marshall and Caroline areas, no support would be extended to these islands. The Senior Commanding Officers of the islands in these areas will therefore command army and navy units and will defend these islands. In the event of American invasion of the Western Carolines and the Marianas, Task Forces of the Combined Fleet as assigned, the First Air Fleet at Tinian, Sixth Fleet at Saipan and the Fourteenth Air Fleet which was immediately subordinate to the Central Pacific Area Fleet would launch a counter-offensive. The Sixth Fleet was a submarine fleet.

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Tuesday, December 28, 1948.

FORTY-FIRST DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, December 28, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Garber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the
adjournment was taken, resumed the stand as a witness in his own behalf. He
was warned that the oath previously taken was still binding and continued his
testimony.

Cross-examined by the judge advocate:

185. Q. On or about March 10, 1944 was the Sixty-second Naval Guard Unit
at Jaluit commanded by Rear Admiral Masuda, subordinate to the Fourth Fleet?
A. Yes, it was subordinate. AB

186. Q. On or about March 10 was there any intermediate command between the
Sixty-second Naval Guard Unit and the Fourth Fleet or was the Sixty-second
Naval Guard Unit at Jaluit directly subordinate to the Fourth Fleet?
A. There was no intermediary command and the Sixty-second Naval Guard
Unit was immediately subordinate to the Fourth Fleet.

187. Q. On or about June 20, 1944 was the Forty-first Naval Guard Unit at
Truk commanded by Rear Admiral Asano subordinate to the Fourth Fleet?
A. Yes, it was.

188. Q. On June 20, 1944 was there any intermediate command between the
Forty-first Naval Guard Unit and the Fourth Fleet or was the Guard Unit at
Dublon a direct subordinate of the Fourth Fleet?
A. There was no intermediary command and the Forty-first Naval Guard Unit
was immediately subordinate to the Fourth Fleet.

189. Q. On or about July 20 on Dublon Island, was the Fourth Naval Hospital
commanded by Surgeon Captain Iwanami subordinate to the Fourth Fleet?
A. Yes, it was a subordinate unit.

190. Q. On or about July 20 was there any intermediate command between the Fourth Naval Hospital and the Fourth Fleet or was the Fourth Naval Hospital a direct subordinate of the Fourth Fleet?

A. There was no intermediary command where hospitals were concerned, and the Fourth Naval Hospital was directly subordinate to the Fourth Fleet.

191. Q. On or about July 20, 1944 was Captain Iwanami, the commanding officer of the Fourth Naval Hospital, also the Chief Medical Officer of the Fourth Fleet?

A. Yes.

192. Q. In that capacity was he attached to the headquarters of the Fourth Fleet?

A. Yes.

193. Q. In that capacity was he a staff officer on your staff at the Fourth Fleet?

A. He was not a staff officer.

194. Q. On or about August 23, 1944 was the Fourth Construction Department commanded by Captain Harada a subordinate unit of the Fourth Fleet?

A. Yes, it was a subordinate unit.

195. Q. On or about August 23 was there any intermediate command between the Fourth Construction Department and the Fourth Fleet?

A. No, there was no intermediary command.

196. Q. In September 1944 was the Sixty-seventh Naval Guard Unit at Nauru commanded by Captain Seeda, a subordinate unit of the Fourth Fleet?

A. Yes.

197. Q. In September 1944 was there any intermediate command between the Sixty-seventh Naval Guard Unit at Nauru and the Fourth Fleet or was the Sixty-seventh Naval Guard Unit a direct subordinate of the Fourth Fleet?

A. There was no intermediary commands and the Sixty-seventh Naval Guard Unit was directly subordinate to the Fourth Fleet.

198. Q. Was the Sixty-seventh Naval Guard Unit at Nauru directly subordinate to the Fourth Fleet on or about December 23, 1944?

A. Yes.

199. Q. On or about April 8, 1945 was the Sixty-second Naval Guard Unit at Jaluit directly subordinate to the Fourth Fleet?

A. Yes.

200. Q. On or about April 13, 1945 was it still directly subordinate to the Fourth Fleet?

A. Yes.

201. Q. On or about August 10, 1945 was it still directly subordinate to the Fourth Fleet?

A. Yes.

202. Q. On or about August 20, 1945 was the Naval detachment at Ocean Island directly subordinate to the Fourth Fleet?

A. The detachment on Ocean was under the command of the commanding officer of the Sixty-seventh Naval Guard Unit on Nauru, and therefore the detachment on Ocean was subordinate to my command but I do not believe it was immediately subordinate.

203. Q. On or about August 20, 1945 was the Sixty-seventh Naval Guard Unit at Nauru directly subordinate to the Fourth Fleet?

A. Yes.

204. Q. Was communication from the Fourth Fleet held directly with Ocean Island as well as with Nauru?

A. All orders issued from the Commander in Chief of the fleet are issued to the commanding officer of the Guard Units and therefore the orders were issued to the commanding officer of the Sixty-seventh Naval Guard Unit, Captain Soeda.

205. Q. After the formation of the Central Pacific Area Fleet in early March 1944, did the Sixty-second Naval Guard Unit on Jaluit remain directly subordinate to the Fourth Fleet?

A. Yes.

206. Q. After the formation of the Central Pacific Area Fleet in March did the Sixty-seventh Naval Guard Unit remain directly subordinate to the Fourth Fleet?

A. Yes.

207. Q. Was Admiral Masuda senior in rank to the highest ranking army officer on Jaluit?

A. Yes.

208. Q. Was Captain Soeda senior in rank to the highest ranking army officer on Nauru?

A. Yes.

209. Q. You have referred to an order of the Central Pacific Area Fleet that the senior ranking army or navy officer should command both army and navy units. Was this order applicable to outlying islands such as Jaluit and Nauru?

A. My testimony was not to the effect that the senior commanding officer, either army or navy, command army and navy units. My testimony was not only to that effect.

210. Q. Did this alleged order from the Central Pacific Area Fleet apply to Jaluit and Nauru Islands?

A. Referring to that order, it was no order that the senior commanding officer of the army or navy assume command of army and navy units.

211. Q. Did you testify that there was an order from the Central Pacific Area Fleet that in case of land invasion the senior commanding officer of either army or navy should take command of both army and navy units?

A. I did testify to that effect.

212. Q. Was this order applicable to Nauru, Ocean, and Jaluit Islands?

A. Yes. This order was sent out to all subordinate units of the Central Pacific Area Fleet. I myself received this order and so did the commanding officers on these islands.

213. Q. As applied to Truk did you consider this order solely applicable in case of land invasion?

A. The meaning of this order was not that it became effective when the enemy started to land on the beaches but that when the enemy approached with intent to invade.

214. Q. Did General Mugikura ever give you any orders relating to treatment of prisoners of war?

A. I never received direct orders from Mugikura concerning treatment of prisoners of war.

215. Q. Did General Mugikura ever issue any orders direct to you or to your headquarters on Truk to instruct your subordinates in regard to the treatment of prisoners of war?

A. Myself and my headquarters?

216. Q. Yes.

A. I do not fully understand the question but I will answer it insofar as I understand it. It was not possible for Lieutenant General Mugikura to issue orders to my headquarters without issuing orders to myself. Whether he issued orders to my subordinate units, of that I am not aware.

217. Q. Were any orders ever issued to you by General Mugikura or the 31st Army to instruct your subordinates with regard to the treatment of prisoners of war?

A. It is not possible for the 31st Army to issue orders to me, myself, because it is not my direct superior headquarters.

218. Q. You testified that the Governor of the South Seas Government office issued instructions to the South Seas Government officers that in case of necessity they would place themselves under the command of the senior ranking naval or army officer on the island, is that correct?

A. That is correct.

219. Q. Were such instructions sent by the Governor of the South Seas Government office to the Governor of the district office at Truk?

A. I was an information addressee of this dispatch. I do not know whether the district governor at Truk received this dispatch.

220. Q. Was this dispatch addressed to the district governor at Truk?

A. My recollection is not clear but insofar as I recall this dispatch was addressed to the personnel of the South Seas Government Office at Truk.

221. Q. Who sent this dispatch?

A. The Governor of the South Seas Government office.

222. Q. And you were an information addressee on this dispatch which he sent to Truk?

A. Yes.

223. Q. Was Aritaka, Aihara, the governor of the Branch Office of the South Seas Government at Truk when you arrived?

A. Yes.

224. Q. Did he remain as head of that district office until the surrender?

A. Yes.

225. Q. Do you know that in his deposition, Exhibit 48, in answer to the Sixth and Eighth interrogatories he stated that he does not remember receiving any orders from the Governor of the South Seas Government office?

A. I do.

226. Q. Do you know that in his deposition Hosogaya, the Governor of the South Seas Government office, states in the answer to the Sixth interrogatory that he only informed the Commander in Chief, Central Pacific Area Fleet about this?

A. I remember that he stated in his deposition that he informed the Commander in Chief, Central Pacific Area Fleet, but I do not recall the word "only" in that connection.

227. Q. Do you recall that he answered "I informed the Commander in Chief of the Central Pacific Fleet, Admiral Nagumo, Chuichi, of this order. He was on Saipan at this time. As the army came under Admiral Nagumo, who was the supreme commander, I thought it was sufficient to inform him only."?

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

The judge advocate replied.

The commission announced that the objection was sustained.

228. Q. When you observed these alleged instructions in this alleged dispatch, did you notify your subordinates on the various islands?

A. I did not.

229. Q. Are you sure that the Fourth Fleet did not notify its subordinates concerning this matter?

A. By no reasoning am I obliged to relay an order issued by the Governor of the South Seas Government to my subordinate units.

230. Q. Did you relay the information of this order to your subordinate units?

A. I do not recall informing my subordinates of this matter.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

231. Q. You testified that you did not notify the subordinates of the Fourth Fleet concerning this order by the South Seas Governor; is that correct?

A. I do not have that recollection. However I believe that such dispatches have as information addressees besides myself, the Commanding General of the 31st Army and also commanding officers of units on the islands.

232. Q. Did it have the commanding officers of the subordinate units of the Fourth Fleet on this dispatch?

A. I do not have a clear recollection but that was the usual procedure followed.

233. Q. In such a case it would be the South Seas Governor who notified the units, is that correct, and not the Fourth Fleet notifying its units?

A. Yes. However this was a problem concerning the whole area of jurisdiction of the Central Pacific Area Fleet, and therefore simultaneously with this order from the Governor of the South Seas Government office an order was issued from the Central Pacific Area Fleet.

234. Q. Did the Fourth Fleet issue any order to its subordinates?

A. As I testified previously I do not have a recollection of having issued such an order.

235. Q. Do you have any recollection of the Fourth Fleet notifying its subordinates concerning the order?

A. I do not have that recollection.

236. Q. I show you a statement. Did you make this statement? (The judge Advocate handed a statement to the witness.)

A. Yes, that is my statement.

237. Q. Did you in this statement, referring to this alleged order from the South Seas Governor say "The Fourth Fleet notified this to its subordinates"?

A. When I said notified in that statement I meant that this order was sent out through the communication installations of the Navy. At that time the wireless equipment that the South Seas Government had was in poor condition and the naval installations were used.

238. Q. Did you, however, say that "the Fourth Fleet notified its subordinates"?

A. Will you repeat that question? I did not grasp the meaning.

239. Q. Did you say in that statement that "the Fourth Fleet notified its subordinates"?

A. Yes.

240. Q. Now, you testified concerning communications on direct examination and you said that the installations at Truk, the wireless transmitting and receiving installations, barely managed to function until the termination of the war; is that correct?

A. Yes, I stated that on this witness stand.

241. Q. Is it not a fact, Admiral, that transmission from Truk to the subordinate units was complete and effective throughout your tour of duty?

A. No, it cannot be said that the wireless transmission was completely effective because owing to the bombings, the effectiveness of the transmission deteriorated and for two or three days it ceased to function altogether.

242. Q. With the exception of these alleged two or three days, was the transmission of messages from Truk ordinarily carried out completely?

A. No, it still could not be said to be complete and the transmission is not effective unless it is received, therefore the transmission cannot be considered effective.

243. Q. Was the transmission apparatus at Truk damaged so that it could not operate at any time other than these two or three days you referred to in your testimony?

A. What I meant by two or three days was not that there were two or three days during my entire tour of duty that the communications were discontinued. What I meant was that the transmitters would go out of function for two or three days at one time and these periods repeated themselves during my tour of duty.

244. Q. Disregarding the question of acknowledgement or receipt of these messages and confining your answer to the question of transmission, would you say that ordinarily during your tour of duty transmission of messages from Truk was completed.

A. Transmission of communications is a two-sided matter and depends on the receiving end. Do you mean transmission from Truk to Tokyo or from Truk to the islands under my command? AB

245. Q. With regard to messages from Truk to its subordinate units, was such transmission ordinarily completed?

A. The sending forth of wireless waves was possible. Do you mean in your question - did you want that in my answer or were you asking for this acknowledgement or receipt of the messages?

246. Q. I am referring to the sending out, of what you referred to as "wireless waves". Was that ordinarily completed to the subordinate units of the Fourth Fleet during your tour of duty?

A. It depends upon what the judge advocate means by "completed". But in relation to the conditions prior to the date when Truk sustained damages, it was not complete in that relation, but messages could be transmitted.

247. Q. On June 15, 1948 did you make the following statement: "The sending of messages from Truk was ordinarily carried out completely but transmission and receiving of messages on the other various islands became very weak because of damage by bombings, wearing out of the telegraph and the wearing out of its requisite tools"?

A. Yes, I have stated to that effect in my statement.

248. Q. You testified with regard to the Eastern Carolines and the Marshalls, that communications with these areas were almost impossible; is that correct?

A. When was this? Are you referring to my tour of duty?

249. Q. That is correct.

A. Yes, I recall making that testimony.

250. Q. Did you not in fact relay communications through Jaluit Atoll to the other islands?

A. Yes, that is true. However, in communications in the military sense the factor of code enters the picture.

251. Q. Did you at any time send any messages in either plain language or in code to your subordinate units at either Jaluit or Nauru instructing them on the humane treatment of prisoners of war?

A. No.

252. Q. You have testified that on August 15 you received an order promulgated by the Emperor of Japan; is that correct?

A. Yes.

253. Q. On or about August 15 did you instruct your subordinate units at Nauru or at other places that in event of hostile enemy action or offensive action by the enemy they should repel such action?

A. No.

254. Q. Did you issue any instructions to your subordinates as to what they should do in the event that the enemy attacked prior to actual surrender?

A. No instructions were given.

255. Q. Did you issue any instructions to your subordinates as to what to do in the event that the allies tried to approach or land on the islands prior to the date of surrender?

A. By surrender do you mean the signing of the surrender document?

256. Q. Prior to surrender of the armed forces under their command.

A. As I testified yesterday, to show my subordinates an example I notified them of my will to surrender and ordered them to execute the surrender smoothly, quickly, and without mistake and I had further notified my subordinates that the United States Commander had acknowledged my will to surrender. Besides the above I issued no instructions but I am convinced that my subordinates grasped my will. 86

257. Q. Are you convinced that your subordinates on Nauru and Ocean Islands also grasped your will?

A. I cannot say, but as I have repeatedly testified, the communication conditions were extremely poor and I was not able to ascertain whether they had fully grasped these instructions.

258. Q. You testified that on August 1st 5th you received this order promulgated by the Emperor of Japan accepting the provisions of the Potsdam Declaration; is that correct? 88

A. Yes, I did receive the Emperor's Rescript.

259. Q. Had you previously known the contents of the Potsdam Declaration?

A. I did not know of the details of the Potsdam Declaration, but I knew of its general import.

260. Q. Did you know that under the Potsdam Declaration the Allied Nations had stated that "stern justice would be meted out to all war criminals including those who had visited cruelties on their prisoners"?

A. I did not know of such fact until August 15th, but subsequent to that date I learned of that fact.

261. Q. Prior to that date either during or before your tour of duty as Commander in Chief of the Fourth Fleet, did you know that the Allied Forces had warned Japan against mistreatment of prisoners of war?

A. No, I did not know of such matter.

262. Q. When you learned on August 15th that the Allied Forces would bring to justice all war criminals, did you authorize your subordinates to conceal the prisoners of war incidents which had occurred on Truk?

A. No, I did not authorize.

263. Q. Did you know that they were attempting to conceal the incidents which had occurred on Truk?

A. I did not know definitely that they were attempting to conceal anything but I knew they were up to something.

264. Q. Did you know that they were up to something with regard to trying to conceal the prisoner of war incidents which had occurred on Truk?

This question was objected to by the accused on the ground that it went beyond the scope of the direct examination and was irrelevant.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not know that they were attempting to conceal such incidents, but I sensed that they were considering something.

265. Q. What do you mean by "considering something"? Do you mean something with relation to concealing these incidents?

A. I sensed that there was something in the air.

266. Q. Of what nature?

A. Not something of a specific nature but something vague, something in general.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Presents: All the members, the judge advocate, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

267. Q. At the time of the surrender on September 2, 1945 at Truk, did you surrender all of the Japanese Naval Forces under your command wherever situated?

A. In my capacity as Commander in Chief of the Fourth Fleet I represented all the units of the Fourth Fleet and commanding the Naval Forces on Truk, I surrendered.

268. Q. In your capacity as Commander in Chief of the Fourth Fleet, did you surrender the Japanese Naval Forces stationed outside of Truk which were under the Fourth Fleet?

A. The units subordinate to the Fourth Fleet which were stationed outside of Truk surrendered independently.

269. Q. Did you sign a document of unconditional surrender on Truk on September 2, 1945?

A. I did.

270. Q. Did paragraph two of this document of surrender state "We hereby proclaim the unconditional surrender to the Representatives of the Government of the United States of all Japanese Armed Forces and all Armed Forces under Japanese control wherever situated under our command"?

A. I did sign.

271. Q. Was there a third paragraph in this document of unconditional surrender which read in part as follows "We hereby command all Japanese forces wherever situated under our command and the Japanese people within our area of command to cease hostilities forthwith, to preserve and save from damage all ships, aircraft, and military and civil property" et cetera?

A. The details have slipped my mind, but on hearing it read I recall it was in the document.

272. Q. Do you also remember in this document in paragraph four it was stated "We hereby command all commanders of units under our command to issue at once orders to their respective forces wherever situated to surrender unconditionally themselves and all forces under their control"?

A. Yes, I recall.

273. Q. You testified yesterday that you had no authority and no duty and no responsibility to protect natives in the area of jurisdiction of the Fourth Fleet, is that correct? AB

A. I believe I testified to the effect that I was not vested with the authority nor given the duty to so protect the natives.

274. Q. Did you have the responsibility to protect natives?

A. I cannot fully grasp the meaning of this word, the sense in which you used this word responsibility, but I sincerely regret and deplore the fact that illegal acts were committed against these natives.

275. Q. Within the area of jurisdiction of the Fourth Fleet, were there any areas occupied by military forces?

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

The judge advocate replied.

The commission announced that the objection was sustained.

276. Q. Within the area of jurisdiction of the Fourth Fleet were any areas occupied by Naval Forces under the command of the Fourth Fleet?

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

The judge advocate replied.

The commission announced that the objection was sustained.

277. Q. Were Naval Forces under the command of the Fourth Fleet in occupation ^P of Nauru Island? AB

A. Yes.

278. Q. Was Captain Soeda the Commanding Officer of the Sixty-seventh Naval Guard Unit the senior officer on Nauru Island?

A. Yes.

279. Q. Were the Naval Forces under the Fourth Fleet in occupation of Ocean Island?

A. Yes.

280. Q. Was the Commanding Officer of these Naval Forces the senior officer on Ocean Island?

This question was objected to by the accused on the ground that it was vague and indefinite.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

281. Q. Were Naval Forces in occupation of Jaluit Atoll?

A. Jaluit Atoll was not occupied.

282. Q. Was Admiral Masuda of the Sixty-second Naval Guard Unit, the senior military officer on Jaluit Atoll?

A. Yes.

283. Q. Were the Naval Forces on Jaluit, on Nauru and on Ocean, all subordinate Naval Units of the Fourth Fleet?

A. Yes.

284. Q. Did you have the authority and the duty to control the Naval Forces on Nauru, Ocean and Jaluit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, I had that duty but it was extremely difficult to exercise this duty.

285. Q. Did you also have the duty and authority to control these Naval Forces on Nauru, Ocean and Jaluit if they abused or mistreated the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was never vested with such duty or authority, but as Commander in Chief of the Fleet and as I had the responsibility to control my subordinates over whom I exercised command. It was because as their Commander in Chief I had the duty to lead these men to wage a war in an upright manner.

286. Q. On Truk Atoll, did you similarly have the authority and duty to control your subordinate units?

A. Yes, it was similar to the case on Jaluit that I just now testified to.

287. Q. And did you have any responsibility to protect natives from mistreatment by your subordinates on Truk?

A. No, I did not have the duty to protect the natives.

288. Q. In the event that your subordinate units mistreated natives on Truk, did you have any responsibility to control your subordinates and prevent these mistreatments of these natives?

A. As I testified, the duty to conduct an upright war and I had the responsibility to see that my subordinates acted in an upright manner.

289. Q. Did you similarly have a duty to control personnel attached to the Fourth Fleet Headquarters and prevent their mistreatment of natives?

A. Yes, as I have previously testified.

290. Q. Do you know one Ishihara, a court reporter for Naval General Courts Martial attached to the Fourth Fleet Headquarters?

A. The Court Martial was an independent organization. It was not attached to the Fourth Fleet Headquarters.

291. Q. Was it subordinate to the Fourth Fleet?

A. Yes.

292. Q. Do you know who ordered Ishihara to assist in the investigation of the natives in connection with a spy incident on August 28, 1944?

A. I do not, but I believe that around that time, August 28, 1944 there was no court martial because all the legal officers had been detached to the Central Pacific Area Fleet.

293. Q. You testified that the Commanding Officer of the Naval Guard Unit had "the absolute responsibility in regard to the fulfillment of the duties of the Guard Unit and also had full responsibility in regard to education, training, morale and military discipline of the subordinates and personnel under his command." Is that correct?

A. Yes, that is correct.

294. Q. Do you mean by that that you had no responsibility for the actions of your subordinates at the Forty-first Naval Guard Unit?

A. I do not say that I had absolutely no responsibility.

295. Q. Did you have the duty to supervise military discipline, morale, education and training of the fleet under your command?

A. Various interpretations may be placed on this, but I did have the duty to supervise the education, training and morale of the personnel of the Fourth Fleet.

296. Q. Did you also have the duty to supervise the military discipline of the Fourth Fleet?

A. Yes.

297. Q. To the best of your knowledge during your tour of duty, were prisoners of war confined ashore at Truk ever confined in any place other than the Forty-first Naval Guard Unit?

A. No.

298. Q. After the Fourth Base Force was dissolved on May 1, 1944, was the Fourth Fleet the immediate superior of the Guard Unit?

A. Yes.

299. Q. During your tour of duty, was any Naval organization superior to the Fourth Fleet ever stationed ashore at Truk?

A. When I assumed command of the Fourth Fleet there was ashore at Truk the Commander in Chief of the Sixth Fleet.

300. Q. Was the Fourth Fleet a subordinate organization of the Sixth Fleet?

A. No, that is not so.

301. Q. Was there any organization superior to the Fourth Fleet ever ashore at Truk during your tour of duty?

A. No, there were no superior Naval Headquarters.

302. Q. As the immediate senior of the Forty-first Guard Unit and the highest organization superior to the Guard Unit ashore at Truk, were you aware that you had a duty and a responsibility to protect the prisoners of war confined by Naval Forces on Truk?

The form of the question was objected to by the accused on the ground that there was no testimony to indicate that the accused knew that there were prisoners confined on Truk. 83

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Are you asking whether I realized that I had the duty to protect and the responsibility to protect these prisoners?

303. Q. Yes, that is correct.

A. Are you asking whether on the premise that there was this duty and that I was aware of its existence, or are you asking whether there was such a duty or not?

304. Q. Whether you were aware of its existence.

A. I did not have the direct duty nor obligation to protect prisoners of war.

305. Q. Did you have any duty to protect them?

A. As I have stated, as Commander in Chief of a fleet, I had the responsibility to lead my subordinates in an upright war and illegal actions cannot have any part in such war, and therefore I had the responsibility in that respect.

306. Q. What steps did you take to carry out that responsibility to protect prisoners of war during your tour of duty?

A. As I judged that prisoners of war should not be exposed to the intensive bombing and the extreme heat of a climate such as Truk, I instructed that they be sent to Japan as soon as possible.

307. Q. What other steps did you take to protect the prisoners of war held by subordinate units of the Fourth Fleet?

A. There were the Naval Regulations issued by the Navy Minister which were complete and sufficient in themselves in regard to this matter.

The judge advocate moved that the witness be directed to answer the question which was "what other steps did you take" et cetera.

The commission announced that the answer by the witness seemed to be perfectly clear.

308. Q. What steps if any did you take in connection with the implementing of these Navy Regulations by the Navy Minister?

A. I had no such duty because such regulations issued by the Navy Minister were not directed to me in person, but to all Naval Units.

309. Q. Did you take any other steps to carry out your responsibility to protect prisoners of war?

A. I do not grasp the meaning of the question.

310. Q. You have testified that the steps you took to carry out your responsibilities to protect prisoners of war were: 1. That you instructed your subordinate units to send prisoners back to Japan. 2. That there were regulations issued by the Navy Minister and you took no steps to implement these regulations because you considered none were necessary. Now were there any additional measures which you took to protect prisoners of war?

A. No, I did not take measures other than the above. The reason was that the articles in the treatment of prisoners in the Naval Regulations were comprehensive and complete in themselves and there was nothing to be added to them.

311. Q. Now you stated that you instructed your subordinates to send prisoners of war to Japan; when did you issue this instruction and in what form did you issue it?

A. These instructions were issued in March, April or May of 1944; the greatest probability being in April. It was on a battle report sheet that I saw that prisoners of war had been confined at the Naval Guard Unit. That was the first time that I was made aware of the presence of prisoners and that is when I issued these instructions. I do not clearly recall whether I gave this order orally to the person who brought the battle report who was a staff officer, or whether I wrote in this battle report sheet this order. I do not recall clearly which it was. At that time I was living in a cell in the caves and therefore this manner of the order may be explained.

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

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

312. Q. In addition to this occasion in March, April, or May of 1944 when you issued this instruction to send prisoners of war back to Japan did you issue such instructions at any other time?

A. I believe it was around the end of May 1944 when I ordered three submarine chasers back to the Japanese homeland to be repaired. At that time a staff officer approached me and said that as there were many numerous civilians desiring to return to the Japanese homeland and as he had obtained permission from the Chief of Staff that he would like to have my permission on this matter. I told this staff officer that my permission was given on the condition that if there were prisoners of war then they be given first priority.

313. Q. Did you issue this order at any other time?

A. There was a prisoner of war taken in January of 1945 and however the Chief of Staff had made arrangements for his return to Japan by flying boat and came to ask my permission which I gave.

314. Q. With regard to the end of May 1944 did this staff officer of yours ever inform you whether there were any prisoners of war on Truk at the time?

A. He did not.

315. Q. Did you inquire whether there were any prisoners of war on hand at that time?

A. I did not.

316. Q. In this first instance in March, April, or May of 1944 when you learned for the first time that there were prisoners of war on Truk did you ask to ascertain how many prisoners of war were confined there?

A. I do not recall.

317. Q. Do you recall whether you sought to ascertain whether any prisoners of war had been on Truk before this date?

A. Until that time I had not heard anything concerning prisoners of war so I didn't ask about them. AC

318. Q. Did you ask to ascertain how prisoners of war had been handled before March, April or May 1944 by the subordinate units of the Fourth Fleet?

A. There had been no talk of prisoners of war and I did not take such action.

319. Q. When you took over as Commander in Chief of the Fourth Fleet on February 23, 1944 did you examine the battle reports concerning the air raid which had occurred on February 17 and 18, 1944?

A. I did not.

320. Q. Did you ask to ascertain when you took command of the Fourth Fleet the available intelligence information affecting the Fourth Fleet?

A. What intelligence?

321. Q. General intelligence concerning enemy operations and forces and concerning damages to the Fourth Fleet and its organizations?

A. Do you mean intelligence concerning Truk or a general intelligence covering a wider area?

322. Q. Either one.

A. No American intelligence concerning Truk and its vicinity was available.

323. Q. Was there any intelligence available concerning the size of American forces in the area and concerning their disposition?

A. No.

324. Q. Did the thought occur to you that if there were prisoners of war captured in the air raid of February 17 that they would be valuable sources of intelligence information for your fleet?

A. No, I did not think of that. It did not arrest my attention.

325. Q. Prior to your commencing your tour as Commander in Chief of the Fourth Fleet where were you stationed?

A. I was Commandant of the Air Training Command.

326. Q. Where was this Air Training Command located?

A. The Headquarters of the Air Training Command was at a place called Kasumigaura and it had units under its command all over Japan and in occupied territories in Shanghai, Tsingtao and Hainan.

327. Q. Where in Japan is Kasumigaura located?

A. It lies approximately 50 to 60 miles northeast of Tokyo. I cannot vouch for the distance.

328. Q. Did you receive Japanese newspapers at your headquarters?

A. Yes.

329. Q. Did you read in any of these newspapers or from any other sources learn of notices from the allied powers that stern justice would be meted out for mistreatment of prisoners of war?

A. I do not recall having read such matter in these papers.

330. Q. In any of these papers did you read of atrocities alleged to have been committed by American forces?

A. No.

331. Q. In your position as training officer for the flying and ground personnel did you train them in matters of international law as well as other matters?

A. Yes.

332. Q. Did you train them in regard to the laws and customs of war?

A. Yes.

333. Q. After you assumed your duty as Commander in Chief of the Fourth Fleet did you instruct or train any of your subordinates of the Fourth Fleet with regard to the law and customs of war?

A. I did not. These instructions were fully set forth in the Navy Regulations and a lieutenant (junior grade) or a lieutenant of the Paymaster Corps or a lieutenant who was well versed in these regulations periodically instructed the officers and it was not necessary for me to give instructions in person.

334. Q. Did you ever discuss in person prisoner of war matters with your subordinates other than at the September conference?

A. I never discussed prisoners of war except for the occasions I have mentioned.

335. Q. What do you mean by the occasions you mentioned?

A. I would like to reword my answer. I never discussed matters pertaining to prisoners of war other than the two occasions that I mentioned when I instructed that they be sent home as soon as possible and besides the instructions I issued at the conference in September 1944 and then one other occasion when I cautioned my subordinates concerning the treatment of the one prisoner of war who was in confinement in January 1945.

336. Q. Other than these occasions you never discussed prisoner of war matters with any of your subordinates; is that correct?

A. I do not have a recollection of it.

337. Q. When you say that you did not discuss prisoner of war matters with these subordinates do you also mean that they did not talk to you about prisoner of war matters?

A. Yes.

338. Q. That applies to all of your subordinates of the Fourth Fleet does it?

A. Yes.

339. Q. Prior to your tour of duty as Commander in Chief of the Fourth Fleet did you ever speak to any of these subordinates with regard to prisoner of war matters?

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

The judge advocate replied.

The commission announced that the objection was sustained.

340. Q. Did you in your testimony yesterday, in response to question 138 "On hearing Iwanami state this what judgment did you draw?" make the following answer "I thought it a strange story. The hospital was by international law a neutral zone and it was the only peaceful haven on Truk. Furthermore Iwanami was a quiet and kind man and previous to this he had told me on several occasions that at his previous post at Ofuna he had treated prisoners of war with kindness and consideration and this statement coming from Iwanami I thought that he had become unbalanced"?

A. I did testify to this effect.

341. Q. At what times during your tour of duty did you know that prisoners of war were confined at Truk?

A. The only two times that I knew of prisoners being confined on Truk were once around March or April 1944 when I saw this report and the other occasion was in January of 1945.

342. Q. In addition to these I also assume you include that at the September conference you learned of disposal of other prisoners of war in July; is that correct?

A. I did not hear about the confinement of the prisoners of the September conference.

343. Q. But you heard of the spearing of these prisoners at the hospital in July and therefore you realized that they had been confined at Truk; is that correct?

A. I could imagine such things but I could not have known them as facts that I knew.

344. Q. In your testimony in answer to question 112 you testified that you did not know in June of 1944 that prisoners of war were confined at the Forty-first Naval Guard Unit on Truk; is that correct?

A. Yes, that is correct.

345. Q. Are you positive that you did not know in June 1944 that there were prisoners of war confined there at the Guard Unit?

A. Yes, I am certain.

346. Q. Have you always since that date been certain that you did not know in June of 1944 that prisoners of war were confined at the Guard Unit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I will not say that this recollection has been a firm recollection.

347. Q. But you are now positive that you did not know in June 1944 that there were prisoners of war at the Guard Unit; is that correct?

A. After the termination of the war the Commanding Officer of the Forty-first Naval Guard Unit reported to me concerning prisoners of war through a written report. In that written report there was no mention of three prisoners of war having died through the bombing. I received a separate report after this written report which stated that three prisoners had died through bombing and when I received this later report my recollection seemed to stir that I had received a report concerning the details of three prisoners of war in June. Studying this matter later I discovered that what I thought was the stirring of my memory had been mistaken and my present thinking is the right thinking.

348. Q. When did you come to this conclusion that your present way of thinking was the right way of thinking?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. After the commencement of my trial I heard my Chief of Staff Arima and my Senior Staff Officer Higuchi testify in court that they knew of no such matter and therefore I came to this conclusion.

349. Q. Then this conclusion of yours that you did not know prisoners of war were confined at the Guard Unit in June of 1944 is a positive conclusion that you have reached in this trial; is that correct?

A. Yes. I stated in the statement which I executed prior to the time the charge and specifications were given to me that my recollection of this matter is not a definite recollection.

350. Q. What other portions of your testimony have been the result of conclusions you drew during this trial?

A. Conclusions on what.

351. Q. What other portions of your testimony have consisted of conclusions that you drew in this trial?

A. I do not recall specific instances at this moment.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Wednesday, December 29, 1948.

FORTY-SECOND DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, December 29, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the
adjournment was taken, resumed the stand as a witness in his own behalf. He
was warned that the oath previously taken was still binding, and continued
his testimony.

(Cross-examination continued.)

352. Q. Around July 1944 did the Fourth Fleet receive a dispatch from
Enderby Island concerning two prisoners of war captured by the army
requesting that the Guard Unit take custody of them?

A. I do not know.

353. Q. You testified yesterday that you received a battle report in March,
April, or May 1944 from the Guard Unit. During your tour of duty on Truk
did you receive any other battle reports from the Forty-first Guard Unit?

A. Yes, I did receive battle reports.

354. Q. Did you also receive battle reports from other subordinate units of
the Fourth Fleet?

A. Yes.

355. Q. Did you receive any battle reports from Jaluit?

A. Yes.

356. Q. Did you receive any battle reports from Wake Island?

A. Yes.

357. Q. When you assumed your duty as Commander in Chief of the Fourth Fleet
was the Guard Unit at Wake Island a direct subordinate unit of the Fourth
Fleet?

This question was objected to by the accused on the ground that it was irrelevant and immaterial in that there was no allegation in the charge and specifications in regard to Wake Island.

The judge advocate replied that the extent of the command of the accused is relevant, and it is relevant and material to show that Wake Island was a subordinate unit of the Fourth Fleet even though there are no allegations concerning Wake Island in the charge and specifications in the instant case.

The commission announced that the objection was sustained.

358. Q. Was Captain Sakaibara of the Fourth Fleet garrison unit at Wake Island a direct subordinate officer of yours? AS

This question was objected to by the accused on the ground that it is irrelevant and immaterial and is only a collateral issue.

The judge advocate replied.

The commission announced that the objection was sustained.

359. Q. At or near the date you assumed command of the Fourth Fleet did you know that Wake Island had been captured from the American armed forces and that large numbers of prisoners had been taken captive at that time?

This question and line of questioning was objected to by the accused on the ground that incidents on Wake are outside the scope of the charge and specifications.

The judge advocate replied.

The commission announced that the objection was sustained and that this line of questioning would not be permitted. AS

360. Q. During your tour of duty on Truk did staff officers of the Fourth Fleet interrogate any prisoners of war on Truk?

A. I recall that my Chief of Staff visited the one prisoner of war in January of 1945. However I do not know whether he went to interrogate him or to issue instructions concerning his treatment. He did, however, report to me that I, Hara, need not worry because he would see to the proper treatment of this prisoner.

361. Q. Did your air staff officer interrogate prisoners of war?

A. He may have seen this prisoner who was captured in January of 1945. Whether he went to interrogate, I do not know.

362. Q. Do you know whether he went to interrogate any of the prisoners prior to January of 1945?

A. I do not.

363. Q. Do you know whether he went to interrogate the prisoners who were captured in March, April, or May of 1944?

A. I do not recall.

364. Q. Did you ever seek to ascertain whether or not any of your staff officers were interrogating any of these prisoners of war at Truk?

A. No.

365. Q. You testified that at certain times you knew there were prisoners of war confined at Truk. Did you ever take steps to ascertain how these prisoners of war were being treated by the subordinate units of the Fourth Fleet at Truk?

A. As there were regulations concerning treatment of prisoners of war, I firmly believed that the prisoners were treated in accordance with these regulations and treated well.

The commission stated that the answer was not responsive^e and directed that the question be repeated and that the witness answer the question.

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The question was repeated.

A. I did not take any steps prior to January 1945, when I did take steps concerning the prisoner.

366. Q. Prior to the end of the war did you ever ask Asano, Arima, Inoue, or Higuchi if they knew or had heard of any mistreatment or killing of prisoners of war by subordinate units of the Fourth Fleet?

A. No.

367. Q. Now, in yesterday's testimony you admitted that you spoke to Iwanami several times in connection with prisoners of war; is that correct?

A. What I meant when I testified then was that Iwanami often talked to me about prisoners of war. It was not that I discussed prisoners of war with him but it was a one-sided conversation.

368. Q. How often did Iwanami speak to you about prisoners of war?

A. I do not recall how many times but as I testified, he spoke saying that he had been kind and considerate to prisoners of war.

369. Q. How often did you see Iwanami prior to July 1944 during your tour of duty on Truk?

A. I do not recall how many times I met Iwanami, but prior to the departure of Arima from Truk it was not many times that I met Iwanami.

370. Q. Did you see him every month?

A. Yes, I met him every month.

371. Q. Did you see him every week?

A. I doubt whether I met him every week.

372. Q. Did you meet him almost every week?

A. I do not recall.

373. Q. How frequently did you see Iwanami after July 1944?

A. I do not recall such details.

374. Q. You testified that you saw Iwanami more frequently after Arima left. When did Arima leave?

A. I believe towards the end of August 1944.

375. Q. How frequently did you see Iwanami after that?

A. It is difficult for me to state the frequency. After the Chief of Staff, Vice Admiral Arima, had left, his successor held the command of the Twenty-second Air Squadron at Moen concurrently, and he was away half of the time, and the senior staff officer was a young officer and therefore I as Commander in Chief met men of the rank of captain more frequently. That is what I meant when I said the frequency increased after Arima left, but I cannot recall the exact frequency.

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376. Q. Would you approximate that you saw Iwanami almost every week from the period of the departure of Arima?

A. Yes, I can testify to that effect, that I met him once a week or once in ten days on an average, and this I can say for all my subordinate cognizant commanding officers.

377. Q. In July 1944 prior to July 20 or July 23 when you were on the veranda, did Iwanami speak to you about prisoners of war?

A. No, outside of the fact that he told me about prisoners that he had treated well at his previous post at Ofuna to which I have testified, he did not mention prisoners of war.

378. Q. Did he speak to you about his treatment of prisoners at Ofuna prior to this July 20 or 23 meeting on the veranda?

A. I do not recall definitely whether he talked about the prisoners at Ofuna before or after July 23, 1944.

379. Q. Then you are not certain as to what date you spoke to him about the prisoners at Ofuna; is that correct?

A. I do not remember definitely.

380. Q. On July 20 or 23, 1944 when you were on the veranda at the Fourth Naval Hospital did Iwanami speak to you concerning the prisoners of war at Ofuna?

A. As I have just testified I do not recall. I wish to state here that it was only after the surrender that I learned of this incident that occurred on July 23, 1944. I had not until then known ^{of} the date, as I had not known of the incident itself. MB

381. Q. What did you discuss with Iwanami while you were on the veranda?

A. I do not recall.

382. Q. Do you recall whether or not you spoke to him concerning this dispatch received in the middle of July 1944 from the Central Pacific Area Fleet saying that they were about to launch their last attack? MB

A. I do not recall and I do not remember discussing matters concerning battle at the hospital.

383. Q. Did you discuss with Iwanami the recent bombing of the hospital?

A. I do not recall. The reason was that all the buildings other than the hospital had been demolished. The damages sustained at the hospital in relation to the damages sustained elsewhere were comparatively small.

384. Q. Didn't Iwanami inform you that he planned to take revenge for the bombing of the hospital?

A. No, he did not. I judged from my observations of the damages caused by the bombing that the United States commander in charge of the air operations was not conducting a systematic bombing of the hospital, that what damages the hospital had sustained were due to the poor bombing on the part of the fliers caused by the excitement to which they were exposed. That was my estimate. Whether Iwanami shared that with me I do not know.

385. Q. Do you know whether or not you spoke to Iwanami about this at that time?

A. No, I did not discuss such matters. When Iwanami came to apologize to me after the termination of the war and when he stated that he had killed the prisoners angered by the bombing of his hospital, I judged that Iwanami had arrived at a conclusion which was his own. This what I stated now, is written in my statement which I executed at Truk.

The judge advocate moved to strike out all of this answer except the first sentence on the ground that it was not responsive.

The accused objected to this testimony being stricken out on the ground that the witness was explaining his answer.

The commission directed that the words "This what I stated now, is written in my statement which I executed at Truk" be stricken out.

386. Q. Now, you are certain that you did not discuss this judgment of yours on July 20 or 23 on the veranda with Iwanami; is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, I am certain that I did not discuss this.

387. Q. Now, you testified that at the September 1944 conference you heard Iwanami say that they had stabbed two prisoners of war at the hospital; is that correct?

A. Yes, that is correct. AB

388. Q. Now, you testified that after the conference in September 1944 you did not order any investigation of the spearing of the two prisoners of war at the hospital; is that correct?

A. Yes.

389. Q. Did you ask Iwanami any questions about the incident at the conference?

A. No.

390. Q. At any subsequent time prior to August 194⁵ did you ask Iwanami any questions about the incident? AB

A. No.

391. Q. Even though you saw Iwanami at least every week or ten days from the time of this conference in September 1944 to August 1945 you never asked him any questions concerning this prisoner of war incident; is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, that is true. The reason was that I had resolved that no investigations be held and in view of the fact that this was a criminal case I had also resolved that no repetition of such incident occur.

392. Q. Now, you testified that after the conference you postponed the investigation of this criminal incident, this spearing of prisoners of war; is that correct?

A. Yes, that is correct.

393. Q. Was this investigation ever ordered by you prior to the termination of the war?

A. No.

394. Q. When you heard at the conference of the spearing of these two prisoners of war at the hospital did you take any steps to ascertain whether any other prisoners of war had been tortured or killed or otherwise mistreated by any of your subordinates at the hospital or at any other place under your command at Truk?

A. No, I did not ascertain.

395. Q. Prior to the termination of the war did you at any time take any steps to punish your subordinates for the murder of the prisoners of war at the hospital?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and repetitious, and that there had been no evidence that the prisoners had in fact been murdered.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

396. Q. You testified that the Naval Regulations contained adequate and complete provisions regarding the treatment of prisoners of war; is that correct?

A. Yes, that is true.

397. Q. Did you have the duty to see to it that the forces under your command obeyed these Naval Regulations?

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

The judge advocate replied.

The commission announced that the objection was not sustained and stated that the question was somewhat repetitious but that it would permit it. 286

A. Did I have the duty to see to it?

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

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

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

No witnesses not otherwise connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

398. Q. Did you have any duty to see to it that the forces under your command obeyed the Naval Regulations?

A. I cannot fully grasp what you mean by duty, but I will answer as follows: unless Naval Regulations are followed, a fleet can not operate.

399. Q. Did you have any responsibility to see that the Naval Regulations were followed by your subordinates?

A. I did.

400. Q. When you became aware of violations of these Naval Regulations by your subordinates, did you have any duty to order investigations of such violations?

A. In the event of violations of the regulations, I had the authority to order prosecution of such violations. I cannot fully grasp the meanings of the words duty, authority and responsibility in the sense in which these concepts are understood by the occidental, but I will attempt to answer to the best of my capacity on my understanding of these terms. I had the duty to investigate.

401. Q. Did you also have the duty to punish or take measures for the punishment of your subordinates who committed serious violations of Naval Regulations?

A. I had the authority to indict these offenders, but I did not have the authority to sit in judgment over them.

402. Q. During your tour of duty, did you indict any of your subordinates for their violations of the Naval Regulations with regard to treatment of prisoners of war?

A. No.

Reexamined by the accused:

403. Q. In your testimony of yesterday, you testified concerning the area of jurisdiction of the Fourth Fleet. How many miles north to south and ~~west~~ ^{east} to west did the area of jurisdiction of the Fourth Fleet measure? MS

A. At the time I assumed command, the area of jurisdiction of the Fourth Fleet was approximately 2,000 miles east to west and 1,000 miles north to south. After the establishment of the Central Pacific Area Fleet it was approximately 1,500 miles east to west and 500 miles north to south.

404. Q. In your cross-examination yesterday, you testified concerning your subordinates, as to the number of personnel under your command. What were the figures broken down into naval personnel, naval gunzokus, and naval employees?

A. When I assumed my command, there were approximately 70,000 persons under my command of which approximately 40,000 were naval personnel, approximately 10,000 gunzokus and the remaining approximately 20,000 were so-called employees which included personnel of the construction corps. After the MS

formation of the Central Pacific Area Fleet these figures changed to total approximately 50,000: Naval personnel - approximately 25,000; Gunzokus - approximately 5,000; and the remaining figure of approximately 20,000 - employees of the construction corps, etc.

405. Q. Did you have the direct duty to supervise and control the military discipline, morale, education and training of your subordinates?

A. I did not have the duty directly to supervise. It is set forth in the Fleet Ordinance that the Commander in Chief of the Fleet shall exercise overall supervision in these matters.

406. Q. Who was then directly in charge of the military discipline, morale, education and training of these subordinates?

A. The cognizant commanding officers.

407. Q. Upon whose shoulders did these duties fall at your headquarters?

A. My chief of staff under my orders was in charge of such matters.

408. Q. What was the average number of reports, representations and dispatches received at your headquarters during your tour of duty?

This question was objected to by the judge advocate on the ground that it was multiple, vague and too general.

The accused made no reply.

The commission announced that the objection was sustained.

409. Q. How many dispatches on an average per day did you receive which were brought to you for your perusal?

A. It varied according to the periods of my tour of duty, but from the time I assumed command of the Fourth Fleet until the fall of the Marianas, they averaged between 700 and 1,000 a day.

410. Q. Did the number of dispatches remain much the same after that period?

A. This number fell off after the conclusion of the Marianas operation by the Americans; and after that time it averaged between 500 and 800 dispatches daily. This number further decreased after entering the year 1945X.

411. Q. Did you as Commander in Chief of the Fourth Fleet have the duty to protect natives of the islands in the area of jurisdiction of the Fourth Fleet?

A. I did not.

412. Q. Who then had this duty?

A. Until the time the Commander in Chief of the Central Pacific Area Fleet was appointed, this duty was incumbent upon the Governor of the South Seas Government Office. After that date, the senior commanding officer on these islands had this duty.

413. Q. In the protection of the natives, under whose command were these senior commanding officers of these islands?

A. I think that they were under the command of the Central Pacific Area Fleet, but circumstances were such that it was difficult even to exercise operational command. And it is my judgment and therefore I do not know, if such duty in connection with protection of natives was exercised or carried out.

414. Q. As Commander in Chief of the Fourth Fleet, did you have obligations or responsibilities directly to protect prisoners of war confined on Truk?

A. I did not have obligations or responsibilities directly to protect prisoners of war.

415. Q. Mention was made in your testimony during the cross-examination that Iwanami spoke to you about prisoners of war at Ofuna Prison. Under what circumstances were these conversations brought up?

This question was objected to by the judge advocate on the ground that it was too broad in scope unless particular dates and conversations were specified.

The accused withdrew the question.

416. Q. You testified during the cross-examination that Iwanami spoke to you on several occasions concerning prisoners of war confined at Ofuna. How many times did he approach this subject?

A. I heard Iwanami's story expanding on his exploits at least two times.

417. Q. What do you mean by this Iwanami story of his exploits?

A. I mean by that that he was telling his own story about kindnesses that he had done to other people.

418. Q. What relation have these stories of kindness done, to the question of prisoners of war?

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

The accused replied.

The commission announced that the objection was not sustained, subject to a motion to strike.

A. Yes, that is what I mean by others, I mean prisoners of war.

419. Q. You testified that Iwanami, after the termination of the war apologized to you for the execution of two prisoners of war. Were there any other cognizant commanding officers who apologized for execution of prisoners of war?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. Yes, there were.

420. Q. Please state who he was, or who they were.

A. It was in July of 1946, approximately a year after the termination of the war that Commanding Officer Asano of the Forty-first Naval Guard Unit suddenly requested that I give him an interview. He reported and apologized to me as follows: "Besides the three prisoners of war who were killed through the bombing, there were two other prisoners who were fatally injured during

the bombing. Although these latter two were treated, there was no hope of their recovery and they subsequently died. I asked under what conditions these two prisoners had died. As there was no hope of their recovery, their deaths were expedited. However, in actual fact, I learned of this later. I, Asano, am in no way connected with this incident. I observed that the Americans had a clue of this incident, and as I do not think it right not to report this matter at all until the whole incident is discovered by the Americans, I hereby report the above to you. I apologize for the fact that I did not report this matter before this date." The above is a gist of what Commanding Officer Asano reported to me. Prior to this date Captain Asano had repeatedly told me that as Commanding Officer of a Naval Guard Unit, he had taken every precaution in regard to treatment of prisoners of war. When I heard this from the commanding officer, I deeply deplored the fact that here again was another unlawful act committed against the Americans.

421. Q. Did Asano state at what time that these two groups of three and two prisoners of war were prisoners under his custody? A8

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

The accused made no reply.

The commission announced that the objection was sustained.

The commission then, at 11:35 a.m., adjourned until 9 a.m., tomorrow, Thursday, December 30, 1948.

United States Pacific Fleet
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, December 30, 1943

Present:

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

No witnesses not otherwise connected with the trial were present.

Here, Shuchid, the accused, the witness under examination when the adjournment was taken, resumed the stand as a witness in his own behalf. He was sworn that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

Q. Why did you not conduct an investigation on hearing Iwanami at the September conference to which you testified yesterday?

A. The conditions on Truk at that time were as follows: Truk was subjected at that time to daily and nightly bombing by American planes and damages to personnel and munitions were extremely heavy. The personnel were living in caves at that time and it was immediately after the fall of the Marianas. All Japanese personnel in the Marianas had fallen in battle. The officers and men on Truk therefore had the feeling that they were in the face of imminent death. Because of the shortage of food, potatoes were made the staple food but this itself was lacking and there were numerous victims of malnutrition. The defenses on Truk when I assumed command of the Fourth Fleet were extremely poor. As I considered that improvements could be made in the defenses in face of the so-called Nimitz offensive operation, I was engaged in this task at this time. The defenses however had not been completed. The conditions at Truk being as I have just stated, it was indeed a most difficult situation there. If I made one false move in regard to general opinion, the results would have been disastrous. If an investigation were held on the basis of Iwanami's story and if the investigation proved the matter to be true, I had the responsibility to indict and therefore, although I knew of the case, I could not, in the face of these conditions, carry out the investigation. I judged that if I did not conduct such an investigation, if I saw to it that there would absolutely be no repetition of such incident and that the matter would be settled.

423. Q. When you referred to dispatches in your testimony yesterday, were you referring to dispatches that were received from your subordinates?

A. No, they were not dispatches from my subordinates. Truk, at that time, had this duty in relation to communications which was to relay all messages coming in from New Guinea, New Britain, Bougainville, coming in from the Southeast Area Fleet, the Eighth and Ninth Fleets stationed in New Guinea, New Britain, and Bougainville.

424. Q. Do you understand what is meant by the term outage and the term duration of outage as applied to communication transmission?

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

The accused replied.

The commission announced that the objection was sustained.

425. Q. Did you ever inspect the naval units on the islands in the area of jurisdiction of the Fourth Fleet, such as Nauru, Ocean, and Jaluit, during your tour of duty as Commander in Chief of the Fourth Fleet, and if so, how many times and when?

A. I'd like to answer that question by dividing it into two answers. One- Truk and the islands within Truk Atoll and two - those that were far removed. I'll answer your question, understanding by the word "inspection" the inspection of the military discipline, education, training, and morals of my troops. I did go around the islands of Truk Atoll, but the damages sustained on these islands were so great and the personnel were completely engaged in the recovery from these damages, so that I did not conduct an inspection in the sense of inspecting the military discipline, et cetera. Next, on the inspection of the other islands in the area of jurisdiction of the Fourth Fleet. To speak metaphorically, I was, during my tour of duty at Truk, confined on Truk by the American forces, therefore, inspections and such matters were impossible.

426. Q. How then did you exercise jurisdiction over your subordinates on these islands such as Nauru, Ocean and Jaluit?

This question was objected to by the judge advocate on the ground that it was repetitious and outside the scope of the cross-examination.

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did have jurisdiction over Nauru, Jaluit and Ocean Islands. However during my whole tour of duty I did not send one round of ammunition nor one pound of food and in the event of American invasion of or offensive on these islands I was not in a position to give them any form of support now was I able to withdraw them from these islands. Although I had command of the units on these islands there were difficulties in my exercising command over them.

427. Q. Did your immediate superior in command or the Navy Ministry know about the difficulty and your inability to provide for and protect the units subordinate to you and for which you have testified you were responsible?

A. Yes, they did. This fact could be known from the circumstances that neither the Navy Minister nor my immediate superior commanding officer ever gave me forces for fleet support operations.

428. Q. Did you know if there were prisoners of war on Nauru, Ocean, or Jaluit during your tour of duty as Commander in Chief, Fourth Fleet?

A. No, I absolutely did not know.

429. Q. One of the definitions of the word "occupy" is "to hold". Is this the way you used the word in answering the judge advocate's questions regarding occupation of Ocean, Nauru, and Jaluit Islands by Japanese naval forces? If not, in what sense did you use the word when answering the judge advocate's questions 278, 280, and 282?

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

The accused made no reply.

The commission announced that the objection was sustained.

430. Q. In what way did you use the word "occupy" in answering the judge advocate's questions, specifically 278, 280, and 282, regarding the occupation of the islands of Ocean, Jaluit, and Nauru by the Japanese forces?

A. Jaluit was one of the Japanese Mandated Territory Islands. Nauru and Ocean were occupied by the Japanese naval forces.

431. Q. After August 15, 1945 did the Americans ever violate the terms of the Japanese Armistice and attack any of your subordinate units, particularly the units on Nauru, Ocean, or the units on Truk?

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, but I judged that such things could not have occurred.

432. Q. After August 15, 1945 could the authority of the Sixty-seventh Naval Guard Unit be exercised in the occupied territory of Ocean Island?

This question was objected to by the judge advocate on the ground that it was vague, general, meaningless, and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. The jurisdiction was still in effect.

433. Q. You have testified that in January 1945 you knew that there was a prisoner of war confined at the Forty-first Naval Guard Unit. Who was the commanding officer of this Guard Unit having custody of this prisoner of war?

A. Captain Asano, Imperial Japanese Navy.

434. Q. Had he been designated and was he the official responsible for the custody of this particular prisoner of war at the Guard Unit?

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

The accused replied.

The commission announced that the objection was not sustained.

A. Yes. In the Imperial Japanese Navy the Navy Minister assigned cognizant commanding officers to their positions and in his selection he gave minute consideration.

435. Q. Is this the same Asano who was commanding officer of the Forty-first Naval Guard Unit in June and July 1944?

A. Yes.

Recross-examined by the judge advocate:

436. Q. You testified yesterday about the area of jurisdiction of the Fourth Fleet under your command; during your tour of duty did not your command consist primarily of land-based units on specific islands within that area of jurisdiction?

A. No, that is not the case. Where areas of jurisdiction are considered from the standpoint of the Navy, the jurisdiction covers primarily the ocean.

437. Q. How many of the approximately 70,000 persons under your command when you assumed your duty were at sea and how many ashore?

A. These men were there to defend the bases from which sea and air operations were conducted and they were there for example to build air strips, to maintain aircraft and ships, et cetera. During my tour of duty there were hardly any at sea.

438. Q. Will you approximate how many you mean by "hardly any"?

A. There was only a very small percentage.

439. Q. Are you able to approximate the number?

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

The judge advocate replied.

The commission announced that the objection was sustained.

440. Q. Approximately how many of the 70,000 personnel when you took over the command of the Fourth Fleet were stationed on and in the immediate vicinity of Truk?

A. Do you mean on the islands of Truk Atoll?

441. Q. Yes. How many were stationed on Truk Atoll?

A. Approximately 25,000.

442. Q. Does that include naval personnel, employees of the Construction Corps, and gunsokus?

A. Yes.

443. Q. After the creation of the Central Pacific Area Fleet how many personnel remained on Truk Atoll under your command?

A. The figure did not materially change.

444. Q. In view of the difficulties that you have outlined in exercising your command over outlying islands such as Nauru, Ocean, and Jaluit, did you not concentrate more on carrying out your duties on Truk?

A. It did not follow that because supervision could not be exercised over Nauru and Ocean that I concentrated on the supervision of units at Truk.

445. Q. Approximately half of the total armed forces under your command were at Truk. Is that correct?

A. Yes, that is about right.

446. Q. Were you in communication with Jaluit, Ocean, and Nauru?

A. The conditions are exactly as I have testified previously.

447. Q. You have testified that you did not know that there were prisoners of war on Jaluit, Ocean, and Nauru. Did you ever try to ascertain whether there were prisoners of war on any of these places?

A. No.

448. Q. You testified yesterday that until the fall of the Marianas approximately seven hundred to a thousand dispatches came to you for perusal every day. Is that correct?

A. Not all of these dispatches were brought to my desk.

449. Q. You testified yesterday concerning 700 and 1,000 dispatches until the fall of the Marianas. Do you mean 700 or 1,000 dispatches came to your headquarters?

A. Do you mean addressed to the fleet?

450. Q. You testified about 700 to 1,000 dispatches until the fall of the Marianas yesterday. What did you mean when you testified about them?

A. By that I meant that Truk was the relaying unit for messages going from New Britain and New Guinea and Bougainville to Tokyo and Truk received this number of messages; and the communication officer or other officers whose duty it was to see these dispatches brought to the attention of the Commander in Chief such dispatches as they thought should be brought to his attention.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

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

No witnesses not otherwise^w connected with the trial were present.

Hara, Chuichi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Recross-examination continued.)

451. Q. Of these seven hundred to a thousand messages received daily at Truk, how many of them did you personally peruse, on an average?

A. I do not recall the number.

452. Q. Can you approximate the number of dispatches?

This question was objected to by the accused on the ground that it was irrelevant, immaterial and repetitious.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not have a recollection of the figure.

453. Q. You testified that after the conclusion of the Marianas operations the dispatches dropped to between five hundred and eight hundred. Do you have any approximate recollection of how many of these dispatches you personally saw daily?

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

The commission announced that the objection was not sustained.

A. I do not recall.

454. Q. After entering the year 1945 do you recall approximately how many dispatches came to Truk daily?

A. No, I do not recall.

455. Q. And similarly do you recall how many of these dispatches after entering the year 1945 came to you for your personal examination?

A. I do not recall.

456. Q. Now, you have testified as to the average number of dispatches that had come to Truk from various places you outlined. Did this number include any dispatches from subordinate units outside of Truk Atoll?

A. Yes.

457. Q. Approximately how many dispatches were received daily from your subordinate units prior to the fall of the Marianas, do you recall?

A. No.

458. Q. Do you recall approximately how many dispatches were received from your subordinate units after the conclusion of the Marianas operation and prior to 1945?

A. I do not recall.

459. Q. Do you recall how many dispatches were received from any of your subordinates after entering the year 1945?

A. I do not.

460. Q. During all these periods however from the period prior to the fall of the Marianas, and the period up to 1945, and the period from 1945 on, you were receiving messages from your subordinates, however, is that correct?

A. Yes.

461. Q. Now, during the period prior to the fall of the Marianas from what subordinate units or islands of yours were you receiving messages at Truk?

A. I recall receiving dispatches from my subordinates but I do not recall from specific subordinates. I do not recall the names of the islands.

462. Q. Do you recall the names of the islands or your subordinate units on those islands from which you received dispatches after the conclusion of the Marianas operation and prior to 1945?

A. No, I do not recall.

463. Q. Do you recall the names of any of your subordinate units or any of the islands on which they were located from whom messages were received after the beginning of the year 1945?

This question was objected to by the accused on the ground that it was irrelevant, immaterial and repetitious. 28

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not recall.

464. Q. Were any messages received from Jaluit, Nauru, or Ocean prior to the fall of the Marianas?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall receiving dispatches from Jaluit although I do not recall that dispatches were received from Nauru or Ocean.

465. Q. After the fall of the Marianas and prior to 1945 do you recall whether any messages were received from Jaluit, Nauru or Ocean?

A. I recall dispatches from Jaluit, but whether there were any from Nauru or Ocean I do not recall.

466. Q. During the year 1945 do you recall any messages being received from Jaluit, Nauru or Ocean?

A. I recall receiving messages from Jaluit, but I do not recall concerning Nauru and Ocean.

467. Q. You recall receiving messages from Jaluit during the year 1945. Can you approximate how many you received?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not recall.

468. Q. But you do recall that some messages were received from Jaluit in the year 1945; is that correct?

A. Yes, I do.

469. Q. In question 94 in your direct testimony when you were asked "State clearly and briefly the communications existing within the area of jurisdiction during your tour of duty as Commander in Chief of the Fourth Fleet.", did you include the following in your answer "Consequently, these islands in that area maintained communications through Jaluit, however I heard that commencing with the year 1945 transmitting on Jaluit had terminated"?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not make that reply. In my answer I used the word "teika" which means deteriorated.

470. Q. Now, you testified that approximately a year after the war in July 1946 Asano came to you and told you about the five prisoners of war at the Guard Unit in June of 1944; is that correct?

A. He did not report directly to me that there were five prisoners of war at the Guard Unit in June.

471. Q. Prior to July 1946 did you ever learn that five prisoners of war had been at the Guard Unit in June of 1944?

A. I did not know of this fact until the termination of the war.

472. Q. Did you know this prior to July 1946?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I heard after the termination of the war that three prisoners of war had been bombed to death.

473. Q. Did you hear anything about two other prisoners of war being at the Guard Unit at that time?

A. No, I did not.

474. Q. When did you first learn that there were two other prisoners of war at the Guard Unit at that time?

A. I learned of that fact when Asano reported to me.

475. Q. And when was this report made?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was either in July or August of 1946 and it was four or five days prior to Asano's arrest.

476. Q. And from the end of the war up until July of 1946 you did not know that there were two more prisoners of war at the Guard Unit in June of 1944, is that correct?

This question was objected to by the accused on the ground that it was repetitious, irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I did not.

477. Q. In August of 1945 and in September of 1945 was an investigation made by the Fourth Fleet concerning the prisoner of war incidents and concerning prisoners of war who had been confined at Truk?

This question was objected to by the accused on the ground that it was repetitious, irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Instructions were issued to all commanding officers of Naval Guard Units and cognizant commanding officers to report on matters concerning prisoners of war.

478. Q. By cognizant commanding officers do you include Captain Iwanami of the Fourth Naval Hospital?

A. Yes.

479. Q. Did your Chief of Staff Sumikawa also participate in this?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The investigations were ordered to all cognizant commanding officers. I do not well know whether Sumikawa directly participated in these investigations or not.

480. Q. You testified that one of the reasons you did not order any investigation after the September conference was because you did not want to be placed in the position of responsibility of having to indict any of your subordinates; is that correct?

A. No, I did not mean it in that sense.

481. Q. Did you not have the responsibility to indict your subordinates when they directly admitted in your presence the commission of a serious violation of Naval Regulations?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, if what he said was proven true.

Examined by the commission:

482. Q. During your testimony you referred to the Governor of the South Seas Government and also officers of the South Seas Government. The commission would like you to clarify whether or not this Governor and his officers were military personnel or civilian personnel.

A. The Governor of the South Seas Office was a retired vice admiral.

483. Q. How about his subordinates? Were they civilians or military personnel?

A. As to the subordinates, the District Governor at Truk was a rear admiral on the retired list and I believe the District Governor at Palau was a retired engineer captain of the Navy.

484. Q. Were these retired officers acting in a military or civil capacity?

A. Their status was that of civilians. The retired rear admiral at Truk may have been recalled to active service, but in the execution of his duties he was acting in the capacity of a civilian.

Reexamined by the accused:

485. Q. Were the officials in the South Seas Government Office in the lower echelons civilians or military?

A. All of the subordinate officials in that office did not have military status. They were civilians. Except for the officers I mentioned, the rest were all civilians.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to reexamine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused.

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

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, was recalled as a witness for the defense and was warned that the oath previously taken by him was still binding.

Examined by the judge advocate:

1. Q. Are you a counsel for the accused in this case?

A. Yes.

2. Q. Have you previously testified?
A. Yes.

Examined by the accused:

3. Q. Please state your name.
A. Sanagi, Sadamu.

4. Q. Do you have in your possession documents of character evidence in behalf of Hara, Chuichi?
A. I have eight documents in my possession.

5. Q. Do these character documents have any relation to the accused's handling and protection of prisoners of war and natives which is a point of issue in this trial?
A. To the best of my knowledge, in inspecting these documents, they are all from naval officers who knew the accused very well, and they do state in general the reputation of the accused concerning the handling and protection of natives and his general supervision of his subordinates.

6. Q. How many do you have in your possession?
A. Eight in all.

7. Q. In what language are the originals written?
A. The originals are written in Japanese.

8. Q. Is there a translation of each document?
A. Yes, there are translations.

The documents produced by the witness were submitted to the judge advocate, and to the commission, and by the accused, offered in evidence.

Cross-examined by the judge advocate concerning the offer in evidence of the eight character documents:

9. Q. Were these statements in character evidence sworn to by the makers of these statements?
A. All except the last one made by Taneda, Tsunio are sworn to.

10. Q. Do the Japanese of these statements contain the signature or personal seal of the affiant in each case where the statements have been sworn to?
A. They are signed or sealed by the makers.

There being no objection, the documents were so received, and are appended marked "Exhibit 56" (Japanese), "Exhibit 56a" (English translation); "Exhibit 57" (Japanese), "Exhibit 57a" (English translation); "Exhibit 58" (Japanese), "Exhibit 58a" (English translation); "Exhibit 59" (Japanese), "Exhibit 59a" (English translation); "Exhibit 60" (Japanese), "Exhibit 60a" (English translation); "Exhibit 61" (Japanese), "Exhibit 61a" (English translation); "Exhibit 62" (Japanese), "Exhibit 62a" (English translation); "Exhibit 63" (Japanese), and "Exhibit 63a" (English translation).

Examined by the accused concerning Exhibits 56, 57, 58, 59, 60, 61, 62, and 63:

11. Q. Will the witness read Exhibit 56?
(The witness read Exhibit 56 as requested.)

12. Q. Will the witness please read Exhibit 57?

(The witness read Exhibit 57 as requested.)

13. Q. Will the witness please read Exhibit 58?

(The witness read Exhibit 58 as requested.)

14. Q. Will the witness please read Exhibit 59?

(The witness read Exhibit 59 as requested.)

15. Q. Will the witness please read Exhibit 60?

(The witness read Exhibit 60 as requested.)

16. Q. Will the witness please read Exhibit 61?

(The witness read Exhibit 61 as requested.)

17. Q. Will the witness read Exhibit 62?

(The witness read Exhibit 62 as requested.)

18. Q. Will the witness please read the last document, Exhibit 63?

(The witness read Exhibit 63 as requested.)

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness resumed his seat as a counsel for the accused.

The defense rested.

The commission then, at 3:25 p.m., adjourned until 9 a.m., Thursday, January 6, 1949, in order to allow time for the prosecution and the defense to prepare their final arguments.

FORTY-FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, January 6, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States
Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the forty-third day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

The accused requested permission to reopen his case in order to present
a deposition which had been received since the commission last adjourned.

The commission announced that the request was granted.

The defense reopened.

Herbert L. Ogden, a witness for the defense, was recalled and was warned
that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. Have you in your possession a deposition signed by Vice Admiral George
Murray?

A. I have.

2. Q. Is this deposition in answer to the interrogatories that were
submitted to Admiral Murray by this court in behalf of the defense?

A. It is.

3. Q. Does this deposition relate to the surrender on Truk of the Japanese
naval forces?

A. It does.

The document produced by the witness was submitted to the judge advocate
and to the commission and by the accused offered in evidence. There being no
objection it was so received and is appended marked "Exhibit 64".

4. Q. Will the witness read this interrogatory and the answers thereto?

(The witness read Exhibit 64 as requested.)

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The defense rested.

The accused read a written statement in his defense in Japanese, appended marked "FF".

An interpreter read an English translation of the statement by the accused, appended marked "GG".

The judge advocate read his written opening argument, appended marked "HH".

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

The commission then, at 10 a.m., took a recess until 10:20 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, commenced the reading of a written argument for the defense, appended marked "II".

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, continued the reading of a written argument for the defense, appended marked "II".

The commission then, at 3:05 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, continued the reading of a written argument for the defense, appended marked "II".

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Friday, January 7, 1949.

FORTY-FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, January 7, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States
Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the forty-fourth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, continued the reading of
a written argument for the defense, appended marked "I".

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

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, continued the reading of
a written argument for the defense, appended marked "II".

The commission then, at 11:20 a.m., took a recess until 2:10 p.m., at
which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, concluded the reading of
a written argument for the defense, appended marked "II".

An interpreter read an English translation of the written argument for
the defense, appended marked "JJ".

The commission then, at 3 p.m., adjourned until 9 a.m., tomorrow,
Saturday, January 8, 1949.

FORTY-SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, January 8, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the forty-fifth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a written
argument for the defense, appended marked "KH".

The accused waived the reading of Commander Carlson's argument in
Japanese in open court.

The commission then, at 9:50 a.m., adjourned until 9 a.m., Monday,
January 10, 1949.

FORTY-SEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, January 10, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the forty-sixth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate commenced the reading of his written closing argument,
appended marked "LL".

The commission then, at 11:20 a.m., took a recess until 2:05 p.m., at
which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate concluded the reading of his written closing
argument, appended marked "LL".

The accused waived the reading of the judge advocate's written closing
argument in Japanese in open court.

The trial was finished.

The commission then, at 4:05 p.m., adjourned until 9 a.m., tomorrow,
Tuesday, January 11, 1949.

FORTY-EIGHTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, January 11, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the forty-seventh day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The judge advocate was recalled and directed to record the following
findings:

The first specification of the charge proved in part, proved except
the words "Nauru Island, Ocean Island," in line four,

the words "British nationals, a Chinese civilian," in lines twelve and
thirteen,

the words "the Caroline Islands," in line thirteen,

the words "Nauru Island and Ocean Island," in line fourteen,

the words "(a) The unlawful killing of three (3) unarmed American
prisoners of war, names to the relator unknown, by shooting and
stabbing, on or about March 10, 1944, on the island of Aineman,
Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral,
IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI,
Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA,
Toshimoto, warrant officer, IJN, all attached to the military
installation of the Imperial Japanese Navy at Jaluit Atoll,
Marshall Islands."

the words "(f) The unlawful torture, abuse and inhumane treatment of six (6) civilians, residents of Nauru Island, namely, Ruben FOLIAPE, Marie FOLIAPE, Rudolph HARRIS, Albert HARRIS, Father Pierre CLIVAZ, and Father Alois KAYSER, by cruelly beating them, on or about August 28, 1944, at Truk Atoll, Caroline Islands, by SHOJI, Takashi, also known as SYOJI, Takashi, civilian employee of the Imperial Japanese Navy, ISHIWARA, first name unknown, a naval civil guard, TAKENOUCHI, first name unknown, a naval civil guard, SHOJI, Hideo, also known as SYOJI, Hideo, a naval civil guard, ANETAI, Soji, a naval civil guard, all attached to the Fourth Naval Construction Department, SAKAMOTO, Takaharu, sergeant of the Japanese Military Police Corps, and others, names to the relator unknown, all attached to the Imperial Japanese armed forces at Truk Atoll, Caroline Islands."

the words "(g) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(h) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(i) The unlawful killing of about two hundred (200) British nationals, namely, UEANTEITI, PALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naocomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KOYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieutenant junior grade, IJN, IJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

which words are not proved.

The second specification of the charge proved in part, proved except the words "the Marshall Islands, Nauru Island, Ocean Island," in line four,

the words "and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision," in lines twelve, thirteen, fourteen, and fifteen.

the words "and said residents of Nauru Island and Ocean Island," in lines sixteen and seventeen,

the words "(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands."

the words "(f) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(g) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(h) The unlawful killing of about two hundred (200) British nationals, namely, UEANTEITI, FALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Satazo, lieutenant junior grade, IJN, IJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIKE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

which words are not proved.

And that the accused, Hara, Chuichi, is of the charge guilty.

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

The commission announced its findings to the accused in open court.

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

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused was recalled as a witness for the defense in mitigation and was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. State your name.
A. Sanagi, Sadamu.
2. Q. Are you a member of the defense counsel in this present trial?
A. Yes, I am.
3. Q. Do you have in your possession statements in mitigation for the accused Hara?
A. I have.
4. Q. How many in all do you have?
A. Twenty-nine.

5. Q. In what language are they written?
A. The originals are written in Japanese.
6. Q. Have you prepared an English translation?
A. Yes, I have prepared English translations.
7. Q. Are the signatures affixed on the original of these petitions?
A. In the originals in Japanese the signatures are affixed.
8. Q. In what relation are those makers of the petitions to the accused?
A. Some are written by the accused's family, some by former naval officers, and the others by close friends and acquaintances.

The twenty-nine petitions produced by the witness were submitted to the judge advocate and to the commission, and by the accused, offered in evidence. There being no objection, they were so received and are appended marked "Exhibit 65" (Japanese), "Exhibit 65a" (English translation); "Exhibit 66" (Japanese), "Exhibit 66a" (English translation); "Exhibit 67" (Japanese), "Exhibit 67a" (English translation); "Exhibit 68" (Japanese), "Exhibit 68a" (English translation); "Exhibit 69" (Japanese), "Exhibit 69a" (English translation); "Exhibit 70" (Japanese), "Exhibit 70a" (English translation); "Exhibit 71" (Japanese), "Exhibit 71a" (English translation); "Exhibit 72" (Japanese), "Exhibit 72a" (English translation); "Exhibit 73" (Japanese), "Exhibit 73a" (English translation); "Exhibit 74" (Japanese), "Exhibit 74a" (English translation); "Exhibit 75" (Japanese), "Exhibit 75a" (English translation); "Exhibit 76" (Japanese), "Exhibit 76a" (English translation); "Exhibit 77" (Japanese), "Exhibit 77a" (English translation); "Exhibit 78" (Japanese), "Exhibit 78a" (English translation); "Exhibit 79" (Japanese), "Exhibit 79a" (English translation); "Exhibit 80" (Japanese), "Exhibit 80a" (English translation); "Exhibit 81" (Japanese), "Exhibit 81a" (English translation); "Exhibit 82" (Japanese), "Exhibit 82a" (English translation); "Exhibit 83" (Japanese), "Exhibit 83a" (English translation); "Exhibit 84" (Japanese), "Exhibit 84a" (English translation); "Exhibit 85" (Japanese), "Exhibit 85a" (English translation); "Exhibit 86" (Japanese), "Exhibit 86a" (English translation); "Exhibit 87" (Japanese), "Exhibit 87a" (English translation); "Exhibit 88" (Japanese), "Exhibit 88a" (English translation); "Exhibit 89" (Japanese), "Exhibit 89a" (English translation); "Exhibit 90" (Japanese), "Exhibit 90a" (English translation); "Exhibit 91" (Japanese), "Exhibit 91a" (English translation); "Exhibit 92" (Japanese), "Exhibit 92a" (English translation); "Exhibit 93" (Japanese), and "Exhibit 93a" (English translation).

9. Q. Will the witness read Exhibits 65 through 93?

(The witness read Exhibits 65 through 93 as requested.)

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness resumed his seat as counsel for the accused.

Commander Martin E. Carlson, a counsel for the accused, read a written statement in mitigation, appended marked "MM".

The accused waived the reading of Commander Carlson's statement in Japanese in open court.

The commission was cleared.

The judge advocate was recalled, and directed to record the sentence of the commission as follows:

*The commission, therefore, sentences him, Hara, Chuichi,
to be confined for a period of six (6) years.*

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

Daniel J. Sweeney
DANIEL J. SWEENEY,
Captain, U. S. Navy, Member.

Harry W. McCormick
HARRY W. MCCORMICK,
Lieutenant Colonel, Quartermaster Corps,
United States Army Reserve, Member.

Newton L. Chamberlain
NEWTON L. CHAMBERLAIN,
Lieutenant Colonel, Signal Corps,
United States Army, Member.

Ralph I. Gerber
RALPH I. GERBER,
Lieutenant Commander, U. S. Navy, Member.

Kermit H. Shelly
KERMIT H. SHELLY,
Captain, U. S. Marine Corps, Member.

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

The commission was opened. All parties to the trial entered.

The commission then read and pronounced the sentence to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

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

MOTION FOR A CHANGE OF VENUE DELIVERED BY COMMANDER MARTIN E. CARLSON
IN BEHALF OF HARA, CHUICHI.

May it please the Commission:

The accused HARA, Chuichi, a prisoner of war hereby makes this motion for a change of venue on the grounds that the action is brought in the wrong place or district.

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

The crimes alleged in the specifications are said to have taken place on Ainemah Island, Jaluit, Dublon Island, Truk, Nauru Island and Ocean Island. These were not within the command of the Commander Naval Forces Marianas during the period from February 23, 1944 to August 20, 1945 or even to September 2, 1945, nor is it now in Commander Naval Forces Marianas Area. Ocean Island particularly is not now nor ever was U. S. territory.

Since the prosecution do not state what the law and the customs of war are which the accused violated or what the law states or sets forth as the duty of Admiral Hara, the accused, toward the victims especially the natives of these Japanese islands and the natives of the island of Nauru and Ocean and toward the Chinese or what the law sets forth were appropriate measures that Admiral Hara must take to protect the alleged violations such as the Japanese natives of these islands and the natives of Nauru and Ocean Island and residents of the Gilbert and Ellice Islands Colony, we are at a loss to know what these vague and indefinite laws are, if any, and particularly as to what venue is provided by such laws.

It is true that the accused is in the custody of the convening authority but we strongly maintain the accused, HARA, Chuichi, a Japanese national, is not legally a prisoner of war and as a prisoner of war must be treated in accordance with the Hague Convention and the Geneva Prisoners of War Convention.

It is also true that the accused is charged with ten offenses of criminal negligence against nationals of the United States, natives of these Japanese islands, Chinese and also civilian residents of Gilbert and Ellice Colony but this does not make him guilty of a war crime or of any crime. We maintain that the offenses alleged in the specifications are not war crimes.

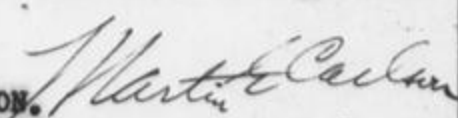
This is a motion for a change of venue and in the case of Southern Sand and Gravel Co. v. Massaponax Sand and Gravel Corporation 145 Va. 317, 133 S.E. 812, 813 it was stated that venue designated the particular county or city in which a court with jurisdiction may hear and determine the case.

We are of the opinion that Ocean Island and Nauru Island are not a part of the military command of Commander Naval Forces Marianas. There is no inherent authority in the convening authority to appoint this military commission to try a Japanese prisoner of war for alleged offenses said to have been committed on Ocean and Nauru Island particularly after the accused obeyed his Emperor and on August 15, 1945 stopped all fighting and subsequently surrendered.

We move for a change of venue to Tokyo, Japan, Ocean or Nauru Island, or Australia. There are no witnesses available here on Guam. The offenses are alleged to have been committed other than here on Guam. If officers of the same rank as Vice Admiral Hara are not available here on Guam they surely are available at Tokyo or Honolulu. For the convenience of witnesses that the members of the court be senior to the accused and that the ends of justice may be better served the accused prays for this change of venue from this military commission.

Respectfully,

MARTIN E. CARLSON.



B

1129

REPLY TO MOTION FOR CHANGE OF VENUE

Delivered by
Lieutenant David Bolton, USN,
Judge Advocate.

Counsel's motion is without sound basis. The accused is charged with violation of the law and customs of war. The convening authority possesses inherent authority as a military commander and specific delegated authority as set forth in the precept to convene military commissions for the trial of war crimes.

HARA is charged with a recognized war crime (see re Yamashita, 327 U.S. 1). He is in the custody of the convening authority and thereby can properly be tried before a military commission convened by Commander Naval Forces Marianas.

It is well established that an accused war criminal may be tried without regard to whether or not he is tried at the scene of his crimes. That the defense counsel recognizes this fact is clearly shown from his own request for a change of venue to Japan or Australia. No crime charged against the accused has been alleged to have been committed in either of these countries.

Defense counsel is in error when he contends that no witnesses are available here on Guam. The prosecution has apprised the accused of witnesses who are available on Guam. Some of them are confined at the War Criminal Stockade and others are residing at the Witness Camp. The accused has made no request for witnesses other than those available here on Guam, nor has he named any in his motion, and the factual basis for his contention that convenience of witnesses justifies change of venue, is therefore wholly lacking.

There is no legal or moral requirement which requires that military officers senior in rank to the accused be members of the commission, and this ground of the defense motion is similarly without merit.

The judge advocate respectfully requests that the defense motion be denied.

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

起訴及罪状項目に對する異議の申立

被告人 原 忠一

弁護人 高野 浩二 郎

被告人原忠一は以下述へる理由に因り本件起訴及罪状項目に對し異議を申立てる。

第一 本件罪状項目其の一に於ては被告人原忠一が第四艦隊司令長官の部下の統率監督上の職責を盡さざりしこととして被告人の職務怠慢の責任を問ひ罪状項目其の二に於ては被告人が被告人の部下部隊の抑留せしアヘン人俘虜及彼の部下部隊の占領せし地域に住民に對する保護義務を懈怠したることとして被告人の職務怠慢の罪を問はれてゐるのである。而て此等二箇の罪状項目中其の一の内、(イ)(ロ)(ハ)を除き其の全部の事件と其の二の全部の事件とは夫々其の基礎とされる基本的主張事實は全く同一である。即ち被告人の部下たる日本海軍の軍人又は被擄人の其等の俘虜及住民を苛責酷使虐待及殺害したと云ふ主張である。換言すれば此の二つの罪状項目は全く同一の主張事實を一方は被告人と犯罪の主体との関係より之を觀じ他方は被告人と犯罪の客體との関係に主眼に被告人の責任を問はれてゐるのである。本件は明かに起訴の相承である。刑事事件の訴訟法上起訴の相承の不当ぶことは言を俟たない。

然るに第四艦隊司令長官としての被告人原の部下の統率及監督上の責任も俘虜及住民保護の責任も其の責任の本質は第一の事である。即ち責任の本質は同一である。

(1)

D (2)

其の態様が二ヶ若は三ヶに及べたものとある。更に言葉を換へて言へば横隊官の主張からすれば被告人原の部下の統率監督が不充分であつたから其の部下の人々を依り厚されては作戦及住民の苛責酷使虐待殺害を生起したと言ふことの通りである。それ故に若し被告人原の部下の統率監督上の職務怠慢が事実とするとすれば作戦及住民の苛責虐待酷使殺害も生起せず随て被告人の此等被害者達の保護上の職務怠慢もあり得たと言ふことが出来るのである。罪状項目其の一は被告人の職務怠慢の原因を根拠とし罪状項目其の二は該職務怠慢の結果を基據としてある。併し被告人の職務怠慢は其の唯一の部下統率監督上の職務怠慢である。唯一箇の職務怠慢と言ふ作厚を相対的に起すことは被告人の具体的な権利を侵害するものである。

又戦争法規並に慣習法は如何なる行爲か法律違反行爲又は戦争犯罪であるかを一般の語は語に於て如何に定めらるゝのである。犯罪は之を規定した法律の法意に依り拡張せらるゝべきと又其の言外の意味に依り制定せらるゝべきとはいふ。解釈上の犯罪と此のほあり得ないものがある。

然るに四罪状項目の冒頭に「……左記の如く戦争法規並に慣習法に違反した」と記載してあるけれども被告人原の違反せしと云はるゝ戦争法規並に慣習法が果して何れの法規並に慣習法を指すか其の具体的な明記は無いのである。

被告人原の第四師団司令部長官として記した横隊官

(2)

D (2)

の依り主張せらるる部下抑制及監督上の職務怠慢並に
俘虜及住民の保護上の職務怠慢が1945年9月2日以前に
有知の状況に於て戦争法規並に慣習法の何れも規定に
違反に於てかを換弁官は明示する義務がある。被告人は
之を明確に知らしめられれば適当と認むべき弁護を準
備するとは出来ない。

仍て被告人の違反に主張せらるる1945年9月2日
以前に有知の通り戦争法規並に慣習法の何れも規定に
違反するものではない。本件は海軍律の規定に違反するものとして又同
様に被告人の憲法的権利を侵害するものである。

第三、罪状次目其の一の冒頭「...當時日本軍隊に
抑留されたるアメリカ人俘虜 英口人 中口人一名 カリブ諸
島 マーシャル諸島 サウール島 オーク島 の住民を苛責酷使
虐待及殺害することを許可し...」と記載されてゐる。

之を以て此の罪状次目の(1)事件より(1)事件に至るま
で12事件中何れの一部にと カリブ諸島の住民が苛責酷
使虐待殺害せられた事件は無いのである。

故に其の如き何等事件に關係する住民を起訴
状に掲げることが不当である。かかる記載は海軍律の規
定に反し且被告人の憲法的権利を侵害するものである。

第四、罪状次目其の一の(1)の内各事件には「...凶
器を以て assault し、殴打し、傷害し、且殺害することを
...」と主張されてゐる。併し一箇の事件に於て assaulting

(3)

D (3)

striking, wounding and killing の行方のある場合には Killing 以外の lesser offenses は全て Killing の中に吸収され、了つて前者の offense とは看做すべしとするのが刑事訴訟法上の原則である。此の事次には American Jurisprudence の方々にも之を採り用ゐる。

「一の犯罪行為が他の犯罪行為の中に吸収され」と言ふ一般原則は Assault and Battery の訴訟に適用されべきである。其の一般原則と言ふのは同様の事案の犯罪時一が他の中に吸収されたと云ふことは其の後の犯罪行為が他の全ての犯罪の構成部分と成つてゐるときは其の後の犯罪が其の全ての犯罪の中に吸収されたとするべきである、(同書 vol 4 Assault, V Criminal Prosecution, § 96 - Meager of lesser offense in greater, pp 177-8)

それ故に然るに其の一の(1)(2)(3)事件に於て assaulting, striking, wounding は此等の事件には記載されなかつたのである。斯の如き不當なる事件の記載は被告人の権利の利益を侵害するものである。

検察官は或は(1)(2)(3)事件に於ては其の事件中の指し示され被害者の或る者は assault, wound され或る者は殴打され殺害されしそれ故に assaulting, striking, wounding and killing を記載する必要があると言つて抗弁するかも知れない。然るに検察官は其等の被害者の或る者が assault され strike され or wound され殺されたる明確に記載する義務がある。若し検察官の之を明確に 13.4 には被告人は検察官側の証拠を

打撃等又は反証を挙げた機会が与へられぬといふ事。
之は被告人の素行の取柄を侵害するものである。

敬 白

萬葉社 謹啓

OBJECTION TO THE CHARGE AND SPECIFICATIONS

Delivered by

Mr. TAKANO, Junjiro,
Counsel for the accused, HARA, Chuichi.

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

1. In Specification 1 of the charge the accused HARA, Chuichi is charged with neglect of duty in that he failed to control his subordinates as Commander in Chief of the Fourth Fleet and in the second specification the accused is charged with neglect of duty in that he failed to protect American prisoners of war held captive by units under his command and residents living in areas under occupation by his subordinate units. However excluding paragraphs (f), (i), (j) and (k) of Specification 1, the basic facts alleged in the two respective specifications are completely identical. In short the allegation is that military and civilian personnel of the Imperial Japanese Navy, subordinate to the accused, tortured, abused, inhumanely treated and killed these prisoners and residents. In other words in these two specifications, the completely identical alleged facts are viewed on the one hand from the standpoint of the relationship of the accused to the perpetrators of the crimes and on the other from that of the relationship of the accused to the victims of the crimes, and the accused is brought to account for his responsibility in the matter. The present is a clear case of multiplication of accusation. It goes without comment that multiplication of accusation from the standpoint of procedural law in criminal cases is inappropriate.

However, in substance the responsibility of the accused, HARA, as Commander in Chief of the 4th Fleet to supervise and control his subordinates and his responsibility to protect prisoners of war and native residents are one and the same. In short the substance of the responsibilities is ^{only} one, but in its mode of presentation this is merely broken down into two or three forms in the present case. To paraphrase the idea in still other words; according to the allegations of the judge advocate, it was because the supervision and control of the accused HARA was not thorough that the torture, abuse, inhumane treatment and murder of the prisoners and native residents by subordinates of the accused occurred. Therefore, if there were no neglect of duty on the part of the accused to supervise and control his subordinates, there would not have been any torture, abuse, inhumane treatment and murder of prisoners and native residents, and consequently there would not have been neglect of duty on the part of the accused to protect these victims.

Specification 1 is based on the cause of the alleged neglect of duty of the accused and Specification 2 on the effect of the same alleged neglect of duty. However the alleged neglect of duty of the accused is in actual fact one alleged neglect of duty to supervise and control subordinates. It is prejudicial to the substantive rights of the accused to multiply the accusation of the alleged single act of nonfeasance designated as neglect of duty.

2. It is generally or specifically set forth in the law and customs of war what acts constitute acts in violation of international law or are war crimes. It is axiomatic that statutes creating and defining crimes cannot be extended by intendment. Purely statutory offenses cannot be established by implication.

Although it is stated at the beginning of both specifications "in violation of the law and customs of war as follows," it is not specifically and clearly stated what law or customs of war the accused HARA violated.

The duty is incumbent on the Prosecution to show which provision of the law and customs of war effective prior to September 2, 1945 the accused HARA violated through his alleged neglect of duty as Commander in Chief of the 4th Fleet to control and supervise his subordinates and protect prisoners of war and native residents. The accused cannot appropriately or fully prepare his defense unless this is clearly and definitely shown him.

The charge in the present case which however does not clearly show which of the law and customs of war were effective prior to September 2, 1945 the accused allegedly violated, is itself a violation of naval law and at the same time is prejudicial to the substantive rights of the accused.

3. It is stated in the beginning of Specification 1 as follows:
" permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, British nationals, a Chinese civilian, and residents of the Caroline Islands, the Marshall Islands, Nauru Island and Ocean Island....."

However of the 12 incidents enumerated in paragraphs (a) through (l) of this Specification there is no incident wherein residents of the Caroline Islands were tortured, abused, inhumanely treated and killed.

Hence to list residents who were in no way connected with the incidents in the charge is a violation of naval law and at the same time prejudicial to the substantive rights of the accused.

4. It is alleged in paragraphs (i), (j) and (k) of paragraph 1 as follows: ".....by assaulting, striking, wounding and killing, with an instrument, a deadly weapon....."

However it is a principle of legal procedure in criminal cases that when there are acts of assault, striking, wounding and killing occur in one incident the lesser offenses other than killing should naturally be merged under the offense of killing, and that they should not be viewed as independent offenses. I quote American Jurisprudence on this subject:

"Merger of lesser offense in greater. - The general rules governing the doctrine of the merger of one crime in another are applicable to a prosecution for assault and battery. The general principle is that crimes of the same degree do not merge, while a crime of a lesser degree will merge in a greater crime of which the lesser is an ingredient." (American Jurisprudence Vol. 4, ASSAULT, V. Criminal Prosecution, Para. 96 - Merger of lesser offense in greater, pp 177-8.)

Hence assaulting, striking, and wounding mentioned in the incidents of paragraphs (i), (j) and (k) of Specification 1 are offenses which should not be listed in the incidents. Such an inappropriate description of the incidents is prejudicial to the substantive rights of the accused.

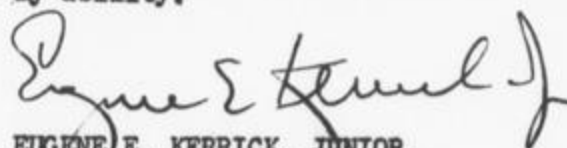
The judge advocate may rebut by saying that certain victims mentioned in the incidents of paragraphs (i), (j) and (k) were assaulted, certain others wounded and still certain others struck and killed; and that therefore it is necessary to mention assaulting, striking, wounding and killing. The duty is then incumbent upon the judge advocate to show clearly who of the victims were assaulted, who struck, who wounded and who killed. If the judge advocate does not clarify this, it will mean that the accused will not be granted an opportunity to quash the evidence of the Prosecution or to submit counter evidence. Such would be prejudicial to the substantive rights of the accused.

On the foregoing grounds, the accused HARA, Chuichi, objects to the charge and specifications of the present case.

Respectfully,

/s/ Takano, Junjiro
TAKANO, Junjiro

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


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

OBJECTION TO THE CHARGES AND SPECIFICATIONS IN THE CASE OF
HARA, CHUICHI, VICE ADMIRAL, IMPERIAL JAPANESE NAVY

Delivered by
CDR Martin E. Carlson, USNR,
Counsel for the accused.

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

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

The charge does not set forth an offense either at common law or by statute. We know of no international law which imposes upon a commander of a fleet, a duty to personally protect prisoners of war held by navy and army units in islands hundreds and even a thousand miles away from his headquarters. We know of no international law which imposes a responsibility upon a commander in chief of a fleet for prisoners of war held by army units on far away islands from that navy commander's headquarters.

We know of no international law which defines the duty of a commander in chief of a fleet under battle conditions such as existed daily through the period from February 23, 1944 to September 2, 1945.

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

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

That was the mature and studied opinion by one of the justices of the Supreme Court of the United States.

In this present case, HARA, Chuichi, who was a vice admiral, the commander in chief of the Fourth Imperial Japanese Fleet, is charged with neglect of duty and the prosecution now seeks to extend the majority opinion ruling in the Yamashita case to Vice Admiral HARA. Neither international law nor local law defines the duties of an admiral like HARA, and the commission should decide that the prosecution has not brought a legal charge against HARA, Chuichi.

There was an army commander on Truk who was senior to Admiral HARA and who commanded Truk as the senior officer present both of the army units and the navy units. Admiral HARA was subordinate to him.

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

We further object because of the allegation "to control as it was his duty to do, etc." without the further allegation or recital of the statute or law or customs of war which made it his duty to control these persons.

We further object because of the allegation "to protect as it was his duty to do, etc....in that he permitted the unlawful torture etc." This is too vague and uncertain for the accused to know what duty the statute, the law or customs of war set out as his duty under the alleged circumstances. It is too vague an allegation to simply allege that he permitted the unlawful torture. The accused must be informed of the statute, the law or the customs of war which specifically does not permit him the accused in his capacity as Commander in Chief, Fourth Fleet to continue his lawful assigned duties at Truk, but required that he be personally present to supervise the work of both Army and Navy officers including Navy doctors and Navy Construction officers on far away islands even after he as the Commander in Chief of the Fourth Fleet had received orders from the Emperor of Japan to cease all hostilities on August 14, 1945.

Truk was no hostile territory as to Japan but Japanese territory. Any invasion or coming upon Truk by Americans was an invasion of hostile Japanese territory by such Americans and in time of war of necessity attended with danger to such invaders. In the case of Yamashita the Japanese had invaded American territory and occupied such American territory, the Philippines. In this present instance during the period from February 23, 1944 to September 2, 1945, we made continuous raids upon Truk and although unsuccessful until the Emperor of Japan ordered all Japanese troops to surrender on August 14, 1945, we are in this present charge alleging that it was Admiral HARA's duty to protect American invaders of this Japanese territory not his duty to protect Truk. Such allegations as are here charged are without any merit whatsoever. We challenge the judge advocate to produce the law which sets forth such a duty upon the commander of naval forces who had been ordered to defend the Japanese island of Truk from the American invaders. The legitimate power and authority on Truk during the period from February 23, 1944 to September 2, 1945 was the authority of Japan.

The charge permits the commission to make the crime whatever it wills dependent upon the victor's biased view as to what the accused duties were and his disregard thereof. The element of personal culpability has been entirely disregarded. Vice Admiral HARA is being charged with an unrecognized crime. This must of necessity be our conclusion unless the judge advocate can show the law which Admiral HARA violated and the law setting forth his duties.

The authority of a court martial is statutory, citing the case of Runkle v. United States, 122 U.S. 543, 30 L. ed. 1167, 7 S. Ct. 1141. A military commission is but another military court, an exceptional military court. According to Article D-13, Appendix D, Naval Courts and Boards, the "specification should show on its face the circumstance conferring jurisdiction." This is not done in the two specifications of the charge. For this reason the specifications are further objectionable.

We further object to the specifications because the second specification is but a duplicate of the first specification. The rule that only one offense can be charged in one count of an indictment is a rule that should be known to every pleader. From page 45, U.S. Code Annotated, Title 18, pocket part, the case of U.S. v. Runion: D.C. Ky. 1942, 47 F. Supp. 594 is cited to support the rule that "Where the same transaction constitutes a violation of two distinct statutory provisions the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." We hold that the second specification is but a duplication of the first specification and should therefore be struck from the charge. It is true the specifications are jumbled to make it appear

that there are different offenses charged in specification 2 but the offenses are but duplications of those set forth in specification 1.

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

There has been much misuse of the privilege granted a pleader by Section 19, N.C.&B. by war crimes prosecutors and this court should take the initiative in stopping this abuse. Strike the duplicate specifications in the charge, and let us proceed in a legal way.

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

The prosecution cannot blow hot and cold and therefore if this is a separate offense then it must be charged in a separate count.

In 27 Am. Jur. "Indictments and Informations," Section 124, pp 683-684, the rule is: "Duplication in criminal pleading is the joinder of two or more distinct and separate offenses in the same count of an indictment or information.(8) As sometimes stated, the rule is that offenses created by different statutes, (9) or those to which different punishments are annexed, cannot be included in the same count. (10) Citing the case of Hamilton v. State 129 Florida 219, 176 So. 89, 112 A.L.R. 1013, citing RCL and the cases of Crain v. U.S. 162 U.S. 625, 40 L. ed. 1097, 16 S. Ct. 952; Hotchkiss v. District of Columbia, 44 App. DC 73, LRA 1917 C 922, Ann. Cas. 1918 D. 683; Joslyn v. State, 128 Ind. 160, 27 N.E. 492, 25 Am. St. Rep. 425; State v. Green, 104 Kan. 16, 177 P 519, citing RCL State v. Warren, 7 Md. 121, 26 A 500, 39 Am. St. Rep. 401; Scales v. State, 46 Tex. Crim. Rep. 1014. Not only do we have duplication but we have multiplicity. As recently as March 8, 1948 in the case of W. M. Gardner A 17-20, 160667 the Judge Advocate General of the U. S. Navy said: "While the law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence (N. C. & B. Sec. 19) it is contrary to the policy of the Navy Department to prefer multiplicity of charges covering the same transaction unless the legal character of the offense cannot be precisely known or defined until developed by the proof or there are aggravating circumstances distinguishing it from the ordinary case contemplated by the Articles for the Government of the Navy. Cf. C.M.O. 2-1939, 154, 155; Naval Digest 1916, p. 66, 67, sec. 61, 68."

This is the navy rule and as in the Gardner case so in this case there is multiplicity and we object to such multiplicity.

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

The specifications are vague and indefinite.

We further object particularly to specification 1 (1) and 2 (h) wherein it is alleged that about 200 British nationals were killed. There may have been a time when England claimed dominion over most of the peoples of the world. There may have been a time when people referred to themselves as British nationals. That day has long passed however.

It is common knowledge that the people of Australia, Canada, and other places have for many many years regarded themselves as Australians or Canadians or a word describing their particular country. It is such a well known fact that I cannot understand how the convening authority has gone against this practice and referred to the victims as British nationals. This is a most important point especially in view of the action taken at the Commonwealth Prime Ministers meeting at which it is said "The word 'British' has been dropped from the official title of the British Commonwealth of Nations. A United Press release of October 22, 1948 stated "A communique issued at the close of the Commonwealth prime ministers meeting referred throughout to the 'Commonwealth of Nations' and a spokesman confirmed that the word 'British' had been purposely omitted."

We object to the word "British" as being obsolete, no longer in good repute, and in no way descriptive legally or otherwise of the victims thereby attempted to be described in specification 1 (1) and 2 (h).

We further object to the charge and specifications dated October 5, 1948 Serial 14975 From Commander Naval Forces Marianas because the precept is dated 25 October 1948 and the charge and specifications are dated 5 October 1948.

According to the rule set forth in Section 345, N.C. & B. "The precept must be drawn before the order for trial and the reference of the charges and specifications to the judge advocate, as otherwise the latter is issued to an officer nonexistent."

Now, the judge advocate says this is no longer true or necessary in war crimes. A military commission is an exceptional military court. The rule laid down in C.M.O. 114-1918, pages 260-261 Compilation of Court-Martial Orders, 1916-1937 clearly states the rule and gives the reason for it. We quote: "The record in a recent case disclosed that the order to the judge advocate directing the trial of an accused was dated June 4, 1918, whereas the precept convening the court before which the case was tried and appointing the judge advocate thereof was dated June 18, 1918. The jurisdiction for the trial of a person is acquired by reason of the convening authority referring the case to a specific court convened by him. It is usually accomplished by said authority referring to the judge advocate thereof the original of the charges and specifications, informing him of the jurisdiction conferred, and directing him to notify the president of the court and to inform the accused of the date set for his trial and empowering him to summon the necessary witnesses. Such action presupposes that the precept convening the court has been issued, otherwise there would be no court or judge advocate. The precept is the order of appointment of the members and judge advocate of a general court-martial and is the only authority for them to act as such during the trial."

Now the authority to convene a military commission vests only in the military commander of an occupied territory. See Section D-18, Appendix D, N. C. & B.

Section D-19 restricts the use of military courts to "the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority."

On July 27, 1948 the Commander Marianas Area, Rear Admiral C. A. Pownall, U. S. Navy convened a military commission. Six officers only were ordered to compose this commission, any five of whom were empowered to act. Of those six officers only three did act in the case of KATSUMI, Seishi.

On October 18, 1948 the military commission and I quote from the record of proceedings of the 13th day of the trial of KATSUMI, Seishi: "The commission, having no more cases before it, adjourned to await the action of the convening authority. "

Rear Admiral Arthur G. Robinson, U. S. Navy was the only member of the commission appointed by precept dated July 27, 1948 which tried Katsumi, Seishi. That commission had no more cases before it on October 18, 1948.

But the present judge advocate says it makes no difference all you have to do is add a paragraph stating the contrary to be the fact and state as authority Section 542, note 13 of Naval Courts and Boards. We are of the opinion that Section 542, Naval Courts and Boards does not overrule Section 345 or CMO 114-1918 nor does paragraph 3 of the precept serial 16462 dated 25 October 1948 legally justify the legal requirement that the precept must antedate the charge and specifications.

The specifications are founded upon the same incidents, and the charge as set forth in the specifications are not the basis for a war crime. The precept is dated after the charge is dated.

For the above reasons fully set forth we do object to the charge and specifications dated 5 October 1948.

Respectfully,

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

REPLY TO OBJECTIONS TO CHARGE AND SPECIFICATIONS

Delivered by
Lieutenant David Bolton, USN,
Judge Advocate.

In view of the fact that the judge advocate did not receive the argument of defense counsel until eight o'clock yesterday evening, having been received for processing in our office along with seven additional arguments in the late morning and afternoon of yesterday, the judge advocate requests the indulgence of the commission in regard to the delivery of his reply, as well as in regard to the obvious inability at such late date to check the citations of defense counsel and provide a broader scope of legal documentation which would perhaps be desirable, but is clearly not necessary before this commission.

1. The first argument of Mr. Takano expresses the contention that there are not two distinct neglects of duty but merely one neglect of duty and it is therefore unjustified to allege separate specifications covering such neglect of duty.

The breach of duty to control and the breach of duty to protect may occur coincidentally and simultaneously, but they nevertheless constitute distinct and separate offenses in violation of the law and customs of war. It may be that for clemency considerations, a convening authority or reviewing authority may, when the circumstances justify, set aside one or two or more offenses growing out of the same transaction or series of transactions or events, but such action on the part of a convening authority is an exercise of clemency, and not a recognition that only one offense was in fact committed. Naval Courts and Boards provides in Section 23: "Different offenses, however, if of the same nature, should be included in separate specifications under the same charge." The fact that the offenses are different and distinct is clearly ascertained when we examine the nature of the duty, whose breach is alleged to constitute a crime. The breach of duty to control subordinates may well constitute an offense without regard to whether or not prisoners of war are in fact injured. Such breach of duty to control may constitute a crime in violation of the law and customs of war where the victims are civilian population and not prisoners of war.

In addition it must be pointed out that the nature of the duty to control arises, even in its crystallized form under international treaties, from different sources than the duty to protect prisoners of war. The duty to control one's subordinates is recognized in Article 1 of the Annex to the Fourth Hague Convention wherein it is laid down as a condition which an armed force must fulfill in order to be accorded the rights of a lawful belligerent that it must be "commanded by a person responsible for his subordinates." (36 Stat. 2295) The nature and existence of this duty is discussed briefly by the United States Supreme Court in the Yamashita case (327 U.S. 1). The duty to protect prisoners of war and others is separate and distinct. It is evidenced in crystallized treaty form and may be found under two distinct and separate conventions, as well as under distinct provisions where the duty to protect is provided for in the same convention with a duty to control. In Article 4 of the Annex to the Fourth Hague Convention it is provided that prisoners of war must be humanely treated. (Also see Article 46, Fourth Hague Convention relating to inhabitants of occupied territory.) Similarly Article 1 of the Geneva Prisoners of War Convention of 27 July 1929 provides that "prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. - They must at all times be humanely treated and protected,

particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited." From the difference in origin of the duty, from the difference in the nature of the duty, it is clear that a different offense results for a breach of these duties and it is alleged so specifically in the specifications - specification 1 dealing with the duty to control and specification 2 dealing with the duty to protect.

2. Defense counsel has contended that the offenses must arise from a specific law or custom of war which the judge advocate must set forth clearly. This has been done, as specification 1 clearly alleges disregard and failure to control subordinates, and specification 2 specifically sets forth the failure to protect prisoners of war. The law and customs of war are not statutory provisions and no greater specificity is required in the charging of such offenses than is fully complied with in the charge and specifications served upon the accused. I refer the commission to the charge in the Yamashita case which was upheld upon appeal to the Supreme Court of the United States and point out that no specific treaty or statutory provision is alleged in that charge, nor was such allegation deemed necessary by the Supreme Court.

3. The third ground of objection by the accused counsel Mr. Takano is the contention that subparagraphs (a) through (l) do not specifically allege the victims who were residents of the Caroline Islands, while the main body of the specification does include residents of the Caroline Islands.

It is the burden of the prosecution to prove the allegations of the initial paragraph, but that is a burden which the prosecution does not and obviously cannot sustain prior to the actual submission of evidence. This is a problem to be faced by the prosecution in its proof but not by its allegations. Failure to prove any part of the allegations in the specifications must result in a finding of not proved as regards any such unproved portion, but such failure of proof if it occurs, relates solely to the decision of the commission and not to the technical correctness of the charge and specifications. And it is the burden of the prosecution, and not of the defense.

The language with regard to residence and nationality is set forth in the initial portion of the specification, and it was designed to adequately provide for any possible contingency of proof, and to allege the facts relating to the residence and nationality for its bearing on the question of jurisdiction. As the commission is undoubtedly aware there are certain authorities who contend that it is necessary in order to establish a war crime, that the victims be of a nationality or residents, of some country other than Japan. The initial language of the first paragraph of the specification is designed to set forth in general terms this aspect of the nationality or residence of the victims of the alleged crime. This has been done and as I will show in subsequent citations of the Yamashita case, the allegation in the initial paragraph completely satisfies the necessary requirement concerning allegation of residence or nationality of the victims. Further particularity with regard to specific victims in specific incidents, is not required in law.

The function of the subparagraph in the specification is essentially distinct and different from the function of the initial paragraph. The function of these subparagraphs is not as defense counsel apparently mistakenly believes the allegation of evidence on which the initial paragraph is based. The function of the subparagraphs of the specifications is to set forth sufficient facts to enable the accused to identify the offense, sufficiently describing the time, place, and circumstances of the incident.

It may be that the allegations in these subparagraphs go beyond the necessary allegation, for it is probable that the victims are sufficiently identified without allegation of their nationality or residence, but if this is so, it merely increases the burden of the prosecution but does not render the specifications defective (Naval Courts and Boards, Section 38 and Section 30). The convening authority has apparently desired to give the accused as much specific information as possible, regardless of the irreducible minimum of allegation which would be necessary for a valid specification.

In the subparagraph the attempt was made to set forth definite information with regard to nationality or residence of the victims concerned in such incidents in order to better identify the victims and the incidents. In a number of the subparagraphs the incidents relate to occurrences on Truk Atoll which is in the Caroline Islands. With regard to these incidents it is alleged in (b), (c), (d), and (e) that the victims were American prisoners of war, but there is no allegation of residence with regard to them. With regard to (f) it is alleged that the victims were residents of Nauru Island. The prosecution will endeavor to prove this, but it is possible that the prosecution will not be able to prove that all of the victims set forth in (f) were residents of Nauru. To provide for every possible contingency of proof that some of these victims were residents of the place where the incidents occurred, the initial paragraph, which is the only paragraph designed to cover the jurisdictional requirements, provides for this additional jurisdictional possibility, by alleging that certain victims were residents of the Caroline Islands. As has been noted, it is completely unnecessary for these subparagraphs to contain any allegation of residence or nationality and it is therefore obviously true that it is not necessary for such subparagraphs to specifically set forth therein, the residence of the victims. I would like to point out the question of dual residence, which is one the commission is familiar with, presents interesting, difficult, and possibly applicable problems, but that such considerations will become significant only if and when there arises a failure on the part of the prosecution to establish the residency of any victims in the Caroline Islands.

The charge and specifications as set forth meets all the requirements in content and form for proper specifications and in this regard I will refer the commission to the charge in the Yamashita case and to the items in the bill of particulars which corresponds to the subparagraphs of the instant specifications. The Supreme Court of the United States did not deem it necessary to allege any greater particularity with regard to nationality or residence than which is set forth in the initial paragraph of the specifications in the instant case. On the contrary the items of the bill of particulars and the charge in the Yamashita case are much less definite and specific in this respect than those presented in HARA charge and specifications. The charge in the Yamashita case describes the victims as "people of the United States and the Philippines". The items in the bill of particulars do not refer to either nationality or residence of the victims, for example the fifth paragraph of the Bill of Particulars reads: "5. During November 1944, in northern Cebu Province, massacre, without cause or trial, of more than 1,000 unarmed non-combatant civilians". It is clear that there is no allegation of whether these victims were Philippine natives, or nationals of the United States, or residents of the Philippines, or merely persons present in the Philippines at the time and place of the incident.

From the foregoing it is apparent that the initial paragraph of the specifications which alleges the victims to have been American prisoners of war held captive by the armed forces of Japan, British nationals, a Chinese civilian, and residents of the Caroline Islands, the Marshall Islands,

Nauru Island and Ocean Island is more than adequate to satisfy the requirements of a proper charge and specifications. Questions with regard to the adequacy of proof are not relevant nor is it necessary to consider them further at this time.

4. The objection by Mr. Takano to the use in paragraphs (i), (j), and (k) of specification 1 of the words "by assaulting, striking, wounding, and killing" is apparently based upon unfamiliarity with standard forms of alleging murder. I need merely to cite the sample specification for murder, set forth in Naval Courts and Boards, Section 53, to rebut the contention of the accused. The wording of this sample specification includes the words "assault, shoot at, and strike with a bullet fired by him". Further to rebut this contention by the accused that the wording of these subparagraphs is defective, I need merely to point out the fact which will subsequently be established in proof, that these specific phrases in the subparagraphs are identical with the language of the original charges and specifications from the records of the cases upon which these incidents are based, and that these records have been reviewed by higher authorities, including the Judge Advocate General of the Navy, without criticism of the language to which the accused here objects.

5. With regard to the further objections by Commander Carlson, I will merely confine myself to the briefest remarks, which are all that the substance of these objections justify. Counsel at great length insists that he knows no international law, which defines the duty of a commander in chief of a fleet in regard to controlling of his subordinates or protection of prisoners of war. The very Yamashita case which defense counsel so strongly cites, particularly with regard to the minority opinion, recognized the application, and legality of the application, of command responsibility as a duty in international law which carries with it the burdens and penalties of criminal liability for its neglect or disregard. The Supreme Court of the United States, Chief Justice Stone in his opinion therein states that "the gist of the charge is an unlawful breach of duty by petitioner as an army commander to control the operations of the members of his command by 'permitting them to commit' the extensive and widespread atrocities specified. The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statement of the prosecution at the opening of the trial.

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

From the foregoing citation from the Yamashita case it is apparent that the charge in the instant case adequately alleges a violation of the law and customs of war.

Defense counsel contends that a distinction must be drawn between the Yamashita case and the instant case, because in the Yamashita case the incidents occurred in an occupied country. It should be pointed out that the incidents which occurred on Ocean and Nauru Islands were incidents which occurred in an occupied country. However, the essence of the rebuttal of the line of reasoning which forms the basis of this contention by defense counsel, is that such reasoning is unsound in fact and in law.

The nature of the duty under international law to control subordinates and to protect prisoners of war and others, is not limited to a duty to protect such prisoners of war or control subordinates when one's armed forces are in an occupied country. To establish this fact it is only necessary to note the numerous war crimes cases which have tried and punished the commission of atrocities and war crimes committed within the prisoner of war camps and displaced persons camps in the country of the accused war criminal. There have been numerous cases tried in Germany and similar cases tried in Japan, in which crimes committed within the country of the accused have been punished as war crimes. The offenses charged occurred within the country of the accused and it should therefore be clear that the point of alleged distinction between the Yamashita case and the instant case is not sound, even if Truk Atoll, etc., is to be considered to have been Japanese territory rather than occupied territory at the time of the incidents. It is unnecessary to point out therefore, that considerable well grounded doubts must exist as to such contention that these islands in the Carolines and Marshalls were Japanese territory. They were mandated and thus in fact were not integral portions of Japanese territory but possessed a specific and distinct status in international law.

6. Commander Carlson's argument that the specifications are duplicitous has already been answered in answering the objections made by defense counsel Mr. Takano. I cited Section 23, Naval Courts and Boards, which deals with the fact that different offenses should be included under separate specifications under the same charge if they are of the same nature, and I have cited the authorities on international law to establish that these are separate and distinct offenses. It should be noted in passing, that the Office of the Judge Advocate General has not at any time indicated in its review of cases dealing with similar charges of neglect of duty to protect and neglect of duty to control, that such charges or specifications were in fact duplicitous. The Judge Advocate General's office has set aside specifications of this nature, although such offenses under the duty to protect are separate and distinct from offenses under the duty to control, on the ground that the offenses arose out of the same transaction. In the instant case the offenses are set forth in separate specifications and this is all that is required in proper pleading. There is no "count" in naval law, for the purpose and function of a specification is equivalent to that of a separate "count" as ordinarily prescribed in the procedure of civil criminal courts.

7. Defense counsel in his capacity as a lexicographer as well as that of an Anglophobe has taken exception to the use of the term "British" in the specifications. While it may be true that the term has been used or omitted from some use rather loosely in recent times, the word nevertheless contains a definite and specific meaning, both in law and lexicography and its meaning is certainly clear and specific in the specifications. If counsel had consulted Webster's New International Dictionary, Second Edition, instead of the newspaper and magazine articles, which he has cited, he would have discovered that the definition of the word "British" includes

"of or pertaining to the people of the British Empire". The term "British national" is one that is in common use in international law and further discussion of counsel's objection would be frivolous.

8. Defense counsel as his final ground of objection contends that the charge and specifications are invalid because they were issued to a nonexistent officer. Apparently defense counsel has not considered the matter fully. The charge and specifications are duly addressed to the judge advocates, Lieutenant David Bolton and Lieutenant James P. Kenny, and the forwarding letter instructs the judge advocates that the case will be tried before a military commission of which they are the judge advocates. The military commission was then in existent. There was this existing military commission which was convened by precept dated 27 July 1948 and in accordance with the letter addressed to the judge advocates this commission was empowered to hear the charge and specifications in the instant case. The fact that individual members of that commission were from time to time relieved and the fact that a new commission had subsequently created with specific authority to hear cases pending before the previous commission, has no bearing upon the fact that the original charge and specifications was properly issued and directed to an existing legal body for trial. It is a well recognized fact that since the charge and specifications was legally and properly issued, by the convening authority, such charge and specifications may properly be tried by a subsequent commission duly authorized to try the charge and specifications. This was done in the instant case, the precept dated 25 October 1948, paragraph 3 of which reads: "This military commission is hereby authorized and directed to take up such cases, if any, as may be now pending before the military commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is president appointed by Commander Marianas Area precept of July 27, 1948, except cases the trial of which may have been commenced." The trial of the instant case had not been commenced as of that date. This commission convened by precept of 25 October 1948 therefore possesses the authority to try cases pending the trial of which had not yet commenced before the prior military commission referred to in the precept.

Defense counsel has apparently been unable to reconcile in his mind the CMO's which he has cited with the pertinent portions of Naval Courts and Boards, Section 542, footnote 13, which, specifically and definitely sets forth the precedent for this commission in regard to the trial of the instant case. Defense counsel's failure to reconcile them does not mean that they cannot be reconciled in law and I believe that brief consideration of this reply will enable him to resolve his difficulties.

There are no further arguments in defense counsel's objection which merit comment.

The judge advocate respectfully requests the commission not to sustain the objections to the charge and specifications.

Respectfully,

David Bolton
DAVID BOLTON.

裁判官権の抗弁

被告人 原 忠一

弁護人 高野純一郎

被告人原忠一は下記の内容の理由により裁判官権の抗弁を申立てる。

第一、本件起訴状によれば被告人原忠一は昭和十九年二月二十三日昭和二十年九月二日に至る間日本海軍第四艦隊司令長官としての職務を不法に無視し之を遂行したとの理由で起訴せられてゐる。即ち(1) 罪状項目其の一によれば彼の指揮下になつた人々の行動を抑制監督するや彼の職務であつたもの拘り等之を行はば(2) 罪状項目其の二によれば彼の指揮監督下になつた日本軍隊に抑留中のアメリカ人俘虜及彼の指揮監督下になつた日本軍の占領せし Nanu 島及 Ocean 島の住民を保護する為等の状況下通称の彼の権限内の措置を講ずべきに之を行はば(3) 戦争法規並に慣習法に違反したとに内責せられてゐるのである。

本軍法委員会に於ける Precept に徴すれば本軍法委員会は格別軍事裁判所の官権内の一の犯罪を裁判する権限を有するところから此処には戦争犯罪の裁判官権を指すといふ事である。然るに從來の国際法に於ても今日の戦争法規並に慣習法に於ても軍隊に於ける上官の部下の監督上の職務を以て戦争犯罪と認めたるものはない。

故に本件は上述せられた被告人原忠一を戦争法規並に慣習法の違反即ち日本海軍第四艦隊司令長官としての部

下統禦監督上の職務怠慢を以て起訴せられてゐる。

それゆゑに本件は本軍法委員会、裁判官権限外であ
る。

又、本軍法委員会に於ける Precept 第三項は犯罪の客体
を列挙してアメリカ合衆国国民、同 Precept 第一項に引用せら
れたるマリアナ方面司令官 despatch の中に言及せられたる人々及
裁判官募集の召集当局の口籍の充分確定せられたる白人とせら
れてゐる。

従つて本件に於て犯罪の客体として掲げられてゐる者の中
に罪状項目其の一は Naumu 島住民 (f)、中国人 (h)、Marshall
島土人 (i) 及び英国民 (l) 罪状項目其の二は Naumu 島
住民 (f)、中国人 (g)、英国民の犯罪の客体として掲げられて
ゐる。主として日民又は住民か上記第一カテゴリーに入らふことは
勿論、第三カテゴリーにも属し、ふつとは言を換へない。唯
或は又二のカテゴリーに属するや否やの問題として置かれるので
あるが此の第一のカテゴリーが如何なる日民又は住民を指
示にあるかは被告人側には知る由もない。刑罰法規に
於て未決定の事柄或は疑問の存する問題は之を被告人の
利益に解釈すると言ふのが根本原則である。此の刑罰法
規上の原則に照せば上記第一カテゴリーは上記本件の日民
及住民は属し、之と解するのが被告人の利益であり且該項
本字則にも合致するのである。仍て上掲罪状項目其の一の
h) i) g) h) i) 各事件及罪状項目其の二の各事件は本軍法
委員会、裁判官権限外であることも被告人は主張する。

檢査官は或は Precept の第三項中の最終の句「他の合

目的に達せられたる人々犯罪に對する本憲法の管轄権に對し
 は何等の制限を加ふることなし」とを以て抗辯するかも知れない
 (併し之を謂ふ所 persons は果に犯罪の客体と指すのか主体
 を謂ふのか或は又其の兩者を含め、指すのかは明確を欠く
 のである。凡そ刑事事件に於て最も重要なる要素は犯罪の主
 体と犯罪行為即ち犯罪事實である。犯罪の客体は第
 二次的の要素である。然らば此の Precept に於て悉く本憲法
 委員會の裁判管轄権を制限し、いと規定にある主旨は犯
 罪に於て最も重要なる要素である犯罪の主体に對して之を制
 限し、いと云ふのである。換言すれば此の最後の句、persons
 は犯罪の主体を指すのであつて犯罪の客体は之に含ま
 れ、ゐないと主張するのである。犯罪の要素中第二次乃至
 は余り重要でない要素例へば犯罪の客体等に就ては之を
 制限し、いと云々と定める必要はないのである。

之を要する被告人は軍隊に在りし司令長官の部下
に樂留留上の職務怠慢は從來(現在に至るまで)の戦争
法規並に慣習法上の戦争犯罪といへるものではない。
故に本事件の付は本軍法委員会に裁判官権限はない。
次に假し之ありといふ罪状次目其の一の(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) (115) (116) (117) (118) (119) (120) (121) (122) (123) (124) (125) (126) (127) (128) (129) (130) (131) (132) (133) (134) (135) (136) (137) (138) (139) (140) (141) (142) (143) (144) (145) (146) (147) (148) (149) (150) (151) (152) (153) (154) (155) (156) (157) (158) (159) (160) (161) (162) (163) (164) (165) (166) (167) (168) (169) (170) (171) (172) (173) (174) (175) (176) (177) (178) (179) (180) (181) (182) (183) (184) (185) (186) (187) (188) (189) (190) (191) (192) (193) (194) (195) (196) (197) (198) (199) (200) (201) (202) (203) (204) (205) (206) (207) (208) (209) (210) (211) (212) (213) (214) (215) (216) (217) (218) (219) (220) (221) (222) (223) (224) (225) (226) (227) (228) (229) (230) (231) (232) (233) (234) (235) (236) (237) (238) (239) (240) (241) (242) (243) (244) (245) (246) (247) (248) (249) (250) (251) (252) (253) (254) (255) (256) (257) (258) (259) (260) (261) (262) (263) (264) (265) (266) (267) (268) (269) (270) (271) (272) (273) (274) (275) (276) (277) (278) (279) (280) (281) (282) (283) (284) (285) (286) (287) (288) (289) (290) (291) (292) (293) (294) (295) (296) (297) (298) (299) (300) (301) (302) (303) (304) (305) (306) (307) (308) (309) (310) (311) (312) (313) (314) (315) (316) (317) (318) (319) (320) (321) (322) (323) (324) (325) (326) (327) (328) (329) (330) (331) (332) (333) (334) (335) (336) (337) (338) (339) (340) (341) (342) (343) (344) (345) (346) (347) (348) (349) (350) (351) (352) (353) (354) (355) (356) (357) (358) (359) (360) (361) (362) (363) (364) (365) (366) (367) (368) (369) (370) (371) (372) (373) (374) (375) (376) (377) (378) (379) (380) (381) (382) (383) (384) (385) (386) (387) (388) (389) (390) (391) (392) (393) (394) (395) (396) (397) (398) (399) (400) (401) (402) (403) (404) (405) (406) (407) (408) (409) (410) (411) (412) (413) (414) (415) (416) (417) (418) (419) (420) (421) (422) (423) (424) (425) (426) (427) (428) (429) (430) (431) (432) (433) (434) (435) (436) (437) (438) (439) (440) (441) (442) (443) (444) (445) (446) (447) (448) (449) (450) (451) (452) (453) (454) (455) (456) (457) (458) (459) (460) (461) (462) (463) (464) (465) (466) (467) (468) (469) (470) (471) (472) (473) (474) (475) (476) (477) (478) (479) (480) (481) (482) (483) (484) (485) (486) (487) (488) (489) (490) (491) (492) (493) (494) (495) (496) (497) (498) (499) (500) (501) (502) (503) (504) (505) (506) (507) (508) (509) (510) (511) (512) (513) (514) (515) (516) (517) (518) (519) (520) (521) (522) (523) (524) (525) (526) (527) (528) (529) (530) (531) (532) (533) (534) (535) (536) (537) (538) (539) (540) (541) (542) (543) (544) (545) (546) (547) (548) (549) (550) (551) (552) (553) (554) (555) (556) (557) (558) (559) (560) (561) (562) (563) (564) (565) (566) (567) (568) (569) (570) (571) (572) (573) (574) (575) (576) (577) (578) (579) (580) (581) (582) (583) (584) (585) (586) (587) (588) (589) (590) (591) (592) (593) (594) (595) (596) (597) (598) (599) (600) (601) (602) (603) (604) (605) (606) (607) (608) (609) (610) (611) (612) (613) (614) (615) (616) (617) (618) (619) (620) (621) (622) (623) (624) (625) (626) (627) (628) (629) (630) (631) (632) (633) (634) (635) (636) (637) (638) (639) (640) (641) (642) (643) (644) (645) (646) (647) (648) (649) (650) (651) (652) (653) (654) (655) (656) (657) (658) (659) (660) (661) (662) (663) (664) (665) (666) (667) (668) (669) (670) (671) (672) (673) (674) (675) (676) (677) (678) (679) (680) (681) (682) (683) (684) (685) (686) (687) (688) (689) (690) (691) (692) (693) (694) (695) (696) (697) (698) (699) (700) (701) (702) (703) (704) (705) (706) (707) (708) (709) (710) (711) (712) (713) (714) (715) (716) (717) (718) (719) (720) (721) (722) (723) (724) (725) (726) (727) (728) (729) (730) (731) (732) (733) (734) (735) (736) (737) (738) (739) (740) (741) (742) (743) (744) (745) (746) (747) (748) (749) (750) (751) (752) (753) (754) (755) (756) (757) (758) (759) (760) (761) (762) (763) (764) (765) (766) (767) (768) (769) (770) (771) (772) (773) (774) (775) (776) (777) (778) (779) (780) (781) (782) (783) (784) (785) (786) (787) (788) (789) (790) (791) (792) (793) (794) (795) (796) (797) (798) (799) (800) (801) (802) (803) (804) (805) (806) (807) (808) (809) (810) (811) (812) (813) (814) (815) (816) (817) (818) (819) (820) (821) (822) (82

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高野純二

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY
HARA, Chuichi, former VADM, IJN

Delivered by Counsel for the
Accused, HARA, Chuichi,

Mr. TAKANO, Junjiro

May it please the Commission:

The accused, HARA, Chuichi, enters this plea to the jurisdiction on the ground that this Commission has no jurisdiction to try him on the following grounds:

(1) The accused, HARA, Chuichi, is charged in the Charge of this case with having unlawfully disregarded and failed to discharge his duty as Commander in Chief of the 4th Fleet during his tour of duty as Commander in Chief of the said Fleet from February 23, 1944 to September 2, 1945. Namely:

(a) In specification 1 it is alleged that he failed to discharge his duty to control, as it was his duty to do, the operations of members of his command and,

(b) in specification 2 it is alleged that he failed to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru Island and Ocean Island,

and is thereby charged with violation of the law and customs of war.

When we refer to the precept addressed to this Military Commission we discover that it is authorized to try all crimes within the jurisdiction of Exceptional Military Courts. There is no doubt therefore that it is authorized to try war crimes.

There is however not a single provision in international law of the past or in the law and customs of war of today which recognizes the fact that neglect of duty to control and supervise subordinates on the part of a superior officer in the armed forces constitutes a war crime.

However, as stated above, the accused, HARA, Chuichi, is charged in this case with violation of the law and customs of war; in short with neglect of duty as Commander in Chief of the 4th Fleet to control and supervise his subordinates.

Therefore this case lies without the jurisdiction of this Military Commission.

(2) In paragraph 3 of the precept addressed to this Military Commission the persons against whom criminal offenses may be committed (for which the Commission has jurisdiction to try the offenders) are enumerated as follows: 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.

However in the present case, the persons against whom offenses were allegedly committed include, in specification 1, Nauru natives (f), a Chinese national (h), Marshall Islands natives (i, j, k) and British nationals (l), and in specification 2, Nauru natives (f), a Chinese national (g), and British nationals (h). It goes without saying that these nationals and natives cannot be considered as belonging to the third category, let alone the first category of the divisions mentioned above. It remains to be seen whether they fall into the second category. However the defense has no means of knowing what this second category is nor what nationals or natives are included in this category. The basic principle of penal laws and regulations in regard to problems which embrace undecided issues or doubtful points, is that these be interpreted in favor of the accused. When we refer to this basic principle of penal laws and regulations, it is to the interest of the accused that the above mentioned nationals and natives of this present charge do not fall into the above mentioned second category and to so interpret it would conform to the same basic principle.

Hence the accused maintains that the incidents of paragraph (f), (h), (i), (j), (k) and (l) of specification 1 and the incidents of paragraphs (f) (g) and (h) of specification 2 are without the jurisdiction of this Military Commission.

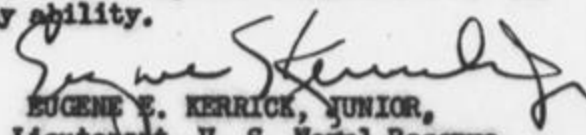
The prosecution may rebut by citing the last sentence from paragraph 3 of the precept which reads: "Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established." However, it is not clear (in this sentence) whether the persons here mentioned refer to the perpetrators of the crimes or the victims or to both. In criminal cases the most important elements are the doers of the crimes and the criminal acts; in short the facts of the crime. The victims of the crimes are elements of a secondary order. If such is the case, then the purport of the precept which goes out of its way to stipulate that nothing limits the jurisdiction of the military commission must be that no limits will be placed on the most important element of the crime, namely, the perpetrator of the crime. I maintain that the persons referred to in the last sentence mean the doers of the crimes and that the victims of the crimes are not included under this heading. There is no need to provide limits for elements of secondary or lesser importance within those elements constituting a crime.

In short, there is not a single provision in the law and customs of war in the past (up to the present) which sets forth that neglect of duty of a Commander in Chief of the armed forces such as the accused constitutes a war crime. Hence this present case lies without the jurisdiction of this Military Commission. Next, even presuming it possesses the jurisdiction, according to the precept this Military Commission has no jurisdiction to try the incidents of paragraphs (f), (h), (i), (j), (k) and (l) of specification 1 and the incidents of paragraphs (f) (g) and (h) of specification 2.

Respectfully,

TAKANO, Junjiro.

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


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

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY
HARA, Chuichi, former Vice Admiral, IJN

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

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

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

The accused Vice Admiral HARA, Chuichi was never regularly demobilized, or returned to Japan as was provided for by the Surrender terms and in accordance with the policy of the United States.

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

Vice Admiral HARA, Commander in Chief 4th Fleet and Lt.-Gen. MUGIKURA surrendered to the American forces under command of Vice Admiral Murray on September 2, 1945. A few days later Admiral HARA was ordered to make available all Japanese Naval Forces on Truk to assist the Americans in the construction of the U. S. Naval Base at Truk. Lt.-Gen. MUGIKURA represented all the Japanese Military Forces on Truk until February 1946 when he returned to Japan. Admiral HARA then became the senior Japanese Military Officer at Truk and remained on Truk until August 1, 1946 when Admiral HARA was sent to Guam. On Guam Admiral HARA was placed in charge of the Japanese POW Camp as the senior Japanese Military Officer, acting under orders issued by American officer in charge of all Japanese POW's on Guam.

On August 22, 1946 he was without any explanation, suddenly transferred to the War Criminal Stockade Guam and placed in solitary confinement. Vice Admiral HARA, Chuichi, Imperial Japanese Navy, without any charges being preferred against him, was confined at the War Criminal Stockade, Guam, on August 22, 1946. He was denied the benefit of counsel until after he was served with the original charge and specifications on October 5, 1948, more than two years after he was placed in solitary confinement.

Not until October 5, 1948, more than three years after he, as the representative of Japan, surrendered Truk on September 2, 1945 to the American Naval Forces under the command of Vice Admiral Murray, U. S. Navy, and after more than two years since he was placed under arrest and in solitary confinement at Guam, was he told why he was being held under arrest and in solitary confinement. On October 5, 1948 he was for the first time served with the charge and specifications dated that same date. Then for the first time he was told that he would be given the benefit of counsel.

The charge and specifications are for neglect of duty as Commander in Chief of the 4th Fleet, Imperial Japanese Navy, during the period from February 23, 1944 to September 2, 1945, in connection with incidents occurring more than four years ago. His trial is by a Military Commission, a court of limited jurisdiction restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations or otherwise in interference with the exercise of military authority.

Martial Law is not retrospective. This means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's "Military Law and Precedents," page 837, wherein he cites footnote 95 Finlason, Coms. on Mar. Law., Clode, M.L. 189, Thring, Crim. Law of Navy, 42-3, Wells on Jurisdiction 577; 12 Opins. 4t. Gen., 200; G.O. 26 of 1866; Do. 12 Dept. of the South 1868; Do. 9 first Mil. Dist. 1870 Digest 507. "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt 216. And see Jones 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." G.O. 125, Second Mil. Dist. 1867.

The jurisdiction of this Military Commission convened by Commander Naval Forces Marianas is limited by the period and territorial extent of the Military Occupation of Dublon Island, Truk Atoll by the American Naval Forces. (See Winthrop, page 837, Ibid, and footnote 95). Japan was still in possession of Dublon Island, Truk Atoll during the period from February 23, 1944 to September 2, 1945, so the offenses charged were committed long before the United States Navy occupied these islands and atoll or declared martial law or military law on these islands.

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

"A Military Commission, (except where otherwise authorized by statute) can legally assume jurisdiction only of offenses committed within the field of the command of the convening commander. Thus a commission ordered by a commander exercising military government by virtue of his occupation, by his army, of territory of the enemy, cannot take cognizance of an offense committed without such territory." Footnote (88) citing Finalson, Repression of Riot and Rebellion, 106; Franklyn, Outlines of Mar. Law; Pratt, 216; G.O. 125 Second Mil. Dist., 1867; G.O. 20, 1847 (Gen. Scott).

The place must be the theatre of war or a place where military government or martial law may be legally exercised, otherwise a military commission (unless specifically empowered by statute) will have no jurisdiction of offenses committed there. Footnote (89) citing Clode, M.L. 189."

Thus the United States of America had no jurisdiction of or on Dublon Island, Truk, on Jaluit, Nauru, or Ocean Island February 23, 1944 to September 2, 1945.

Truk, Jaluit, Nauru and Ocean Islands were not within the field of command of the convening authority of this Military Commission at any time during the period from February 23, 1944 to September 2, 1945.

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

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

So in the case of Dublon Island, Truk Atoll, Jaluit, Nauru and Ocean Island, the military occupation of these islands by the United States conferred only the right to exercise control during the period of occupation. The sovereignty of Japan over these islands was not transferred by the mere act of occupation by the United States forces. Only the authority to exercise some of the rights of sovereignty were, because of the necessity for maintaining law and order, indispensable to both the inhabitants of these islands and to the occupying force, the United States, transferred to the United States.

The necessity for maintaining law and order by the United States in these islands only commences on the date of occupation of these islands by the United States. It does not go back to March 10, 1944, or to February 23, 1944, or August 15, 1945, or to September 2, 1945. Between February 23, 1944 and September 2, 1945 Japan exercised sovereignty in these islands. There was no relinquishment or transfer of power until after August 14, 1945, yes, not until the date when United States Forces occupied these islands when Admiral HARA and Lieutenant General MUGIKURA officially surrendered Truk to the United States Naval Forces under Vice Admiral Murray on September 2, 1945.

Even the exercise of a state's jurisdiction over its citizens is strictly limited to territorial boundaries. Fenwick in his book, "International Law," states the rule, and we quote:

"We have seen that a state may exercise personal jurisdiction over its nationals for acts committed abroad and may make its jurisdiction effective when such nationals return again within the jurisdiction of the state. Can a similar jurisdiction be exercised with regard to an alien for an act committed abroad when such alien happens to come subsequently within the territorial jurisdiction of the State? The question has given rise to much controversy. Acts of the alien not directly injurious to the state or to its citizens may be excluded from consideration."

The acts of the accused, an alien and a Japanese national was not directly injurious to the United States, for the offense of neglect of duty committed against any of the victims: some Chinese, others natives of the Japanese mandated islands, and others alleged to be British nationals named in the specifications is not alleged to have been the proximate cause of the injury complained of nor is it alleged the negligence was wilful. There can be no jurisdiction therefore to punish the accused for the alleged offense of neglect of duty against the victims; most of whom were British nationals, Chinese, and native inhabitants of these Pacific Islands.

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

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

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

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

Therefore, even the Hague Convention of October 1907 lays down the principle that there is no jurisdiction until occupation and since there was no occupation until after August 14, 1945 yes not until September 2, 1945, there was no jurisdiction from February 23, 1944 to September 2, 1945, and there cannot, therefore, be any jurisdiction now.

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

On the other hand, subjugation or conquest implies a transfer of sovereignty. Ordinarily, however, such transfer is effected by a treaty of peace. When sovereignty passes, military occupation as such must of course cease; although the territory may, and usually does for a period at least continue to be governed through military agencies which have such powers as the President or Congress may prescribe."

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

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

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

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

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

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

Commander Naval Forces Marianas cannot legally therefore assume jurisdiction because these islands were not within the field of command of the convening authority at the time the offenses were committed. The precept, serial 16462, dated 25 October 1948, states: "Pursuant to the authority vested in me by virtue of my office as the Commander Naval Forces, Marianas and further by the specific authority vested in me by the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinGPac and CinCPacFlt ltr. dtd. 1 Aug. 1948, CinCPac serial 2955 and CinGPacFlt Serial 3490)." The specifications of the charge allege the neglect of duty was committed during the period from February 23, 1944 to September 2, 1945. During this period Commander Naval Forces Marianas did not have jurisdiction of these islands either as the Commander Naval Forces Marianas or by specific authority.

The precept further states: "...by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. Pac. Flt. serial 0558 of 8 Mar. '46...)" But the confidential serial 0558 is dated 8 March 1946 and the offenses were committed from February 23, 1944 to September 2, 1945. Thus neither by virtue of his office or by authority of the confidential serial 0558 dated 8 March 1946 did the Commander Naval Forces Marianas have authority to assume jurisdiction of these islands during the period from February 23, 1944 to September 2, 1945. Neither did Commander in Chief Pacific and United States Pacific Fleet legally have jurisdiction of these islands during this period. The use of classified dispatches as a reference in the precept of 25 October 1948 is highly irregular and we refer the commission to the rulings of CMO's 317-1917, p. 3; 133-1920, p. 13; 2-1917; 15-1916, p. 3. This precept states the commission will convene at 10 o'clock a.m., on Monday, October 25, 1948. The precept was not even signed at 10 a.m., on Monday, October 25, 1948.

The Commander Naval Forces Marianas is no longer the civil administrator of these islands and therefore has no authority as the civil administrator of these islands. The enforcement of law and order on Truk, Jaluit, Nauru or Ocean Islands is the responsibility of the civil administrator or someone else and not Commander Naval Forces Marianas.

Let the judge advocate show the jurisdiction of Commander Naval Forces Marianas over Ocean Island and over Nauru Island. This is not an international tribunal but a Navy convened military commission. There can be no authority over islands like Nauru and Ocean Islands.

I quote from 36 American Jurisprudence, "Military" section 98, page 252, which reads as follows: "It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charges with the specification.(9)" Citing U.S. v. Smith, 197 U.S. 386, 49 L. ed. 801, 25 Sup. Ct. 489; Bishop v. U.S. 197, U.S. 334, 49 L. ed. 780, 25 S. Dynes v. Hoover, 20 How (U.S.) 65, 15 L. ed. 838.

The commission can have no jurisdiction of HARA, Chuichi, former-vice admiral, IJN, for the crimes of negligence committed on these islands of Truk, Jaluit, Ocean and Nauru during the period from February 23, 1944 to September 2, 1945.

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

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

The charge, dated 5 October 1948 from Commander Naval Forces Marianas, under which Vice Admiral HARA is being tried does not allege that he either committed or directed the commission of the acts, or that he had knowledge of the acts, and consequently no violation is charged against him. The gist of the charge against Admiral HARA is an unlawful breach of duty, a criminal neglect of duty, as Commander of the Fourth Fleet, IJN, but neither wilful neglect is charged nor is knowledge charged. In specification 1 it is alleged he failed to control certain persons permitting them to torture and kill not only American POW's but British nationals, Chinese and native inhabitants. In specification 2 it is alleged he failed to take such measures as were appropriate to protect not only American POW's but British nationals, Chinese and natives of these Pacific Ocean Islands.

We hold that this commission has no authority to try the accused, Vice Admiral HARA, the Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, for criminal neglect of duty, particularly as set forth in specification 1 (f), (g), (h), (i), (j), (k), and (l) and specification 2 (f), (g), and (h).

We also maintain that the offense of neglect of duty particularly as set forth in specification 1 (f), (g), (h), (i), (j), (k), and (l) and specification 2 (f), (g), and (h) alleged in the charge is one not cognizable by this commission.

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

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

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

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

If it is a statutory offense, that former Vice Admiral HARA is charged with having violated, what is the statute and does the statute define it as a misdemeanor or a felony? What punishment does the statute provide and what courts have cognizance of the offense? Does the statute provide that a Navy Military Commission has jurisdiction over offenses committed on Truk, Jaluit, Nauru, and Ocean Islands, particularly against British nationals, Chinese and native inhabitants of these Pacific Ocean Islands?

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

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

In this same footnote we find the rule:

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

At common law one person has no legal duty to protect another person unless there is a duty to act. Clark and Marshall, A Treatise on The Law of Crimes, 4th Edition, Sec. 262, pp. 332-333 says this:

"(e) There must be a Duty to act.--To render one responsible for a homicide because of mere non-feasance, he must have omitted some legal duty which he owed to deceased. Failure to perform acts of mercy or mere moral obligations is not enough." (Citing Wharton Crim. Law, para. 329, 330; State v. Reitze, 86 N.J. 407, 92 Atl. 576; Burrell v. State, 18 Tex. 713; Connaughty v. State, 1 Wisc. 159, 60 Am. Dec. 370.) For a stranger to neglect to give warning so as to prevent a collision between railroad trains, or to prevent a man from taking poison, or for failure to rescue a drowning person, or to feed a starving child would not render him guilty of manslaughter, for he is only under a moral obligation to interfere in such cases and the law does not undertake to punish for failure to perform moral obligations. There must have been a legal duty, and it must have been owing to the deceased. (Citing the cases of Reg. v. Smith, 11 Cox C.C. 210; Rex v. Smith, 2 Car. & P. 449.

"Knowledge of Facts Giving Rise to Duty.--It is also necessary, in cases of this character, that the accused shall have known of the facts making it his duty to act, for a man cannot be said to neglect to perform a duty unless he knows of the condition of things which requires performance at his hands. (Citing the cases of State v. Smith, 65 Me. 257; Westrup v. Com. 123 Ky. 95, 93 S.W. 646, 29 Ky Law Rep. 519, 6 L.R.A. (N.S.) 685, 124 Am. St. Rep. 316."

The offense charged is criminal neglect of duty in violation of the law and customs of war. Clark and Marshall have this to say about the jurisdiction of federal courts on common law jurisdiction in criminal matters. Section 484, p. 645:

"In this country, as we have seen, the federal courts have no common law jurisdiction in criminal matters. They can punish no act until Congress has made it a crime, affixed the punishment, and conferred upon them jurisdiction of the offense. (Citing Section 12 b, wherein is cited the case of U.S. v. Hudson, 7 Cranch (U.S.) 32, 3 L. ed. 259; U.S. v. Eaton, 144 U.S. 677, 36 L. ed. 591, 12 S. Ct. 764.) Without this, therefore, they could not punish offenses against the law of nations."

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

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

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

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

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

In his dissenting opinion Mr. Justice Rutledge said:

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

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

The specifications in this HARA case are altogether different from those in the YAMASHITA case. HARA was defending Japanese territory from the invading American forces until his Emperor ordered him to surrender he held Truk against the invading Americans. He could not, however, leave Truk because the American forces controlled the air and the sea and in effect Admiral HARA was prisoner on Truk long before the surrender.

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

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

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

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

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

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

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations."

"Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander; objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victors' judgment is an unfortunate but unescapable fact. So great is the probability that international law refused to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits, indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct."

It isn't enough to simply refer to a confidential dispatch in the precept and allege that by reason of that confidential dispatch this military commission does have jurisdiction. It is equally as proper in order to prove the charge and specifications for the judge advocate to introduce a certified copy of the charge and specifications. See C.M.O. 133-1920, p. 13 and C.M.O. 15-1916, p. 3.

The accused, HARA, Chuichi, therefore prays of judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

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

REPLY TO THE PLEA TO THE JURISDICTION DELIVERED BY LIEUTENANT DAVID
BOLTON, U. S. NAVY, JUDGE ADVOCATE.

1. The crux of the accused's plea to jurisdiction, as ably presented by defense counsel Mr. Takano and Commander Carlson, is the contention that there are no common law offenses against the United States, and that while war crimes can be tried by military commission, the offense of neglect of duty to control subordinates, set forth in the specification, does not constitute a war crime.

The fact that military commissions possess jurisdiction to try offenses in violation of the law and customs of war is so fundamental that it merits no comment or citation. Defense counsel Commander Carlson who has cited somewhat misleading snatches from the Yamashita decision, fails to point out the fact that the charge against YAMASHITA was that "while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly in the Philippines; and he...thereby violated the laws of war." He fails to point out the fact that the majority opinion of the Supreme Court of the United States clearly recognizes the validity of the charge, as well as the jurisdiction of the military commission to try the accused for the offenses charged. The Court stated "It is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of petitioner to perform the duty imposed on him by the law of war and to pass upon its sufficiency to establish guilt." And fn. 4 thereof reads: "...the charge sufficiently states a violation against the law of war, and that the commission, upon the facts found, could properly find petitioner guilty of such a violation." While the accused contends that the facts of the YAMASHITA case differ from the facts in the instant case, his argument relates to the sufficiency of the evidence and not to the question of jurisdiction. Criminal neglect of duty is a question of fact dependent upon all the relevant circumstances. So-called "knowledge", "wilfulness", "scienter", "criminal intent", are not essential elements to the charge of such an offense. This appears clearly to be the fundamental approach of the U. S. Supreme Court in the Yamashita case. While the language from the opinion of Mr. Justice Rutledge cited by defense evidences a belief that knowledge is an essential element of the crime, it must be clearly understood that this opinion was a dissenting opinion. It was rejected by the majority of the U. S. Supreme Court, and does not reflect the prevailing law. Since the majority decision of the U. S. Supreme Court is so clearly in point, it is unnecessary to cite the numerous decisions regarding criminal neglect of duty, which unquestionably reject the concept of knowledge or intent as a necessary element of such crime. The commission is familiar with the concept of neglect of duty in military law -- for example the neglect of duty charge and specifications 1 and 2 set forth in Naval Courts and Boards, Section 105. These specifications do not allege any element knowledge or intent. Civil criminal law applies the same standards. The laws of negligent homicide is analogous. Knowledge is not necessary to constitute a criminal homicide, but knowledge of the danger may convert what would otherwise be manslaughter into murder (Com. v. Pierce, 138 Mass. 165; 180. Michael & Welsher, 37 Col. L. Rev. 722) and similarly a wilful omission of duty may convert the lesser to a greater crime. 26 American Jurisprudence 294, states "... where death ensues in consequence of a wilful omission of duty, it is said to constitute murder; and where it ensues in consequence of a negligent omission of a duty, it is said to be manslaughter."

There is no need to cite further law on this subject. The decision of the U. S. Supreme Court in the Yamashita case clearly establishes the fact that knowledge or wilfulness is not a necessary element to a charge of violation of the law and customs of war as charged in the instant case which follows the fundamental language previously cited from the Yamashita charges and the Yamashita decision by the U. S. Supreme Court above,

The offenses charged against the accused do not constitute an ex post facto application of criminal law. The duty to control subordinates and to protect prisoners of war has been recognized for literally hundreds of years. In more recent times this duty has been affirmed and specifically crystallized in treaty form in the Fourth Hague Convention (1907) and the later Geneva Prisoners of War Convention (1929). Criminal responsibility of an individual for violation of international law is similarly of long standing and as far back as 1784 it was recognized and applied in the United States in the famous case of *Respublica v. De Longchamps* 1 Dall. 110 (Pa. 1784). The opinion of the United States Supreme Court in the Yamashita case (327 U. S. 1) is directly in point.

The remaining grounds of accused's plea to the jurisdiction, as argued by his counsel are of secondary importance, but some of them merit brief comment.

2. Defense counsel Commander Carlson contends that the accused is not legally before this commission as he was not served with the charge and specifications until a substantial period of time after his confinement. It is not my purpose to discuss the necessity or justification for continued confinement of the accused during the interval between his arrest and the preferring of the charge and specifications in the instant case. This question is immaterial to the issues before the commission, as it does not in any manner affect the jurisdiction of this commission to try the accused for the offenses with which he has been charged. The accused was legally arrested and confined as a war crimes suspect. He was confined in Guam pending further investigation and subsequent trial as a war criminal. It is unfortunate that the accused has been confined for a considerable period of time during which time certain of his subordinates and his predecessor in office as Commander in Chief of the Fourth Fleet, were investigated and tried as war crimes suspects. But this fact does not negate or jeopardize the legitimate jurisdiction of this commission to try the accused for the offenses charged. The accused has failed to cite any law which supports his bare contention that the length of the period of his confinement in any manner affects the jurisdiction of this commission to try the accused.

3. Defense counsel Commander Carlson has expended much time and effort in considering questions dealing with jurisdiction of a military court under international law and the law of military occupation. He has contended that since the United States armed forces were not in occupation of the islands where the offenses were committed at the time those offenses were committed that no jurisdiction exists to try the accused with regard to such crimes. He similarly contends "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed."

Counsel's argument is erudite but confusing and inapplicable. The martial law and law of occupancy cited by the accused relates primarily to local or domestic law. The accused is not charged with violation of such law. He is specifically charged with violation of the law and customs of war and the material cited by accused with regard to martial law is therefore inapplicable. Even as it relates to crimes against local law the argument of defense counsel is faulty in substance for it has been held by military commissions sitting in this very area and approved by the Judge Advocate General of the United States Navy in the *FURUKI* and *INOUE* cases, see Advance C.M.O. 6-1948, that crimes against existing local law committed prior to occupation may be tried by military commissions of the occupying power.

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In regard to crimes in violation of the law and customs of war, it is well established that traditional concepts of territorial jurisdiction are not applicable. War criminals have been tried and convicted, by military commissions and international tribunals, for war crimes committed within their own country as well as crimes committed in occupied neutral or enemy territory. The cases are too legion to warrant enumeration. The very nature and essence of war crimes is such that the vast majority of them occur at the time and in places where the forces committing the war crime are in control. It is clear therefore why jurisdiction of such war crimes, such international offenses, does not rest upon territorial control over the places and at the time when the offenses occurred. Note that jurisdiction over offenses charged in violation of the law and customs of war is not even limited to offenses rising during the course of the war for, as evidenced by SCAP Regulations Governing the Trials of Accused War Criminals AG 000.5 (5 December 1945) 2 (b) "The offenses need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden Incident of September 18, 1931."

4. Defense counsel, by reference to the precept, contend that the commission is not authorized by that precept to try the accused for the offenses charged, particularly with regard to certain incidents involving victims other than American prisoners of war.

For reference to detailed specific authority set forth in the despatches referred to in the precept, the Commission has ample opportunity to examine these despatches. They also have been available and examined by defense counsel, Commander Carlson. The despatches are clear and they set forth specific authority with regard to the incidents set forth in the charge. In reference to the comment by defense counsel in regard to the classified nature of these despatches, such comment is highly out of place and irrelevant to the question of jurisdiction. The court martial orders cited by defense counsel relate to the use in evidence of classified matter and do not relate to reference citation of classified matter in precepts or other fundamental documents.

The precept specifically refers to CincPac and CincPacFlt ltr. dtd. 1 August 1948, CincPac Serial 2955 and CincPacFlt Serial 3490. The Judge Advocate wishes to specifically bring to the Commission's attention the third paragraph of this unclassified letter which reads "Nothing in this letter limits the inherent authority of a military commander to convene military commissions."

This sentence is significant for it evidences the intent not to curb or limit the inherent authority of the Commander Naval Forces, Marianas, with regard to war crimes matters.

This brings us to the broad authority which is itself set forth in the precept. The first sentence of paragraph 4 reads "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including...". And this is followed by an enumeration of certain offenses. But note that the language of this precept reads "all offenses" and that the enumeration of specific offenses is preceded by the word "including" and not by the words "limited to". The language used was clearly intended as a broad and complete grant of authority, and the enumeration was one of inclusion and not designed as a limitation or exclusion of authority. The fact that this was intended as a full and complete grant of authority to try "all offenses within the jurisdiction of exceptional military courts" is also unequivocally proved by the last sentence of this same paragraph of the precept, which reads "Nothing herein limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established." Despite the contention by Mr. Takano

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that crimes committed against Nauruan natives, Marshall Island natives, a Chinese national or British nationals must be excluded from the war crimes which the commission is authorized to consider, nothing in the precept of this commission limits their jurisdiction in this manner. Aside from the dispatches which give specific authority in this regard, the Commission as I have pointed out has full authority to "try all offenses within the jurisdiction of exceptional military courts", and nothing in the precept "limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established."

To determine the extent of jurisdiction of this Commission, we must therefore examine the fundamental law of jurisdiction with regard to military commissions. It is well established, and defense counsel, Mr. Takano recognizes the fact, that a military commission has jurisdiction to try war crimes and accused war criminals. (In Re Yamashita 327 U.S. 1).

War crimes jurisdiction is not based upon jurisdiction over the place where offenses were committed, or limited to jurisdiction of offenses committed against the nationals of the forces by which the accused is tried. War crimes are international crimes in the sense that they are crimes against all civilized nations. In this respect war crimes are like the crime of piracy and the war criminal like the pirate, as expressed by Grotius (1583-1645) *De Jure Belli ac Pacis*, vol. 2 cap. 20, sec. 40 is "hostis humani generis," and as such he is justiciable by any state anywhere. Hackworth, *International Law* Vol. 2, p. 187.

As early as 1612, Grotius stated: "The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishment not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any person whatsoever." Grotius, *De Jure Belli Ac Pacis* Tres (1612) Carnegie Trans, 1925, p. 504.

Similarly:

Wheaton in his *Elements of International Law*, 6th Ed., Vol. I, (1929), p. 269, declares that the judicial process of every independent state extends to the punishment of "offenses against the common law of nations, by whomsoever and wheresoever committed." Hall in his *Treatise on International Law* (8th Ed., (1924), Sec. 135) states that a belligerent possesses "the right of punishing persons who have violated the laws of war if they afterward fall into his hands." Oppenheim says, "the right of the belligerent to punish, during the war, such war criminals as fall into his hands is a well-recognized principle of international law. It is a right of which he may effectively avail himself after he had occupied all or part of enemy territory and is thus in the position to seize war criminals who happen to be there." (Oppenheim, *International Law*, 6th Ed., Rev., Vol. II, 1944, Sec. 257 a).

The opinions of leading jurists in this regard, cited above, clearly and unequivocally reflect the prevailing view on this subject. An interesting application of the principles involved herein is found in the Judge Advocate General's Opinion, Memorandum for the Joint Intelligence Committee, The Joint Chiefs of Staff, file: SPJGW 1943/17671, subject: "Jurisdiction to Punish War Criminals," dated 13 December 1943:

"In October of 1943, shortly after the capture by American troops of the town of Calasso on the Volturno River, in Italy, some German troops fighting there executed without trial 23 Italian civilians whom they accused of aiding the American troops. The killing took place on the

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same day that the Badoglio government declared war on Germany and on which it was recognized as a co-belligerent of the United Nations. The Germans responsible for the executions were subsequently captured by the Americans. In an exhaustive consideration of the evidence and law pertaining to the occurrence, the Judge Advocate General of the United States Army concluded as follows:

"a. The putting to death by German troops without trial of twenty-three Italian civilians at Calazzo constituted an offense against the laws of war.

"b. The United States Army, by military commission, and the Italian government,... by whatever tribunal its laws provide, have concurrent jurisdiction to punish those committing the above offense.

"c. Whether the accused shall be tried by a military commission of the United States or by an Italian tribunal is a question of policy."

This opinion clearly coincides with the accepted view presented by the judge advocate that a military commission of the United States armed forces has jurisdiction to try for crimes in violation of the law and customs of war, regardless of where the crime was committed, and regardless of who the victims of such crime were. In the instant case we have alleged crimes committed by Japanese armed forces against Nauruan natives, British nationals, Chinese national, Marshall Islands natives as well as against American prisoners of war and others. The offenses charged are in violation of the law and customs of war and the commission by virtue of its broad authority as a military commission, and the authority specifically delegated to it in the precept, has clear jurisdiction over the accused for his neglect of duty with regard to the incidents charged.

As Grotius and Wheaton have said, such jurisdiction extends to those offenses which "violate the law of nature or of nations in regard to any person whatsoever;" to "offenses against the common law of nations, by whomsoever and wheresoever committed."

The judge advocate respectfully requests that the plea to the jurisdiction be denied.

David Bolton
DAVID BOLTON.

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HARA, CHUICHI

(27 OCT 1948)

(VOL. IV)

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0002

Case of
HARA, Chuichi
October 27, 1948

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
convened at
United States Pacific Fleet
Commander Naval Forces, Marianas
Guam, Marianas Islands,
by order of
The Commander Naval Forces, Marianas

VOLUME 4

0003

PLEA IN BAR OF TRIAL
of
HARA, Chuichi, Vice Admiral, IJN, a Japanese prisoner of war
Delivered by
Commander Martin E. Carlson, USNR.

May it please the commission:

The accused, Vice Admiral HARA, Chuichi, a Japanese prisoner of war, makes this plea in bar of trial on the grounds of the statute of limitations.

The offense, criminal neglect of duty, is alleged to have been committed during the period from 23 February 1944 to 2 September 1945. The charge and specifications are dated 5 October 1948, at least three years after the alleged offenses were committed and in several instances more than four years after the offense is alleged to have been committed.

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

"The Articles for the Government of the Navy.

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

"Codification.

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

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

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

"Articles established:

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

"Article 61. Limitation of trials: offenses in general. No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article which appears to have been committed more than two years before the issuing of the order

for such trial or punishment, unless by reason of having absented himself or of some other manifest impediment he shall not have been amenable to justice within that period (R.S. sec. 1624, Art. 61; Feb. 25, 1895, c. 128, 28 Stat. 680)."

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

It isn't enough for the prosecution to say that this only relates to trials by court martial and it is therefore not applicable to offenses triable before exceptional military courts. We call the commission's attention to Section D-12, Appendix D of Naval Courts and Boards wherein it is explained that exceptional military courts are employed by the Naval establishment in order to exercise the power conferred upon it when its duty is such as to place under it a wider jurisdiction. An exceptional military court such as this military commission is charged with the administration of naval law.

Section D-15 reads: "A military commission should, in general, correspond to a general court martial both as to its constitution and as to its proceedings."

Section 33 Naval Courts and Boards enumerates the persons subject to the naval jurisdiction of the United States. It specifically mentions prisoners of war stating: "Under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial. We believe this is in accordance with Article 45 Geneva Prisoners of War Convention of 1929."

Clearly, therefore the accused, HARA, Chuichi, Vice Admiral, IJN, who surrendered on September 2, 1945 and immediately became prisoner of war, benefits of Article 61 and other articles for the government of the Navy. Admiral HARA was an enemy combatant, during which time Admiral HARA was kept in the status of a prisoner of war. Then on August 22, 1945 Admiral HARA was thrown into solitary confinement at the stockade here on Guam. For more than two years Admiral HARA, a prisoner of war was kept in solitary confinement without any charges being preferred against him. We refer the Commission to Articles 5, 6, 49 and 54 of the Geneva Prisoners of War Convention. These articles were all violated in the case of Admiral HARA, a prisoner of war.

Notwithstanding his long confinement and the fact that Admiral HARA has never been repatriated as have all other Japanese prisoners of war who were captured or surrendered to the United States, the judge advocate says that the law imposes no limitation on the length of time the United States Navy can hold a prisoner of war or imposes a limitation on the offense. The Yamashita case General Tomoyuki Yamashita, an enemy combatant surrendered to the U. S. Army at Baguio Luzon on September 3, 1945. He immediately became a prisoner of war. On September 25, 1945, approximately three weeks after surrendering, General Yamashita was served with the charge. In this case of Admiral HARA approximately a year elapsed.

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

Title 18 Criminal Code United States Code Annotated. Criminal Code and Criminal Procedure. Sec. 582 reads "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed." (R.S. pp 1044; April 13, 1876, c 36, 19 Stat. 32; Nov 17, 1921, c 124, pp 1, 42 Stat. 220.)

Even under this section the offenses which HARA, Chuichi, a prisoner of war is being tried for are barred by this Statute of Limitations.

The specifications do not allege a capital offense. The commission is only authorized to impose lawful punishment (see para. 5 of precept). The death sentence is clearly not a lawful punishment for an alleged offense of neglect of duty. Admiral HARA, Chuichi, the accused, is not charged with personally participating in the acts of atrocity or with ordering or condoning their commission.

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

The criminal charge in this case was not made until the formal written accusation was made on 5 October 1948 of the charge and specifications dated 5 October 1948.

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

This statute of limitation is regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense." (citing Wheeler v. Castor 11 N.D. 347, 92 N.W. 381, 61 L.R.A. 620) "and is one to which, in proper circumstances, all men are entitled as a right. (citing Anaconda Min. Co. v Saile, 16 Mont. 8, 39 P. 909, 50 AmStRep 472; Carter v Collins, 174 Okla 4, 50 P. (2d) 203, 34 Am.Jur. Limitation of Actions Sec. 12, p. 23 also states: "The Defense is not technical (citing U.S. v Oregon Lumber Co. 260 U.S. 290, 67 LEd 261, 43 S.Ct. 100) but is deemed to be legitimate (citing O'Malley v. Sims, 51 Ariz. 155, 75 P. (2d) 50, 115 ALR 634) substantial, and meritorious." (Citing Guaranty Trust Co. v U.S., 304 U.S. 126, 82 L.Ed. 1224, 58 S.Ct. 785 and many more cases,

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

A judgment for the defendant on a plea of the statute is necessarily an acquittal of the charge, and not a mere abatement of the action. Therefore it has been universally classed as a plea in bar and not in abatement (citing U.S. v Oppenheimer 242 U.S. 85, 61 L.Ed. 161, 37 Sct 68, 3 ALR 516; U.S. v Barber, 219 U.S. 72, 55 LEd 99, 31 Sct 209. 15 Am. Jur. Criminal Law, pp 342, p. 32.

Since we have raised the issue of the statute of limitations in this case it is incumbent upon the judge advocate to affirmatively prove the commission of the offenses charged within the statutory period. We cite from 15 Am. Jur. "Criminal Law" section 343, page 32: "Where the issue of the statute of limitations is raised, the state must affirmatively prove the commission of the offense within the statutory period." In many

jurisdictions, if the state relies upon an exception to remove the bar of the statute, it is incumbent upon the state to prove the exception.

The case of *Hogoboom v State*, 120 Neb. 525, 234 NW 422, 79 ALR 1171 holds that statutes of limitation as applied to criminal procedure, are to be liberally construed in favor of the defendant.

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

But let us hear what Wharton says. In Wharton's "Criminal Procedure, Volume I, section 376, is headed: "Statute of limitations construction to be liberal to defendant." On page 45 we read this regarding such statutes in criminal cases:

"But it is otherwise when a statute of limitation is granted by the state. Here the state is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned it and positive periods in which it destroys proof of guilty. (2)"

Footnote (2): "This is well exhibited in a famous metaphor by Lord Plunkett of which it is said by Lord Broughman (Works, etc. Edinb. ed. of 1872, IV 341) that 'It cannot be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced.' 'Time' so runs this celebrated passage, 'with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he metes out the periods of that possession that shall supply the place of the monuments his scythe has destroyed.'"

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

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

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

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

Vice Admiral HARA became a prisoner of war when he surrendered on September 2, 1945. He should have been treated as a prisoner of war. Instead, he was incarcerated in the Guam Stockade on 22 August 1946 without warrant of arrest or charges being preferred against him. He has been and is still held there in solitary confinement. This violates Article 54 of the Geneva Prisoners of War Convention.

For more than two years the prosecution have held Admiral HARA in solitary confinement and without benefit of counsel. Now the prosecution come before this court and ask that you deny the accused Admiral HARA the benefit of the statute of limitations because they have delayed for no good reason instituting this trial. They know full well that the long delay in instituting this trial is not only productive of expense to United States Government but that it is a peril to public justice in the attenuation and distortion by natural lapse of memory of testimony they will introduce. The prosecution ask that you approve their action in keeping Admiral HARA, a prisoner of war, in solitary confinement here on Guam for more than two years without preferring charges against him or giving him the benefit of counsel whereas "The rule now prevails in most if not all the States that an accused is entitled, as a matter of constitutional right, to the services of counsel upon his preliminary examination" from 14 American Jurisprudence, Cum Supp Criminal Law Sec. 167 add new par p 884.

And "It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charge with the specifications." 36 Am.Jur.Military, section 98, Citing United States v Smith, 197 US 386, 49 LEd 801, 25 S.Ct. 489 and other cases.

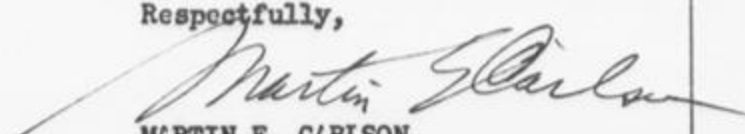
The statute of limitations has run in this instance because the prosecution deliberately refrained from bring the accused, Admiral HARA, a prisoner of war to trial. We ask that the law be applied, the statute of limitations.

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

The accused, Vice Admiral HARA, Chuichi, a prisoner of war, pleads the statutes of limitations as a bar to his trial for the alleged offenses committed during the period from February 23, 1944 to September 2, 1945 and charged under date of October 5, 1948.

The accused Vice Admiral HARA, Chuichi prays of judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,


MARTIN E. CARLSON,
Commander, USNR.

REPLY TO THE PLEA IN BAR

Delivered by

Lieut. David Bolton, USN
Judge Advocate

The prosecution strongly denies the ill-considered statements by defense counsel that the prosecution has "deliberately refrained" from bringing the accused to trial, and that the prosecution is asking the commission to "deny the accused, Admiral Hara, the benefit of the statute of limitations because they have delayed for no good reason instituting this trial." These innuendos in the defense argument are malicious. Defense counsel is fully aware of the nature and extent of many of the sound reasons and unavoidable problems which have necessitated expenditure of time in bringing accused war criminals to trial.

The accused is not the only Japanese war criminal tried by U. S. Military Commissions for responsibility for some of the brutal, unforgivably bestial war crimes committed during the course of the recent war.

At the conclusion of the war, the United States Armed Forces were faced with difficult and detailed investigation and subsequent trial of a staggering number of war crimes. Rarely, if ever, has such a stupendous task been encountered by the armed forces of any country; and never has more effort been expended to assure a just, fair, and adequate trial for each accused. The number of qualified persons available to carry out this task has been limited, and they have all carried a full work load. I can speak with particular assurance with regard to the navy trials held in this area where I have served for more than twenty months. During this time the various commissions of which Rear Admiral Robinson has been President, have sat in continuous daily session allowing only the briefest adjournments, and only where absolutely essential to complete clerical work, or to afford defense counsel and sometimes prosecution necessary time to obtain essential evidence to complete necessary arguments.

Vast numbers of suspected war crimes were investigated in this area. Of these approximately 108 persons were tried in some twenty cases. The defense counsel is aware of these trials having served here as defense counsel throughout this time. He is also aware of the limits to which such commissions have gone to assure the accused in these cases a full and fair trial with every reasonable opportunity for presentation of his defense. The majority of such cases have required more than a month for trial, and many have required six to eight weeks. It is possible that by limiting the proof or arguments, including the numerous objections and arguments of defense, such trials could have been speeded up and perhaps completed in considerably less time. But our armed forces, and our concepts of justice do not permit bamboo courts or star chamber prosecutions. Nor do we stress speed at the expense of legitimate protection of the accused. I for one, even if defense counsel does not agree with me, believe that a delay caused by offering an accused every legitimate opportunity for a full trial and fair defense, is a "good reason" for causing delay in the commencing of subsequent trials.

The instant case of the accused, HARA, Chuichi, is one of the cases which has been delayed because of the trial of prior cases, including the trial of certain of his subordinates and his predecessor as Commander in Chief of the 4th Fleet. The accused HARA is not entitled to any special considerations, nor has he been subjected to any discrimination. The accused is charged with responsibility for numerous incidents committed by his subordinates. It was therefore necessary and proper to complete the trial of persons accused of committing such incidents, prior to trial of the accused for neglect of duty in permitting such incidents to occur.

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It has perhaps been unnecessary to burden the commission at this time with the recital of some of the many reasons with which I realize they are fully conversant as to why the accused and a few other war criminals remain who have not yet been tried. However I deemed it necessary to go on record in strong denunciation of the innuendo in defense counsel's argument, that the prosecution has deliberately delayed proceedings against this or any other accused war criminals. This innuendo is false. And other innuendos and statements of counsel in his plea are equally groundless.

His continued reference to solitary confinement is misleading. The accused has been confined like all other accused war criminals in close confinement and custody. The experience of prison and stockade authorities with suicides and attempted suicides by war criminals has necessitated and justified such close confinement. The prisoners have separate cells, but they enjoy periods of group recreation and exercise. They are permitted to write and communicate with their families.

Defense counsel's argument that accused was denied counsel until served with charges and specifications is also misleading. The accused has not been denied counsel. To the best of my knowledge and belief, which extends over twenty months of my duty here, he has never requested counsel, and clearly therefore has not been denied counsel. It is certainly true that we have never assigned counsel for him, but in the absence of his request this does not constitute a denial of counsel. The same procedure is well recognized in our customary civil criminal courts and naval courts. While as defense counsel points out in our civil courts it is held that on preliminary examination accused is entitled to counsel - this merely means that he should not be denied counsel if he desires and requests counsel. The preliminary examination referred to is a formal judicial judicial process. There is no similar stage in the procedure which was established for commitment of war criminals. And it is my belief that such a procedure would not only have immeasurably delayed, but in fact would have made impossible, the administration of the entire program of war crimes prosecution.

With reference to the preliminary examination in civil criminal courts, it must be noted that many, if not most, of such courts do not assign counsel at this stage. Counsel is assigned when the accused is brought before the court for trial after he has been indicted or formally charged with the crime. In war crimes procedure the accused is assigned counsel from the time he receives charges and specifications.

The procedure with regard to war crimes is similar to our procedure under naval law with regard to our own personnel. Even when an accused naval person is brought before captain's mast he is not assigned counsel and may be subsequently confined pending issuance of charges and specifications. It is not until after charges and specifications are served that the accused is ordinarily assigned counsel to prepare his defense. This is the exact procedure followed with the accused in the instant case, and nothing herein adversely affects the essential legal rights of the accused, or supports his plea in bar of trial.

The relevant arguments of defense counsel in this plea in bar of trial are twofold. He argues existence of a statute of limitations on two bases: the first of these is Article 61 of the Articles for the Government of the Navy which, with exceptions, provides a two year statute of limitations; and the second of which is Section 582 of the U.S. Code which provides a three year statute of limitations. Neither of these statutory provisions is applicable. Article 61 reads in part:

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"No person shall be tried by court martial...for any offense... committed more than two years before the issuing of the order for such trial..." By its specific terms therefore this statutory limitation relates only to trials by court martial, and is not applicable to offenses triable before exceptional military courts such as the instant military commission. The distinction between a naval court martial and an exceptional military court such as the instant military commission is specifically noted in N.C.&B. Appendix D-12. Article 61, since it relates to trial by court martial, is limited therefore to persons and offenses triable by court martial. In general the persons so triable are members of the naval forces, personnel accompanying the Navy, spies, prisoners of war, etc., as set forth in N.C.&B. Sec. 333. The accused does not fall within any of these categories and is therefore not entitled to the benefits of Article 61 or other Articles for the Government of the Navy.

Counsel for the accused contends that the accused appears before this commission as a prisoner of war. Counsel is in error. The accused is appearing before this commission as an accused war criminal. Counsel for the accused has observed that accused has been in the war criminal stockade for a long period of time that he was confined as a war criminal suspect, and clearly the charge and specifications against the accused leaves no room for doubt that he appears before this commission in the status of a war criminal suspect, and not as a prisoner of war.

Defense counsel on page 2 of his argument has stated that in the Yamashita case, Yamashita surrendered and immediately "became a prisoner of war," only 23 days after that he was served with charges. The accused Yamashita claimed he was a prisoner of war and entitled to special protection under provisions of the Geneva Convention. The prosecutor in that case expressly claimed that the accused, Yamashita, appeared before the commission as an accused war criminal and not as a prisoner of war. In substance the Supreme court adopted this view and held that the language "prisoner of war" in reference to rights and benefits conferred on an accused, related only to persons being tried as prisoners of war for offenses committed while prisoners of war.

The Geneva Prisoners of War Convention does not apply to prisoners of war who are tried for offenses committed prior to becoming a prisoner of war. As Yamashita was being tried for offenses committed prior to the time he became a prisoner of war, he was held not entitled by law to such privileges.

Similarly in the instant case the accused is being tried before this commission as a war criminal for offenses committed prior to his confinement, and not for offenses committed while a prisoner of war. The accused therefore is not entitled to special benefits or privileges conferred by national or international law upon prisoners of war. He is not entitled to trial by court martial, under Article 333 Naval Courts and Boards which refers to the Geneva Prisoners of War Convention, and is similarly not entitled to the benefit of the statute of limitations applicable to naval courts martial. Article 61 of the Articles for the Government of the Navy is not applicable to the accused.

In this regard I again refer the commission to the decision in the Yamashita case in which they considered an argument by Yamashita that certain Articles of War were applicable in his case because he was a prisoner of war. But the Supreme Court determined that these Articles of War were not applicable to accused war criminals. Similarly the articles for the Government of the Navy are equally inapplicable to the accused, Hara, for similar reasons.

N (3)

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

The accused contends that the specifications in the instant case do not allege a capital offense, that the commission is only authorized to impose lawful punishment, and that the death sentence is clearly not a lawful punishment for an alleged offense of neglect of duty. The accused is in error. The death sentence is authorized, and was in fact pronounced and executed in the Yamashita Case. It is clearly established that military commissions in the trial of war crimes cases, are authorized to impose the capital sentence for the crime this accused is charged with. The imposing of the death sentence is specifically authorized in paragraph 5 of the precept of this commission. See Naval Courts and Boards, Appendix D-15. As I have previously pointed out, Section 582 of 18 U.S.C. is completely inapplicable to offenses where capital punishment is authorized. It should be noted that 18 U.S.C. 581a specifically provides that "an indictment for any offense punishable by death may be found at any time without regard to any statute of limitations."

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

The judge advocate respectfully requests that the defense plea in bar of trial be denied.

David Bolton
DAVID BOLTON.

N (4)

0012

PLEA IN ABATEMENT

in the case of

HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy

The accused, HARA, Chuichi, a prisoner of war, having surrendered to the American naval forces under Vice Admiral Murray, USN, on Sept. 2, 1945, interposes this plea in abatement on the ground that there has not been any notice to the protecting power of the opening of this judicial proceeding against this accused, a Japanese national and a prisoner of war.

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

"This advice shall contain the following information:

- "(a) Civil state and rank of prisoner
- "(b) Place of sojourn or imprisonment
- "(c) Specification of the (count) or counts of the indictment, giving the legal provisions applicable.

"If it is not possible to mention in that advice the court which will pass upon the matter, the date of opening the trial and the place where it will take place, this information must be furnished to the representative of the protecting Power later, as soon as possible, and at all events, at least three weeks before the opening of the trial."

The accused, Vice Admiral HARA, Chuichi, as the senior naval officer on Truk did on September 2, 1945 together with Lieutenant General MUGIKURA, the commanding general of the 31st Imperial Japanese Army and the senior land ranking military officer on Truk, surrender to Vice Admiral Murray, USN representing the American naval forces. Admiral HARA thus became a prisoner of war.

As a prisoner of war Admiral HARA was in accordance with Article 2 of the Geneva Prisoners of war Convention in the power of the hostile Power, in this case the United States of America, but not of the individual who captured him. Article 2 further provides that prisoners of war must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity.

Article 5 prohibits coercion, insults, unpleasant or disadvantageous treatment being used on prisoners to secure information.

Article 6 provides among other things: "Identification documents, insignia of rank, decorations and objects of value may not be taken from prisoners."

Article 49 provides: "No prisoner of war may be deprived of his rank by the detaining Power."

Article 54 provides: "Arrest is the most severe disciplinary punishment which may be imposed on a prisoner of war."

"The duration of a single punishment may not exceed thirty days."

Vice Admiral HARA surrendered on September 2, 1945 and on August 1, 1946 Admiral HARA was transferred to Guam to a prisoner of war camp and on August 22, 1946 Vice Admiral HARA, a prisoner of war was without any charges being preferred against him thrown into solitary confinement at the Stockade at Guam. Since that date August 22, 1946 Vice Admiral HARA has been held in solitary confinement. Not until October 5, 1948 more than two years were any charges preferred against him. The charge dated October 5, 1948 is the "Charge and Specifications, in the case of Hara, Chuichi." Notwithstanding the Geneva Prisoners of War Convention Article 49, Vice Admiral HARA has been stripped of his rank while a prisoner of war here on Guam, has been held in solitary confinement for more than two years in direct violation of Article 54 of the Geneva Prisoners of War Convention, and now the judge advocate seeks to bring the accused, a prisoner of war to trial, without notifying the protecting power as is required by Article 60, Geneva Prisoners of War Convention.

Unlike the question raised in the application of YAMASHITA, 66 S. Ct. 340 we enter this motion as a plea in abatement. The YAMASHITA case cannot determine the merits of our present plea in abatement. Article 60 which we cite does not state directed against a prisoner of war for offenses committed only while prisoners of war. Article 60 contains a clear unequivocal statement as follows: "At the opening of a judicial proceedings directed against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof as soon as possible, and always before the date set for the opening of the trial."

Even the application of General Tomoyuki Yamashita, the motion for leave to file petition for writ of habeas corpus and writ of prohibition and petition for writ of habeas corpus and writ of prohibition was not an unanimous opinion by all members of the United States Supreme Court. Mr. Justice Murphy wrote a strong dissenting opinion in which he said:

"Hostilities ceased and he voluntarily surrendered. At that point he was entitled, as an individual protected by the due process clause of the Fifth Amendment, to be treated fairly and justly according to the accepted rules of law and procedure. He was also entitled to a fair trial as to any alleged crimes and to be free from charges of legally unrecognized crimes that would serve only to permit his accusers to satisfy their desires for revenge.

"A military commission was appointed to try the petitioner for an alleged war crime. The trial was ordered to be held in territory over which the United States has complete sovereignty. No military necessity or other emergency demanded the suspension of the safeguards of due process. Yet petitioner was rushed to trial under an improper charge, given insufficient time to prepare an adequate defense, deprived of the benefits of some of the most elementary rules of evidence and summarily sentenced to be hanged. In all this needless and unseemly haste there was no serious attempt to charge or prove that he committed a recognized violation of the laws of war. He was not charged with personally participating in the acts of atrocity or with ordering or condoning their commission. Not even knowledge of these crimes was attributed to him. It was simply alleged that he unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit the acts of atrocity. The recorded annals of warfare and

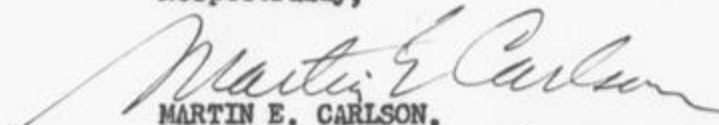
the established principles of international law afford not the slightest precedent for such a charge. This indictment in effect permitted the military commission to make the crime whatever it willed, dependent upon its biased view as to petitioner's duties and his disregard thereof, a practice reminiscent of that pursued in certain less respected nations in recent years.

"In my opinion, such a procedure is unworthy of the traditions of our people or of the immense sacrifices that they have made to advance the common ideals of mankind. The high feelings of the moment doubtless will be satisfied. But in the sober afterglow will come the realization of the boundless and dangerous implications of the procedure sanctioned today. No one in a position of command in an army from sergeant to general, can escape those implications. Indeed the fate of some future President of the United States and his chiefs of staff and military advisers may well have been sealed by his decision. But even more significant will be the hatred and ill-will growing out of the application of this unprecedented procedure. That has been the inevitable effect of every method of punishment disregarding the element of personal culpability. The effect in this instance, unfortunately, will be magnified infinitely for here we are dealing with the rights of man on an international level. To subject an enemy belligerent to an unfair trial, to charge him with an unrecognized crime, or to vent on him our retributive emotions only antagonizes the enemy nation and hinders the reconciliation necessary to a peaceful world."

Gentlemen of the commission this question of due process guaranteed by the Fifth Amendment, and the procedure clearly demanded by Article 60 of the Geneva Prisoners of War Convention is not wholly without merit and it was not disposed of in the YAMASHITA case. In the sober afterglow of the YAMASHITA case on this 29th day of October 1948 you full well realize that the highest standards of justice be applied in this trial of an enemy commander.

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

Respectfully,


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

REPLY TO PLEA IN ABATEMENT

Delivered by

David Bolton, Lieut., USN.
Judge Advocate

The vast majority of this verbose plea by defense counsel is completely irrelevant to any issue now before the commission. The portions cited from the dissenting opinion of Mr. Justice Murphy in the Yamashita case are not properly cited at this time, for the cited portions are clearly not relevant to the issues of this plea in abatement. Defense counsel states this plea in abatement is made "on the ground that there had not been any notice to the protecting power of the opening of this judicial proceeding against this accused, a Japanese national and a prisoner of war." The citation from Mr. Justice Murphy does not deal with, or in any manner affect this issue.

Defense counsel contends that in the instant case the issue of applicability of Section 60 of the Geneva Prisoners of War Convention is made in a plea in abatement, while in the Yamashita case the issue with regard to applicability of the Geneva Prisoners of War Convention was presented in a different application. This distinction is a distinction without a difference. In the Yamashita case the U. S. Supreme court was faced squarely with the issue of whether a person who surrendered and became a prisoner of war and was subsequently after his surrender charged as a war criminal for offenses committed prior to the time he became a prisoner of war, was entitled to the procedure and privileges set forth in the Geneva Prisoners of War Convention. The U. S. Supreme Court clearly and unequivocally decided that such persons charged with war crimes are not entitled to the privileges of the Geneva Prisoners of War Convention, for those provisions in regard to notice of trial, etc., are limited in application to crimes committed subsequent to the time the individual becomes a prisoner of war.

The precise article from the Geneva Prisoners of War Convention cited by defense counsel, namely Article 60, was considered in the Yamashita case by the U. S. Supreme Court. The decision as set forth by the Chief Justice said as follows: "Article 60 of the Geneva Convention of July 27, 1929, 47 Stat. 2051, to which the United States and Japan were signatories, provides that 'At the opening of a judicial proceeding directed against a prisoner of war the detaining power shall advise the representative of the protecting power thereof as soon as possible and always before the date set for the opening of the trial'. Petitioner relies on the failure to give the prescribed notice to the protecting power to establish want of authority in the commission to proceed with the trial. For reasons already stated we conclude that Article 60 of the Geneva Convention, which appears in part 3, Chapter 3, Section V, Title III of the Geneva Convention, applies only to persons who are subject to judicial proceedings for offenses committed while prisoners of war." (UN War Crimes Commission War Crime Trial Law Reports Vol IV page 42-43 Trial of General Tomoyuki Yamashita).

The judgment is clearly in point and it is unnecessary to remind the commission of the respect to which a judgement of the Supreme Court of the United States is properly entitled.

The judge advocate respectfully requests that the plea in abatement be denied.

David Bolton
David Bolton

MOTION FOR A BILL OF PARTICULARS

Delivered by:
Commander Martin E. Carlson, USNR,
Defense Counsel for HARA, Chuichi.

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

The accused prays that both Specification 1 and 2 of the charge set out the law and customs of war which it is alleged the accused violated while serving as the Commander in Chief of the Fourth Fleet and also what measures were within his power and appropriate in the circumstances to protect as it was his duty to do, American prisoners of war.

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

It is necessary that the accused definitely know with a certainty just what law and customs of war he is charged with having violated. The accused cannot determine from reading the charge and the specifications what law and what customs he has violated. Neither can he determine what the law or customs of war prohibited. A penal statute is required to be sufficiently definite to show what acts the law makers intended to punish or it will be considered invalid. Clark and Marshall, A Treatise on the Law of Crimes, 4th edition, section 29, p. 40 states the rule as follows:

"It must define the offense with certainty, either by specifying the acts which shall constitute it or by describing it by some name known to the common law."

Citing the cases of United States v. General Const. Co., 269 U.S. 386, 70 L. Ed. 322, 46 S.Ct. 126 see note; 38 Harv. Law Rev. 963.

The accused cannot know what the statute says was appropriate measures which he was required by the statute to take to protect prisoners of war.

It must be some statute which imposes such a duty upon the accused because at common law there is no such duty imposed upon any man as the duty to protect another person. It is true that there is a so-called higher law which answers the biblical question "Am I my brother's keeper?" in the affirmative but this Christian teaching has not been fully accepted or made law by statute. Certainly it was not the law of war. We ask for particulars as to what law imposed such a duty upon this accused.

The accused, Vice Admiral Hara, knows of no international law or customs of war or anything in all naval history which justifies such a charge as is set forth against HARA, Chuichi, former vice admiral, Imperial Japanese Navy.

The YAMASHITA case when brought to the Supreme Court of the United States resulted in dissenting opinions by two of the Supreme Court justices.

Mr. Justice MURPHY in the case of General Tomoyuki YAMASHITA, Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands cited as 66 S. Ct. 340 at 357 held:

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liabilities under such circumstances for failure to meet the ordinary responsibilities of command.... To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviation from duty."

The accused cannot properly prepare a defense to a charge based upon vague and indefinite references in certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907. We call the Commission's attention to the case of Gross v. Big Creek Development 75 W. Va. 719, 84 S. E. 75, L.R.A. 1915 E. 1057.

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

"As a general rule bills of particulars will be ordered in every case in which the party can satisfy the court that it is necessary to a fair trial that he should be apprised beforehand of the particulars of the charge which he is expected to meet."

The following cases are cited in support of this rule: May v. Ill. C.R. Co. 129 Tenn. 521, 167 S.W. 477, L.R.A. 1915 A. 781, Ann. Cas. 1916 A. 213. Not knowing the statute, the accused can of course not know what the statute prohibits or even know what acts of omission the law makers intended to punish.

"A bill of particulars should be granted in furtherance of justice."

All these cases are cited: Tilton v. Beecher 59 N.Y. 176, 17 Am. Rep. 337; Haukins v. Lassell, 43 S.D. 191, 178 N.W. 731 citing R.C.L.; May v. Ill. C.R. Co. 129 Tenn. 521, 167 S.W. 477, L.R.A. 1915 A. 781, Ann. Cas. 1916 A. 213; Richmond and D.R. Co. v. Payne, 86 Va. 481, 10 S.E. 749, L.R.A. 849; Turner v. Great Northern R. Co. 15 Wash. 213, 46 p 213, 55 Am. St. Rep. 883.

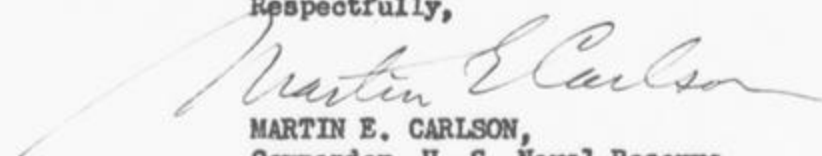
"A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused."

These cases are cited: Williams v. Chattanooga Iron Works 131 Tenn. 683, 176 S.W. 1031, Ann. Cas. 1916 B. 101; and May v. Ill. C.R. Co. 129 Tenn. 521, 167 S.W. 477, L.R.A. 1915 A. 781, Ann. Cas. 1916 A. 213.

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

This motion is not interposed for delay but to make the charge and specifications more definite and certain and in order to effectuate justice and to insure a fair trial to the accused, HARA, Chuichi, former vice admiral, Imperial Japanese Navy, charged with neglect of duty as Commander in Chief of the Fourth Fleet, Imperial Japanese Navy.

Respectfully,


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

REPLY TO THE MOTION FOR A BILL OF PARTICULARS

Delivered by

David Bolton, Lieut., USN.
Judge Advocate

The granting or refusal of the defense request for a bill of particulars is a matter resting in the sound discretion of a court. 27 Am. Jur. 111. While the motion for a Bill of Particulars is not provided for by Naval Courts and Boards, such a motion has been allowed in the trial of war crimes before a military commission, for example in the Yamashita case. But it should be noted that in the Yamashita case there was a different type of military commission, an army commission utilizing a somewhat different procedure, and that the charge against Yamashita did not furnish detailed information such as that provided in the specifications in the instant case which follows the pattern used in naval courts.

In Naval Courts, the Bill of Particulars is not a recognized part of the judicial procedure, for the use of specifications, in addition to a basic charge, obviates the necessity for such a Bill of Particulars. All the requirements of a Bill of Particulars are met by the use of such specifications, and in naval courts the remedy for lack of necessary particularity with regard to the incidents charged, is found in the objection to charges and specifications. The accused has recognized this fact and availed himself of it, and it should be noted that in this objection to charge and specifications he has pursued the identical question which he now again raises in his motion for a Bill of Particulars, namely, that the specifications should set forth with particularity the law and customs of war which the accused has been charged with violating. The merits of this contention were argued at that time, and the commission rejected the argument of the accused.

Let us briefly examine the function of the bill of particulars and see if the interests of justice require or justify its application in the instant case.

The function of the Bill of Particulars, as set forth in 27 Am. Jur. Sec. 113, is "to supply the accused and the court additional information concerning an accusation that the accused has committed an act or acts constituting a criminal offense."

Certain grounds for refusal of the request for a bill of particulars are set forth in 27 Am. Jur. Sec. 113, and some of the language there used is particularly appropriate, and establishes the grounds for denial of the instant motion. The following appears on page 674 of 27 Am. Jur.: "A bill of particulars is not necessary where the indictment informs the defendant of the crime with which he is charged sufficiently to enable him to prepare his defense, or where the means of obtaining the facts are as accessible to the defendant as to the state, and the facts are already known to him, or where he has been fully informed as to the matters in question....A motion for a bill of particulars, that, in its nature, is a request for a disclosure of evidence or of matters which are largely evidentiary in character and which, if furnished, would unduly limit and embarrass the prosecution and might exclude material evidence may properly be refused....A bill of particulars is sufficient which supplies all necessary information to enable the accused to prepare for trial and after judgment to be able to plead the record in bar of a further prosecution for the same offense."

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That the specifications satisfy all essential requirements of particularity is apparent when we compare them with the items of the Bill of Particulars presented to the commission in the Yamashita case. The fifth paragraph of the Bill of Particulars in that case reads "5. During November 1944 in northern Cebu Province, massacre, without cause or trial, of more than 1,000 unarmed non-combatant civilians". The subparagraphs of the specifications in the instant case set forth with much greater particularity the incidents which accused is charged with having permitted to occur.

No further argument on this motion is required, and in closing I merely refer the commission to the portions of 27 Am. Jur. Sec. 113 which I have cited in regard to the grounds for refusal of the motion for a Bill of Particulars.

The judge advocate respectfully requests that the motion for a Bill of Particulars be denied.

David Bolton
David Bolton

OPENING STATEMENT

In the case of HARA, Chuichi, former Vice Admiral, IJN

Delivered by
Lieutenant David Bolton, USN,
Judge Advocate.

Human society is largely the interrelation between individuals and groups of individuals. Equilibrium in such society, relative peace and security of these individuals and groups of individuals, depends upon the creation and enforcement of certain social so-called ethical standards of behavior. These are not absolute standards. They are not unchanging standards. They are relative standards which, within a given time and within a given society are applied in response to the needs and efforts of that society to maintain or develop the social order and the accepted social values.

The application of law, and more particularly criminal law, is one of the efficacious forces by which society attempts to create or maintain certain minimum standards of social conduct. In this respect international society is not basically different from local society, and international law in peace and in war seeks to maintain certain minimum standards of conduct. The so-called law and customs of war is the outgrowth of fundamental ethical considerations, agreements, treaties, usages and customs as accepted or practiced between nations. Violations of the standards of conduct embodied in the law and customs of war constitutes what is loosely termed war crimes.

When it became apparent in the early course of World War II that these fundamental standards of human conduct under the law and customs of war were being disregarded by enemy belligerents, efforts were made to dissuade the enemy from continuation of these barbarous acts and atrocities. In conformance with international practice, protests were made, and when disregarded these changed to warnings. On August 21, 1942, the President of the United States, Franklin D. Roosevelt, issued the following warning: "It is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders in Europe and Asia. It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer for their acts."

This "warning" was not a creation of new law, it was merely an express declaration to all actual and potential offenders against the existing law and customs of war, that the time would come when all offenders would be punished. More than that, it was an implicit warning and caution to all, and particularly to high-ranking responsible officers, that they take all measures to prevent the commission of crimes in violation of the law and customs of war. This warning was issued prior to the time when the accused took command of the Fourth Fleet, and was repeated over and over again during the course of the war.

This warning, this solemn declaration of intention to hold offenders responsible for their criminal acts and omissions, was embodied in the Potsdam Declaration of 26 July 1945, issued by the President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain. The Potsdam Declaration declared "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." In the Surrender Document, September 2, 1945, Japan specifically accepted the provisions of the Potsdam Declaration.

It was and is the duty of the Allied Powers, the United Nations, to enforce the standards of international law and society, and to punish those who have violated the law and customs of war. It is the duty of the victor to do this, just as it is the duty of the police and the courts to apprehend, to confine, to try, and to punish those who violate domestic criminal law. And it is specious reasoning that contends that it is unfair for the conqueror to try the vanquished. The "police", the forces of law and order, must be stronger than the criminals. If not, the power of society to punish for wrongdoing would perish, for the criminal and his kin do not apply the standards of lawful society to punish the wrongdoer. If the forces of law and order cease to be stronger than those who violate the standards of society, either revolution or chaos inevitably results. It is therefore natural and proper that the victor nations, the "law and order" nations of international society, should punish those individuals who have violated the law and customs of international society, the law and customs of war.

The Potsdam Declaration was not a declaration of any novel concept of international law. The concept was clearly recognized at the close of the First World War, and was partially embodied in the provisions of the Treaty of Versailles. International law has long recognized the necessity of enforcing established social standards of conduct by punishing those who violate them. Lawrence, in the Principles of International Law (7th Ed. 1923), pp. 373-374, comments on the law of war, as follows: "A ruler drunk with the consciousness of overwhelming power might venture to defy the moral sentiments of mankind, but only to discover by and by that outraged humanity avenges itself in unexpected ways...Those, therefore, who imagine that a state is free to ignore, because of the exigencies of the moment ~~any~~ rule...are as erroneous in their reasoning as they are anarchical in their sentiments. The laws of war are made to be obeyed, not to be set aside at pleasure."

The accused, HARA, is being tried before this commission for violation of the law and customs of war. It is not through any desire for vengeance or any sense of vindictiveness of the conqueror for the vanquished. The accused is tried for the same reason that society tries and punishes all criminals. Society is based upon a system of law, a system in which the weak as well as the strong must be protected if life and order are to continue. The individuals who violate the laws of society - whether local, state, or international - must be punished in accordance with the law. Human nature is such that if we did not punish the individual who commits the crime, that individual and other individuals believing that crimes are not punished, would cease to respect the law and would violate it without fear of punishment. Punishment of individual offenders acts as a deterrent force.

We have just finished a war in which at the cost of millions of lives we have reaffirmed our belief in a society of law and order in which the rights of individuals and nations are protected against the depredations of the strong or the ambitious. That war removed a crucial threat to the existence and security of

independent nations in an international society based upon accepted principles of law and order.

The fact that the war was not climaxed with a regenerated international society providing and effectively guaranteeing peace and order for all nations and peoples, does not justify the rejection or repudiation of the accepted standards and practices of international law, the law and customs of war. International society has not stopped war; but it has established certain fundamental law and customs of war in accordance with the principle of humanity.

It is our duty and privilege to be engaged in the administration and enforcement of that law. Through the functions of this and similar commissions the law and customs of war take tangible form and deterrent effect, to warn potential wrongdoers that society will punish those who violate the law and customs of war.

The accused HARA, Chuichi, former vice admiral of the Imperial Japanese Navy, is charged with violation of the law and customs of war. The violation of the law and customs of war is set forth in two specifications. These offenses occurred during the period when the accused was the Commander in Chief of the Fourth Fleet, from February 23, 1944 to September 2, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire.

The first specification alleges that the accused unlawfully disregarded and failed to discharge his duty as the Commander in Chief of the Fourth Fleet, to control the operations of members of his command and persons subject to his control and supervision, permitting them to commit the illegal acts, the specified war crimes set forth in subparagraphs (a) through (1). The duty set forth in this specification is the duty to control the operations of members of his command and persons subject to his control and supervision. The accused HARA is charged with having unlawfully disregarded and failed to discharge this duty in that he permitted these members of his command and persons subject to his control and supervision, to torture, abuse, inhumanely treat and kill American prisoners of war, British nationals, a Chinese civilian, and residents of various islands. It is alleged and the prosecution will prove that at the times and in the incidents alleged, within the period when the accused was Commander in Chief of the Fourth Fleet, 7 American prisoners of war, and 211 other persons were brutally killed, and an additional 7 persons were tortured, abused and inhumanely treated. The prosecution will prove that these vicious crimes were committed by members of the accused's command and persons subject to his control and supervision.

The second specification alleges that the accused unlawfully disregarded and failed to discharge his duty as the Commander in Chief of the Fourth Fleet, to take such measures as were within his power and appropriate in the circumstances, to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment and killing of said prisoners of war and said residents of Nauru Island and Ocean Island. The gravamen of this specification is that the accused unlawfully disregarded and failed to discharge his duty to protect these persons. The acts and incidents set forth in the subparagraphs of

this specification are the same acts and incidents set forth in specification 1, except that subparagraphs (f), (i), (j) and (k) which appear in specification 1 are omitted from specification 2. These subparagraphs of specification 1 were omitted from specification 2 because they do not fall within the same classes of persons to whom the duty to protect is clearly applicable under the express provisions of the Hague and Geneva Conventions, which will be more fully discussed in the prosecutions later arguments.

Detailed presentation of the legal aspects of the duty to control one's subordinates and the duty to protect prisoners of war and others will be deferred until a more appropriate time during the final arguments of the prosecution. But certain focal points of the duty, and the applicable law and customs of war must be kept in mind during the course of the presentation of evidence in the instant case.

The existence under the law and customs of war of the duty to control subordinates and of the duty to protect prisoners of war, etc., and the applicability of criminal punishment for violation of these duties under the law and customs of war, is no longer the subject of legitimate dispute. The matter was concretely dealt with by the United States Supreme Court in the Yamashita case (327 U.S. 1).

The prosecution does not contend that the accused had an "absolute" duty, an absolute responsibility for the acts of his subordinates; and the charge and specifications against the accused do not envisage the application of such a doctrine of absolute responsibility.

The first specification which deals with the duty to control alleges that the accused "disregarded" and "failed to discharge" his duty to control the operations of members of his command and persons subject to his control and supervision, "permitting them" to torture, abuse, inhumanely treat, and kill. Discussion of the legal implications of the word "permit" will be deferred until the final arguments in the instant case. It should be noted at this point, however, that even the terms "disregarded" or "failed to discharge", clearly envisage something beyond the concept of absolute responsibility. They require that it be proved that the accused "disregarded" or "failed to discharge", that is to say, that he failed to take the required and appropriate action, in accordance with the law and customs of war, to control the members of his command.

The second specification is similar to the first specification in that it does not require the application of any theory of absolute responsibility. The second specification sets forth more explicitly the scope of this duty for it alleges that the accused unlawfully disregarded and failed to discharge his duty "to take such measures as were within his power and appropriate in the circumstances" to protect prisoners of war and residents of the occupied country - namely Nauru and Ocean Islands.

It is the burden of the prosecution to prove beyond a reasonable doubt, that the accused "disregarded" and "failed to discharge" his duty, in short that he failed to take appropriate action to control the members of his command...etc., and that under Specification 2, he failed "to take such measures as were within his power and appropriate in the circumstances" to protect prisoners of war...etc. The proof of this disregard and failure to discharge his duty does not require proof that such neglect of duty was wilful or that it occurred with knowledge of the impending commission of

any specific incident. Defense counsel will contest this presentation of the applicable law, for in their numerous pleas and motions they have evidenced their position that knowledge or wilfulness should be charged and proved by the prosecution. While it is not my purpose or function at this time to argue the applicable law it is necessary to direct the commission's attention to the precedents and authorities in this connection, in order that the commission may ~~here~~ readily follow and evaluate the evidence in this case.

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The accused is charged with criminal responsibility for neglect of duty arising from his command responsibility. The position of command is a position of grave social responsibility. It carries with it important and inescapable duties. Every reasonable vigilance and every reasonable effort must be expended to perform those duties. It is for this reason that the law and customs of war requires that armed forces and I quote from Art. 1 of Annex to the Fourth Hague Convention of 1907, be "commanded by a person responsible for his subordinates". The accused as Commander in Chief of the Fourth Fleet was such a commanding officer and thereby accepted such responsibility.

The accused contends that neglect of the duty inherent in this responsibility cannot be established without proof that the accused wilfully and knowingly neglected this duty. In the plea to jurisdiction by Commander Carlson, page 7 he contends "that the neglect of duty charged is no crime because knowledge is not charged neither is it charged that the accused wilfully and knowingly neglected his duty".

But counsel is in error. The very Yamashita case, from which he has quoted numerous excerpts from the dissenting opinions, establishes that such knowledge or wilfulness is not an essential element of the offense. The charge and findings in that case clearly evidence this fact. As Mr. Justice Murphy points out in his dissenting opinion (pages 3, 8):

"He was not charged with personally participating in the acts of atrocity or with ordering or condoning their commission. Not even knowledge of these crimes was attributed to him. It was simply alleged that he unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit the acts of atrocity". "Nowhere was it alleged that the petitioner personally committed any of the atrocities, or that he ordered their commission, or that he had any knowledge of the commission thereof by members of his command. The findings of the military commission bear out this absence of any direct personal charge against the petitioner. The commission merely found that atrocities and other high crimes 'have been committed by members of the Japanese armed forces under your command..... that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers...that during the period in question you failed to provide effective control of your troops as was required by the circumstances'."

Similarly, as Mr. Justice Rutledge points out in his dissent (p.8) "Nor is there any express finding that he knew of any of the incidents in particular or all taken together."

Despite the fact that no knowledge or wilfulness was charged or found to be proved in the Yamashita case, the Military Commission found Yamashita guilty, and the United States Supreme Court in reviewing the case (327 U.S.1) held that "the charge sufficiently states a violation of the law of war, and that the commission, upon the facts found, could properly find petitioner guilty of such a violation".

While the factual questions in each case of neglect of duty are distinct, and depend upon the particular relevant circumstances, the law applied in the Yamashita case is equally applicable in the instant case, for it constitutes an application of the law and customs of war in regard to command responsibility. The decision of the Supreme Court is therefor directly in point in the instant case, and merits our consideration at this time. The opinion of the court was delivered by Chief Justice Stone, and the following excerpts are relevant establishing the nature of command responsibility and the inherent corollary that knowledge or wilfulness is not an essential element of the charge or proof of criminal neglect of that command responsibility.

"But it is urged that the charge does not allege that petitioner has either committed or directed the commission of such acts, and consequently that no violation is charged as against him. But this overlooks the fact that the gist of the charge is an unlawful breach of duty by petitioner as an army commander to control the operations of the members of his command by 'permitting them to commit' the extensive and widespread atrocities specified. The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statement of the prosecution at the opening of the trial."

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates." (p. 9, 10)

"These provisions plainly imposed on petitioner, who at the time specified was military governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals." (p. 10)

"Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. Collins v. McDonald, supra, 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. Dealy v. United States, 152 U.S. 539; Williamson v. United States, 207 U.S. 425; Glasser v. United States, 315 U.S. 60, 66, and cases cited. (p.11)"

"4 In its findings the commission took account of the difficulties faced by the accused, with respect not only to the swift and overpowering advance of American forces, but also to errors of his predecessors, weakness in organization, equipment, supply...., training, communication, discipline and morale of his troops", and "the tactical situation, the character, training and capacity of staff officers and subordinate commanders, as well as the traits of character of his troops." It nonetheless found that petitioner had not taken such measures to control his troops as were "required by the circumstances". We do not weigh the evidence. We merely hold that the charge sufficiently states a violation against the law of war, and that the commission, upon the facts found could properly find petitioner guilty of such a violation." (Footnote 4, p. 11)

In addition to the Yamashita case, the commission may similarly bear in mind on the question of knowledge, the General Court Martial case of Colonel James A. Kilian (General Court Martial Orders No. 140 - Headquarters Continental Base Section, U. S. Forces, European Theater) in which the doctrine of command responsibility was applied to a member of our own armed forces. This case is illustrative of the fact pointed out in the U. S. Supreme Court decision in the Yamashita case that "this duty of a commanding officer has heretofore been recognized and its breach penalized by our own military tribunals". In the specifications in the Kilian case, it had been charged that the accused "knowingly permitted" the imposition of cruel punishment, etc. But the court martial found the accused guilty except for the word "knowingly" etc. The case therefore specifically and expressly established that the accused had no knowledge of the offenses which were committed within his command. The court nevertheless found him guilty, and the case was reviewed and approved by higher authority. In an able memorandum review of this case by the Assistant Judge Advocate General, in which the Judge Advocate General of the United States Army concurred, it is pointed out that: "Where, through laxity, indifference, or culpable inefficiency, he permits wrongdoing within his command he is guilty of neglect of duty within the meaning of the 96th Article of War which denounced 'all...neglects to the prejudice of good order and military discipline.' It has been traditionally recognized that the neglect denounced by the 96th Article of War may be a mere omission or failure properly to perform a duty (Winthrop, Reprint 722). It is not a defense to a charge of neglect of duty to prove that the omission was not deliberate or conscious. The reasoning of the Supreme Court in the Yamashita case, cited by Colonel Riter, must be applied here....".

So much for the focal points of the law which the commission must bear in mind during the presentation of the prosecution's evidence.

This evidence will consist of the testimony of witnesses and documentary evidence such as excerpts from prior court records which will be used to establish that within the area, and during the period of the tour of duty of the accused, his subordinates and persons subject to his control and supervision committed the numerous incidents set forth in the subparagraphs of the specifications.

The complexity of the evidence which will be presented justifies the expenditure of some additional time in outlining to the commission the nature and relevance of the evidence which the prosecution will present.

The prosecution will first establish the factual basis of the existence of the duty of the accused, by proof that he was the Commander in Chief of the Fourth Fleet during the period from February 23, 1944 to September 2, 1945, the date of surrender of the Japanese armed forces. The

prosecution will prove the area and units under the command of the accused, and will establish that as Commander in Chief of the Fourth Fleet he was in command of the persons, and had jurisdiction over the areas where the alleged incidents occurred.

The prosecution will establish that when the accused took over the command of the Fourth Fleet there were no existing standing orders with regard to the treatment or protection of prisoners of war, etc. The prosecution will prove that although the accused, as expressed by the U.S. Supreme Court in the Yamashita case, "had" an affirmative duty to take such measures "were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population", he completely disregarded and failed to discharge this duty. Throughout his tour of duty he did not issue any orders or instructions to his subordinates with regard to the treatment or protection of such prisoners of war or civilian population. The prosecution will then prove using the records in the pertinent cases, that subordinates of the accused and persons subject to his control and supervision (see paragraph (f) of Specification 1), committed the incidents of torture, abuse, inhumane treatment and killing set forth in subparagraphs (a) through (l) of Specification 1, and corresponding subparagraphs (a) through (h) of Specification 2. A total of 218 persons will be proved to have been killed, and an additional 7 persons cruelly tortured, in the incidents alleged.

The prosecution contends that the above, which will be conclusively proved, in and of itself establishes that the accused disregarded and failed to discharge his duty under the law and customs of war.

There is however additional proof of the neglect of duty by the accused. Briefly summarized this proof is as follows:

The accused issued no orders regarding the treatment or protection of prisoners of war, although he knew and should have known of the arrival of prisoners of war at Truk. The arrival of prisoners of war at Truk was reported to the Fourth Fleet; Staff officers knew of the arrival of prisoners of war at Truk. Fourth Fleet staff officer Lieutenant Akai questioned prisoners of war at Truk. Subordinate unit commanding officers of the Forty-first Guard Unit, the Fourth Base Force, and the Fourth Naval Hospital knew of the confinement of prisoners of war at Truk. The accused Hara personally knew of the arrival of certain prisoners of war.

Considered as an isolated circumstance, the fact that Hara should have known or knew of the arrival and confinement of prisoners of war at Truk or elsewhere in the area of his command, cannot reflect the significance of this knowledge. When viewed in the light of the rank and the responsibilities of the accused, and his presumed knowledge of war and its demoralizing and brutalizing effect upon individuals, this fact begins to take form and importance. But the full significance of such facts can only be understood by examination of all the circumstances prevalent at the time and under the command of the accused.

In a sense this is part of the *res gestae* in a neglect of duty case. And for that reason a much broader scope of evidence is considered relevant and permissible in such neglect of duty cases. For this reason in the Yamashita case considerable latitude was permitted in the presentation of such evidence, and the opinion of the Supreme Court in footnote 4 which I previously cited, notes that "In its findings the commission took account of the difficulties 'faced by the accused, with respect not only to the swift and overpowering advance of American forces, but also to errors of his predecessors, weakness in organization, equipment, supply...training, communication, discipline and morale of his troops', and 'the tactical situation, the character, training and capacity of staff officers and subordinate commanders, as well as the traits of character of his troops'."

These factors considered relevant by the Military Commission in the Yamashita case, are equally relevant in the instant case. The prosecution intends to present certain evidence relevant to "the nature of the training, discipline, and morale" of the forces under the command of the accused, and the "character, training, and capacity of staff officers and subordinate commanders".

The prosecution will seek to establish the facts that when the accused took command of the Fourth Fleet the training and experience of his forces and subordinates with regard to prisoners of war, was that prisoners of war were unimportant and could be mistreated or disposed of without fear of censure or disciplinary or other punishments.

This will be established by the instructions which had been issued to certain subordinates in the Fourth Fleet prior to the tour of duty of the accused; viz, the instructions received by Rear Admiral Abe and Captain Hiyashi of the 6th Base Force, from Lt. Cdr. Okada of the Naval General Staff and Commander Iida of the 4th Fleet Staff. While these instructions were received prior to the time the accused became Commander in Chief of the Fourth Fleet, it will be proved that neither the predecessor of the accused nor the accused ever issued any specific orders regarding prisoners of war, and therefore these instructions and training continued in effect during the tour of duty of the accused.

Similarly to establish the state of training, morale, instruction, and experience of the forces and subordinates of the Fourth Fleet at the time the accused became Commander in Chief, it will be shown that on February 17, 1944, just prior to the time the accused became the Commander in Chief of the Fourth Fleet, an incident of killing of prisoners of war occurred on Truk. Knowledge of this incident was widely disseminated amongst the unit commanders and subordinates, including staff officers of the accused, and it was similarly known that no action was taken by Hara's predecessor, or by the accused Hara after he became Commander in Chief of the Fourth Fleet, to investigate, discipline, censure or punish those who were responsible for or participated in that incident.

The prosecution will establish that this state of morale and training continued during the tour of duty of the accused Hara.

This fact will be circumstantially proved by the very fact that incidents of mistreatment and killing occurred during the tour of duty of the accused, that some of them occurred on Dublon Island, Truk, a small island where the accused had his headquarters, and that high ranking subordinate officers and unit commanding officers were personally involved in these incidents.

This fact will also be established by proof that the accused Hara was personally present at a Fourth Fleet conference in September 1944 and learned of the brutal killing of prisoners of war, by stabbing with spears, yet took no action to censure or punish his high ranking subordinate, Captain Iwanami, who was at the time the Commanding Officer of the Fourth Naval Hospital and also the chief medical officer of the Fourth Fleet; and the accused issued no instructions to Iwanami, or to other subordinates who were present at this conference and knew of the incident, that prisoners should not be mistreated or killed.

The prosecution will try to establish the existence of a basic factor in the training of the Japanese military personnel with regard to prisoners of war: this factor is that Japanese military personnel were trained to believe that to become a prisoner of war meant to lose all honor and to lose all right to be treated as a human being. This factor

if established may partly explain the brutal mistreatment and killing of prisoners of war by Japanese personnel, but it does not justify the failure by the accused to perform his duty under international law to control his subordinates and to protect prisoners of war. On the contrary, the existence of such training and the recognized tendency of war to brutalize armed forces, were known or should have been known to the accused, and his failure to take measures to restrain his forces constitutes proof of violation of the law and customs of war - for, as was stated by the Supreme Court, in the Yamashita case "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent."

An additional factor which the prosecution will seek to establish as part of the training, instruction, and discipline of the forces under the accused was the training that in the event of land invasion it was proper to dispose of prisoners of war.

The prosecution will seek to establish that this was part of the training of the armed forces under his predecessor - (as evidenced by incidents in Wake Island and Truk, and the statement of responsible parties concerning the basis for disposing of these prisoners of war) - and that no instructions or orders were issued by the accused with regard to this matter and that during the tour of duty of the accused this continued state of training and discipline resulted in the incident at Ocean Island, set forth in subparagraph (1) of Specification 1, subparagraph (h) of Specification 2, in which 200 civilians were killed.

With regard to this phase of the prosecution's case, dealing with the general subject of morale, discipline, and training of the armed forces under the command of the accused, the judge advocate anticipates that conclusive evidence may not be presented as to all of the factors which he desires to establish. It is probable that some of the testimony will be conflicting, but it is believed that when properly evaluated, the evidence presented will, on the whole, establish beyond reasonable doubt an accurate picture of the training and discipline of the Japanese armed forces under the command of the accused, and clearly establish the fact that the accused, who knew or should have known and under the law and customs of war is held responsible for the morale and training of his subordinates and the armed forces under his command, neglected to take reasonable measures and in fact took no measures, to instruct or discipline his forces with regard to the treatment or protection of prisoners of war and civilian populations.

The prosecution contends that this failure to train or discipline subordinates and persons under the ^{command} of the accused is relevant and material evidence tending to establish that the accused criminally neglected his responsibilities under the law and customs of war. For as said in the Yamashita case with regard to the law of war "Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

With regard to subordinates, it is relevant and the prosecution will establish, that subordinates of Hara, both staff officers and unit commanding officers knew of incidents of mistreatment and killing of prisoners of war which occurred prior to Hara's tour of duty - and that.

therefor Hara knew or should have known of the occurrence of these incidents within the area of his command. It will be established that these subordinates knew that no action had been taken by Hara's predecessor with regard to disciplining or punishing the perpetrators of these incidents and that no action had been taken subsequent to these incidents to issue instructions that prisoners of war should not be mistreated. This knowledge by the subordinates of Hara is relevant for it tends to establish that if the accused had properly supervised his subordinates he would have learned of these prior incidents and by appropriate measures could have prevented the occurrence of those incidents with subsequently occurred during his tour of duty. The weight to be given to such evidence is a matter for the determination of the commission, but the prosecution believes this evidence is relevant for it clearly bears upon the training and discipline of these subordinates after they were under the command of the accused, as well as constituting circumstantial evidence of direct knowledge or wilful omission of duty by the accused to investigate such prior incidents, to punish or discipline the perpetrators, and to institute corrective action in the nature of instructions, orders or training to prevent further violations of the law and customs of war by the forces under his command.

The prosecution will establish that the following subordinates of Hara knew of the following incidents which occurred prior to his tour of duty:

Captain Inoue, the senior staff officer of the 4th Fleet, and Captain Sakaibara, the Commanding Officer of Wake and others, knew of the Wake Island incident of October 7, 1943 in which 96 prisoners of war were executed;

Captain Iwanami, the Commanding Officer of the Fourth Naval Hospital and Chief Medical Officer of the Fourth Fleet, and other members of the staff of the Fourth Naval Hospital and of the 41st Naval Guard Unit knew of the incidents which occurred at Dublon Island, Truk Atoll, on January 30 and February 1, 1944, in which 8 prisoners of war were disposed of;

Captain Inoue, Senior Staff officer of the Fourth Fleet, and Commander Higuchi, staff officer of the Fourth Fleet, and unit commanding officers who attended the conference after the air raid of February 17, 1944 knew that prisoners of war had been disposed of during the air raid, at Dublon Island, Truk.

The prosecution will establish that the following subordinates of the accused Hara (staff officers and unit commanding officers) knew of the following incidents which occurred during the tour of duty of the accused:

Rear Admiral Masuda, the commanding officer at Jaluit and his staff knew of the incident set forth in subparagraph (a) of Specification 1 which occurred at Jaluit Atoll in the Marshall Islands on March 10, 1944;

Captain Asano, the Commanding Officer of the 41st Naval Guard Unit and Rear Admiral Arima, Chief of Staff of the Fourth Fleet, and others, knew of incidents set forth in subparagraphs (b) and (c) of Specification 1, which occurred on Dublon Island, Truk Atoll, on June 20, 1944;

Captain Iwanami, Commander Higuchi, and staff officers and unit commanders (as well as the accused himself) who attended the September Conference of the Fourth Fleet, knew of the incident set forth in subparagraph (e) of Specification 1, which occurred at the Fourth Naval Hospital, Dublon Island, on July 20, 1944.

It is of course obvious that all of the subordinates and persons subject to the control and supervision of the accused who participated in the incidents charged in all the subparagraphs of Specification 1, knew of the incidents in which they were involved - but the foregoing subordinates and incidents specifically referred to are highlighted because it is reasonable to believe that in view of the rank and duties of the subordinates noted, the accused knew or should have known of these incidents.

It will be established that high ranking subordinates and unit commanding officers under the command of the accused Hara directly participated in all of the incidents set forth in specification 1, with the exception of those set forth in subparagraphs (f), (g), and (h).

Rear Admiral Masuda, IJN, the commanding officer of the 62nd Naval Guard Unit, and Atoll Commanding Officer of Jaluit, directly participated in the incidents set forth in subparagraphs (a), (i), (j), and (k).

Captain Asano, the Commanding Officer of the 41st Naval Guard Unit on Dublon Island, Truk, participated in the incidents set forth in subparagraphs (b), (c) and (d).

Captain Iwanami, the Commanding Officer of the Fourth Naval Hospital and Chief Medical Officer of the Fourth Fleet, participated in the incident set forth in subparagraph (e).

The participation of these subordinates is particularly significant. The prosecution contends that the direct participation of such subordinates is strong circumstantial evidence of the responsibility of the accused Hara in connection with these incidents. Such evidence tends to prove that the accused condoned such incidents, or at least that his subordinates had no instruction, training, orders, or other reason to believe that the Commander in Chief was concerned with the protection of prisoners of war or would disapprove or discipline his subordinates for their mistreatment or killing of prisoners of war.

As is pointed out in the Trial and Law Report of the United Nations War Crimes Commission, Series No. 50, Volume IV, p. 88: "It is worthy of note that the participation in offenses of officers standing in the chain of command between an accused commander and the main body of his troops may be regarded as some evidence of the responsibility of the commander for the offenses of those troops....Regulation 10(5) of the Canadian Regulations makes it possible for a Court to regard even the presence of an officer at the scene of the war crime, either at or immediately before its commission, as prima facie evidence of the responsibility not merely of the officer but also of the commander of the formation, unit, body or group whose members committed the crime."

It is also highly significant, and the prosecution will establish: That the incidents set forth in subparagraphs (b), (c), (d), and (e) of Specifications 1 and 2 all occurred on Dublon Island, a small island approximately 5,000 yards in length and 4,000 yards in width; and that the Headquarters of the Fourth Fleet were also located on this island; and that the accused was personally present on Dublon Island at the time these incidents occurred; and that the accused was in continuous communication with his high ranking subordinates who directly participated in these incidents.

In addition to this evidence, the prosecution will present certain evidence which circumstantially evidences the fact that prior to the time of its occurrence, the accused Hara had knowledge of the incident of July 20, 1944 which occurred at the Fourth Naval Hospital. Of particular significance in this regard is that the accused will be shown to have been personally present at the Fourth Naval Hospital on the very day that the incident, a public execution, occurred on the hill behind that hospital; and that in fact, the accused was present on the veranda of that hospital with Captain Iwanami at the very time the prisoners were driven past that veranda on their way to that hill behind the hospital where the execution occurred.

By direct evidence the prosecution will establish that the accused Hara was present at a subsequent Fourth Fleet conference in September 1944, when Captain Iwanami described the use of spears on the prisoners of war killed in the July 20th incident. The prosecution will establish that other staff officers, and unit commanding officers were present at that conference, but that the accused Hara and none of his subordinates made any comment, statement, or criticism of the brutal spearing of these prisoners of war. And the prosecution will prove that the accused Hara, even after this clearly and unequivocally proved knowledge of the July murder of these prisoners of war, issued no orders or instruction to his subordinates with regard to the treatment or protection of prisoners of war. Certainly at this time the accused was on clear notice of the discipline and state of training of his subordinates, and under the law and customs of war had an inescapable duty to take immediate affirmative action to protect prisoners of war and the civilian populations; but he continued to disregard and fail to discharge his duties under the law and customs of war. And it will be proved that incidents of unlawful torture, abuse, inhumane treatment, and killing of prisoners of war and civilians, by his subordinates, continued to occur within the area of his command, as set forth in subparagraphs (g), (h), (i), (j), (k), and (l) of Specification 1.

This in substance, is the case which the prosecution will seek to prove against the accused Hara. The issue of his guilt or innocence of the charge and specifications is a factual question to be determined upon all the relevant evidence. The judge advocate contends that this evidence will establish beyond reasonable doubt that the accused is guilty as charged. But whether the accused "neglected" his duty is the fundamental question which the Commission must determine after full consideration of all the evidence and arguments which will be presented both by the prosecution and the defense.

The Commission must examine and consider all the circumstances, all the acts and omissions of the accused. And in the light of the duty and responsibility of the accused as the Commander in Chief of the Fourth Fleet, the Commission must determine whether the prosecution has proved beyond a reasonable doubt that, as set forth in Specification 1 and Specification 2, the accused disregarded and failed to discharge his duties to control the operations of members of this command and persons subject to his control and supervision, and whether the accused disregarded and failed to discharge his duty to take such measures as were within his power and appropriate in the circumstances, to protect prisoners of war and civilian residents of the occupied islands.

Respectfully,

David Bolton

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

Objecting to the Request for Taking
Judicial Notice,
Defence counsel
TAKANO

W

検察官の公知事実認定の申請
に対する異議の申立

被告人 保忠一 辯護人
高野 純二 郎

被告人保忠一は下記の理由に因り、検察官の下記
の事項について公知事実の認定を申請するに對し異
議を申立てる。

検察官の申請事項第四は1945年7月26日の
Potsdam Declaration 第十項中の一部分「吾等
は吾人及民族として奴隷化せしめ又國民として懲
らしめしむべき悪行を有する者には非ざるを吾等
は憐れみ居候る者を含む一切の戦争犯罪人ニ對し
ての嚴重なる處罰を加へしむべき」と謂ふの
こと。即ち之は戦争犯罪人並に件屬を居候
せざる者に對し嚴重なる處罰を加へることを
ある。

然るに本件被告人保忠一は現在に至るは戦争
犯罪人ではない。勿論件屬として自ら戦争
行為を加へたものではない。故に此のPotsdam
Declaration 第十項中の此の文章は本件とは何
等の関連性もない。然るに今裁判の席頭に於
て本件は何等の関連なき斯かる事項について公知事実
の認定をなさうことは判決前に既に被告人は恰も
有罪の判決を受けた後の被告人即ち戦争犯罪人と
して取扱はるべきであるかとの疑念を懷かせる
虞がある。今や本件の裁判の進行せしむるに
當り此の事項の公知事実認定の申請は要に

(1)

W (1)

0035

朱廣仁2. 仍以此9人^{公知}本堂之認定申請之社員異議之
申立2

謹 言

高野純一郎

OBJECTION TO THE REQUEST FOR JUDICIAL NOTICE BY
THE JUDGE ADVOCATE

Delivered by
Mr. TAKANO, Junjiro,
Counsel for the Accused.

The accused, HARA, Chuichi, objects to the request by the judge advocate for judicial notice of the following fact for the reasons given below:

Item 4 of the request for judicial notice by the judge advocate states that the Potsdam Declaration of 26 July 1945, paragraph 10 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."


In short, this means that stern justice will be meted to war criminals and those who visited cruelties upon (allied) prisoners.

However, HARA, Chuichi, the accused in this case, is not a war criminal at present. And of course he did not personally visit cruelties upon any prisoners (in his own person). Hence this portion of clause 10 of the Potsdam Declaration has no bearing on the present case. To take judicial notice of such matter which in no way is relevant or material to the case, right at the beginning of the trial, runs the danger of leaving a doubt that the accused even before trial is being treated as one convicted, namely as a war criminal.

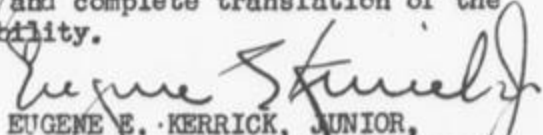
It is most inappropriate to request such matter to be noted judicially at the opening of the trial.

Hence, I object to the request for judicial notice of this matter.

Respectfully,


TAKANO, Junjiro.

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


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

OBJECTION TO THE COMMISSION TAKING JUDICIAL NOTICE AS REQUESTED BY
THE JUDGE ADVOCATE

Delivered by
CDR Martin E. Carlson, USNR,
Counsel for the Accused.

The accused objects to the commission taking judicial notice of the Hague Convention No. IV of 18 October 1907 and the Annex thereto unless the judge advocate furnishes the commission with the complete Hague Convention including Number XIV of 18 October 1907 which prohibits the discharge of projectiles and explosives from balloons. We object unless the official French text is furnished which is the only official text so far as the international relations of states are concerned. The Foreword to FM 27-251 states: "It will be noted that the French text is the only official text so far as the international relations of states are concerned; and accordingly in case of dispute as to the meaning of any provision, it is the French text which must be accepted as controlling. Though the English translation is, in general, believed to be correct, no translation can always give the meaning of the original with entire accuracy."

We continue to quote from this Foreword: "Each of the Conventions signed at the Hague in 1907 and set forth in this manual save that relative to the opening of hostilities, contains a provision that it shall be binding upon any of the belligerents in a war only if all the belligerents in that war are parties to it. As neither Italy or Bulgaria has ratified the 1907 Conventions given herein, the United States might have declined to be bound by them."

If the United States could decline to be bound by these Hague Conventions then Japan could also decline to be bound. According to Section 309, Naval Courts and Boards, "A court may not take judicial notice of a foreign law, or of a law of another State, etc., than that within which the court is sitting, the existence of such law being a question of fact which must be proved by competent evidence the same as any other fact - i.e., the purport or the actual wording of the law must be introduced into the evidence - and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place."

If this Hague Convention is the law alleged to be in violation of which the accused neglected his duty the plea of not guilty puts such a Convention in issue and most certainly it must be proved and also that it was in effect and in force at the time the accused is alleged to have committed the great international crime he is charged with having committed, the crime of international neglect of duty and that the accused was bound personally by such a Convention.

The accused objects to the commission taking judicial notice of the Geneva Prisoners of War Convention of July 27, 1929 because Japan did not ratify this convention. It is a foreign law. This Convention not even ratified by Japan was most certainly never ratified by the accused or made binding upon him if his own country did not ratify the Convention. Any agreement made by Japan with Switzerland, a non-belligerent, cannot bind the accused. It is a fundamental of the law of contracts that only parties to the contract are bound thereby. Japan made no agreement with the United States. The accused was not a party to any contract made between Japan and Switzerland. This Convention is also put into issue by the plea of "not guilty" of the accused.

We object to the Commission taking judicial notice of the Potsdam Declaration of 26 July 1945 particularly paragraph 10. The Potsdam Declaration was simply a declaration signed by three persons meeting at Potsdam: President F. D. Roosevelt of the United States of America, the President of China, and Winston Churchill of England.

The judge advocate doesn't even furnish the commission or the defense with an authentic copy of this declaration. The commission certainly must have grave doubt of the propriety of taking judicial notice of such a declaration as the Potsdam Declaration. Article 10 speaks of war criminals. Does the judge advocate infer that the accused is a war criminal before he is tried and found guilty? Such a declaration as this declaration made by President Roosevelt and the President of China is irrelevant and immaterial and is not binding upon the accused.

We do most certainly object to the statement that a state of war existed between the Japanese Empire and the United States during the period from December 7, 1941 to September 2, 1945. As far as we know this is the first time that any United States court has been asked not to recognize the cessation of hostilities as having taken place on August 15, 1945. It was on August 15, 1945 that the Emperor of Japan ordered all Japanese to stop fighting. The accused as Commander in Chief, Fourth Fleet, with his headquarters at Truk received the Emperor's orders and did stop fighting. He was also ordered to take orders from the United States commanders as to when he as Commander in Chief of the Fourth Fleet was to formally surrender the Japanese naval forces on Truk to an American commander. However, for all practical purposes and certainly for the purposes of this trial all hostilities ceased on August 15, 1945. From that date on Admiral HARA was subject to the orders of the United States commanders. This is such a well known fact that it seems it should be unnecessary to argue the point.

Only one point more. Although hostilities ceased on August 15, 1945 out here in the Pacific on this side of the International Date Line there has as yet been no formal declaration of peace between the United States and Japan. Technically therefore we are still at war with Japan. However, the hostilities ceased on August 15, 1945 and there has been no actual war since that date.

We object to the commission taking judicial notice of the Instrument of Surrender alleged to have been signed September 2, 1945. If the commission is to take judicial notice of any Surrender Document we ask that the defense be furnished with an authentic copy of such Surrender Document so that we can at least be apprised of what there is in evidence in this trial. To do otherwise is most prejudicial to the substantive rights of the accused.

Respectfully,

Martin E. Carlson
MARTIN E. CARLSON.

辯護側冒頭陳述

辯護人 佐 藤 敦

被告厚忠一、彼が第四陸隊司令長官であった期間、第一、
彼、指揮下、人員及び彼、抑判監督下、人々、行部、抑判入へ、彼、職責、違
法の、無視、遂行セ、第、一、係屬及占領地、住民、保護入へ、彼
、職責、違法、無視、遂行セ、彼、部下、係屬及市民住民、酷使
虐待及殺害ヲ新テ、依リ、之ヲ戦争状況及慣習、違反、行ハ、テ
訴追セラル。

茲ニ、辯護側、証據ヲ提出ス、一、当リ、主要ト、是ニ、就テ若干、予備的
説明ヲ行ハ、テ、出ス。

一、部下、行部監督及係屬、市民住民、保護ニ、関ス、被告、職責ニ、関シ

(1) 被告厚一、上述、二、職責ヲ、是、二、テ、行ハ、テ、訴追セラル、行ハ、
テ、之ニ、関ス、被告、職責、範圍ヲ、明確ニ、ス、必要ナル
茲ニ、特ニ、指摘シ、テ、出ス。

被告厚一、第四陸隊司令長官ニ、就任シ、同、二、テ、新ニ、指揮ト、シ、司令部
カ、設置セ、又、陸軍、高級、司令部、カ、基、下ニ、編入セ、ル、為ニ、被告厚一、管
轄ニ、成、成、且、陸軍、指揮、系統、及、指揮、系統、方、前、例、無キ、複雑
奇、妙、ト、シ、テ、出、ス、此、状況、判、明、推、完全ニ、握、リ、テ、居、ル、米
機、部隊、取、組、成、常、時、的、存在ニ、依、リ、更ニ、混、雜ト、シ、テ、居、ル、ト

被告厚一、訴追セラル、事件、中ニ、日、陸軍、人、カ、主、役ヲ、演、ジ、事
件、カ、四、川、谷、セ、ル、居、ル、被告厚一、全、一、指揮、系統ニ、属、シ、居、ル、且、テ
彼、到、レ、先、任、テ、陸軍、指揮、官、カ、彼、ト、全、一、管、理、セ、居、ル、ト
シ、ル。

此、指揮、系統、及、指揮、系統、明確ニ、シ、テ、出、ス、被告、訴追セラル、事件、中、罪
狀、項、目、一、(4)(b)(c)(d)、事件、主、役ヲ、演、ジ、者、行部監督ニ、関シ、被告
厚一、責任、カ、何、カ、否、カ、ヲ、解、明、セ、ル、カ、出、来、テ、居、ル、ト

是等=崗之、檢事、証人=依、既=証言、部分=元、辯護、則
、日本政計、提出、資料、證據=提出=コト思フ

(2) 一般的=云、軍艦區域、捕、又、收容、俘虜及占領地、住民
ヲ保護、外、崗之第四艦隊司令長官、部下中、直接、相當者ヲ通シ、或
程度、職責ヲ持、后ヲハ之ヲ否定、シ、然、日本、委任統治領下、土人
=崗之、第四艦隊司令長官、任務ト全然無關係、トテ、被告原、
訴追、此、居、事、中、マ、ヤ、群島、土人=崗之、事件、カ、含、メ、テ、居、ル、元、來
日本委任統治領南洋群島、司法、及、行政=大東亞大臣、管轄=屬、ニ、基、キ、下、
南洋庁長官、カ、置、カ、レ、之、カ、相當、シ、居、ル、イ、ハ、所、カ、1944年3月乃至9月、間、
=戰況、及、各群島、間、交通、通信、杜絶=依、日本政計、南洋群島、行政、
、各島、所在、先、任、軍隊、指揮官、指揮、ヲ、受、テ、得、=旨、決、定、ニ、南洋庁長官、各
島、部下、職責=甚、旨、命令、シ、イ、ハ、然、民政=崗之、第四艦隊司令長官
=依然、ト、シ、何、事、關係、ガ、ナ、カ、ツ、イ、ハ、

是等、事情=決、然、當時、南洋庁長官、Deposition 及 証人、証言=依、
辨=コト思フ

(3) 日本委任統治南洋群島=日本陸軍、カ、大量、進、出、シ、第三十一軍、カ、設置、サ、レ、
直、全、地、域、に、治安、維持、陸軍、担、任、ト、決、メ、テ、第四艦隊司令長官、何
等、之、關係、ガ、無、カ、ツ、イ、ハ、軍、紀、規則、(一)(二)(三)(四)、事件、陸軍、人
カ、主、役、ヲ、演、ジ、理由、カ、之、依、テ、明、瞭、=了解、ル、イ、ハ、
事件=崗之、証人、証言、及、南洋庁、トラツ、支、庁長、Deposition=依、立、証、シ、

(4) 艦隊司令長官、一般的、任務、及、所、轄、長、國際、指揮、守=崗之、任務=決、
然、日本海軍、關係、法規、證據=提出=コト思フ

(5) 被告原、國際、法規、及、慣習=違反、シ、ト、シ、訴、追、サ、レ、居、ル、國際、法規=
、部下、人員、行動、監督、ヲ、怠、ル、外、カ、犯罪、テ、ア、ル、ト、云、フ、外、規定、シ、居、ル、
從、テ、日本海軍=於、職務、怠、慢、刑、事、責任、カ、如何、規定、サ、レ、居、ル、カ、被告原、
、刑、事、責任、判斷、上、=必要、事、項、イ、ハ、大、カ、否、之、關係、日本海軍

法規即海軍刑法及懲罰令ヲ証拠ニ提出スルヲ思フ

二、被告、在任中、遠隔地、部下行動監督、所執リ得ル具体的手段

被告原カ第四部隊司令長官在任中、彼、管轄区域ニ於テ速ク離ル島々ニ在ル部下、行動ヲ監督抑制スル為、實際問題トシテ果シテ如何ニ手段カ執リ得ルヲ云フ外ニ、被告、職務怠慢、刑事責任ヲ判斷スル上ニ極メテ重要トモテイル

之ニ関シ、當時、戦況、地理的環境 (a) 及トラツ島ト各離島間、交通、通信ノ重要ト要素トイル (b)、其、内 (a) = 請求 Judicial Notice、認知ヲ要求スルモノ、(b) = 請求 既ニ檢事側証人ニ依ツテ一部ヲ立証セシガ尚辯護側証人ニ依ツテ更ニ明確ニシタト思フ、特ニ1944年8月15日戦斗停止及降伏ニ関シ第四部隊司令部付ハル、オーパル島所在部隊ニ對シ如何ニ指導ヲナシカニ請求 明ニシタト思フ

三、被告原カ事件、生起ヲ知テ居ルカ否カニ関シ

Knowledge又ニ故意ニ刑事的職務怠慢、訴訟又ニ立証、重要ト要素計イ旨、檢事、其、冒頭陳述ニ於テ述べカ之ニ對シ、果漏ガレハテリトモ、其、論駁、最終弁論、機会ニ讓ルナトモ、ソレヲ茲ニ、

Knowledgeニ職務怠慢、刑事責任ヲ尚責スルニ當ツテ、依然重要要素ヲテ陳述スルニ止メテ置ク

ソレヲ辯護側段階ニ於テ被告原カ問題セル居ル事件ニ就テ、罪狀項目第一 (c) 第四海軍病院事件ヲ事件後相當經過シテカラ知ツ以外ニ、全ク知ラセカツト云フ事實ヲ一層明瞭ニシタト思フ

第四海軍病院事件ニ就テ、当日係屬ニ名カ海軍病院ニ到着シ時、被告原カ全所ニ居ヌトカラ、彼カ本事件、生起スルヲ其、時、承知シタハテハテカト云フ疑問ヲ持タル、此、果ニ関シ、被告原カ事件、生起ヲ知ツト云フ証拠、檢事側証人岩波浩ニ依ツテ何等辨証ケレナカハテイルカ弁護側、當日、岩波、被告原ト一緒ニブランチテ会話ヲシテ種子軍醫大佐、Depositionヲ証拠ニ提出シテ被告原カ事件、生

スルヲ知ラサカワタテ一層明白ニシト思フ

四、俘虜取扱ニ関スル日本海軍、方針及海軍人員、気風

日本海軍中央当局ニ、俘虜ヲ前線、現地ニ送附シテ差支ナシト云フ
方針ガマツタ又第四舰队、部下人員、尚ニ、被害厚、状況前カヲ斷ル
気風ガマツタ云フコトガ検事ニ依リテ提出スル。

辯護側ハ日本海軍ニ於テ、俘虜取扱規則ガ制定サレテ居リ又
海軍大臣ハテ行ハル戦時国際法規則要ガ各部隊ニ配布サレ平素ハ
海軍人員ニ周知セシム方ガ執ラレテ居タトテ証拠ニ提出シコト思フ

又戦時中是等ニ記載サレ日本海軍中央当局、俘虜取扱方針ガ
毫モ変化シカツタ。又被害厚ガ第四舰队司令長官ニ着任スル以前ニトテ
ツク所在、各部隊、指揮官ニ、俘虜ヲ速ニ内地ニ送還スルニ関シ中央
職員ニ依リテ明瞭ニ傳達サレテ事實、ルニ、Deposition 及 証人、証
言ニ依リテ明ニシコト思フ

被害厚、第四舰队司令長官着任前ニ、其、部下部隊ニ俘虜ニ関
スル非行ガ幾件カ行ハレテ、之ヲ知ラサカ限リ被害、知識トハナシ
此、果ニ、関シ、然レ、検事側証人ニ依リテ証言セマツカ更ニ明瞭ニ
度ト思フ

五、起訴事實ニ関スル被害、特色ヲ述ベタル人格証言

被害厚ハ海軍大臣ハ海軍少将時代ニ國際關係ニ関スル陸海
軍、紛争處理及占領地住民保護ニ関スルニ、事件ヲ正義ニ基キ美事
ニ之ヲ處理シタト云フコト日本海軍ニ及ビ聲ヲ傳ヘラレテ居ル又彼、極
テ人情ニ厚ク病院ニ看護ヲ見舞フコトガ後、習慣ニマツタコト知ラレテ居ル

是等、事柄ニ関スル彼、人格ニ對シ一般的评价ハ本起訴事
實ニ関シ被害、有罪無罪ヲ判斷スル有力ナル資料ナレバ是等ニ関
スル証拠ヲ最後、段階ニ提出シコト思フ。

(終)

(4)

DD(4)

OPENING STATEMENT FOR THE DEFENSE IN THE CASE OF
VICE ADMIRAL HARA, CHUICHI, C-IN-C, FOURTH FLEET.

Delivered by Sanagi, Sadamu,
Counsel for the accused.

The accused Hara, Chuichi is being tried for violation of the law and customs of war in that during his tour of duty as Commander in Chief of the Fourth Fleet, he (1) unlawfully disregarded and failed to discharge his duty to control the operations of members of his command and persons subject to his control and supervision, and (2) unlawfully disregarded and failed to discharge his duty to protect prisoners of war and native residents of occupied territories, by permitting his subordinates to abuse, inhumanely treat, and kill them.

Prior to the presentation of the case for the defense, I will make a brief preliminary explanation of the main points relative to the evidence which the defense will introduce.

I. Concerning the duty of the accused to supervise the operations of his subordinates and his duty to protect prisoners of war and the civilian populace.

1. As the accused is charged with having neglected the above two duties, I find it necessary to clarify the scope of such duties. I wish to note specially the following points:

That, as soon after the accused, Hara, was appointed Commander-in-Chief of the Fourth Fleet, a superior naval headquarters was newly established senior to him. A superior army headquarters was included in this senior headquarters. Thus the organization and chain of command between army and navy units within the area of jurisdiction of the accused Hara, became so highly complicated as to be without precedent. This condition was further complicated by the ever present American military forces in the form of task forces and aircraft, which completely controlled the sea.

That, although Army personnel played the leading role in four of the incidents with which the accused, Hara, is being charged, there was a Commanding General, senior in rank to him, who was subordinate to the same superior naval headquarters and within the same area of jurisdiction as the accused, Hara.

Unless this organization and chain of command is clarified it would not be possible to understand whether the accused, Hara, had any responsibility to control the operations of the principal offenders in the incidents of paragraphs (f), (i), (j) and (k) of Specification 1 of the charge preferred against the accused.

Regarding this point, although testimony was given in part by witnesses for the prosecution, the defense will introduce into evidence material made available by the Japanese Government.

2. Speaking generally, the defense is not attempting to deny that a certain degree of responsibility was incumbent on the Commander in Chief of the Fourth Fleet to protect prisoners of war captured in his area of jurisdiction, and native residents of occupied areas; this through the directly responsible officers among his subordinates. This duty was incumbent on subordinate commanding officers who by Navy Regulations and by assumption of office became responsible for prisoners of war and the safety of civilians residing in the areas over which they exercised command. The command responsibility of these officers is clear and we will show by document and by witness who was primarily and fully responsible.

In matters concerning the natives of the Japanese Mandated Territory, such matters are in no way related to the duties of the Commander in Chief of the Fourth Fleet. Among the incidents charged against the accused, Hara, are those relating to Marshall natives. The judicial and administrative authorities over the Japanese Mandated Territory of the South Seas were under the jurisdiction of the Minister for Greater East Asia, and under him, the Governor of the South Sea Islands exercised these authorities.

Between March and July, 1944, owing to the war situation and the

severance of transportation and communication between the various far-lying islands, the Japanese Government decided in effect, that the administration of the islands in the South Seas would fall under the command of the senior commanding officer on each island. The Governor of the South Sea Islands Government Office issued orders to this effect to all his subordinates on the various islands. Notwithstanding, the Commander in Chief of the Fourth Fleet still had nothing to do whatsoever with matters of civil administration.

The defense will clarify this subject through the deposition of the then Governor of the South Seas Islands and through the testimony of witnesses.

3. After the Japanese Army began to move into the Japanese Mandated Territory of the South Seas in large numbers, and immediately after the formation of the 31st Army, it was decided that the Army take over the maintenance of peace and security in that area, and the Commander in Chief of the Fourth Fleet had no connection with this problem of maintenance of peace and security of civilians.

The reason for the main role being played by army personnel in the incidents of paragraphs (f), (i), (j) and (k) of Specification 1 may be clearly understood by this circumstance.

We will prove this through the testimony of witnesses and the depositions of the District Governor of the South Seas Government Office on Truk.

4. Concerning the general duties of a Commander in Chief of a Fleet, and the duty of the cognizant commanding officers to observe international law, we will introduce into evidence relevant and the then effective regulations of the Japanese Navy.

5. The accused Vice Admiral Hara is charged with violation of the law and customs of war. International Law nowhere provides that neglect to supervise the operations of subordinates constitutes a crime. Consequently, what regulations there were in the Japanese Navy relative to criminal responsibility for neglect of duty, becomes an important consideration in deciding on the criminal responsibility of the accused.

In connection with this defense counsel will introduce into evidence Japanese Naval Regulations, namely the Naval Criminal Code and the Naval Disciplinary Code.

II. Concrete measures which could have been taken regarding supervision of operations of subordinates in outlying places, during the tour of duty of the accused.

It is of great importance in judging on the criminal responsibility of the neglect of duty of the accused, to know what measures could in actual fact have been taken by the accused during his tour of duty as Commander in Chief of the Fourth Fleet to control and supervise the operations of his subordinates on the various far removed islands within his area of jurisdiction.

With regard to this, the following would constitute important elements: (a) The then existing war situation, geographical environment, (b) the transportation and communication existing between Truk and the various islands. Request for judicial notice may be made for (a). Part of (b) was proved by witnesses for the prosecution. However to make it clear beyond any doubt witnesses for the defense will show what direction or instructions the Headquarters of the Fourth Fleet actually did pass on to units on Ocean and Nauru/^{Islands} after August 15, 1945, concerning cessation of hostilities and surrender.

III. Concerning knowledge or ignorance of the occurrence of the alleged incidents on the part of the accused Hara.

The judge advocate in his opening argument stated in effect that knowledge ^{or} of wilfulness does not constitute an important element of proof in a charge of criminal neglect of duty. However we submit a different theory. Leaving the reply to the judge advocate to be given in the closing argument, we merely wish to state here that in our submission, and according to present law, knowledge still constitutes an essential element of proof in a charge alleging criminal responsibility for neglect of duty.

We will, during the presentation of our case show in yet clearer light, the fact that outside of the incident of paragraph (e) of Specifi-

cation 1, the incident at the 4th Naval Hospital of which he came to know after a considerable lapse of time, the accused Hara had no knowledge whatsoever of any of the incidents with which he is charged.

Concerning the incident at the 4th Naval Hospital, the doubt may be raised that as the accused Vice Admiral Hara was at the Naval Hospital when the two prisoners of war arrived, he may have known of the inception of the incident at that time. In regard to this point, it was in no way proved by the Prosecution witness Iwanami, Hiroshi that the accused Hara knew of the inception of the incident at that time. The defense will introduce into evidence a deposition by Surgeon Captain Taneda, the third man who was in conversation with Iwanami and the accused Hara on the verandah on that day, and make it even still more clear that the accused did not know of the inception of the incident or anything concerning the incident.

IV. The policy of the Japanese Navy regarding prisoners of war, and the disposition of Japanese Naval personnel.

The prosecution stated that the Central Naval Authorities followed a policy which condoned the execution of prisoners of war locally, at the front lines, and that there was this tendency among subordinates of the Fourth Fleet even prior to the time the accused Hara assumed office.

The defense will prove that in the Japanese Navy, Regulations for the Treatment of Prisoners of War were established, and that the Secretariat of the Navy Minister had issued and distributed to all units the "Manual of Wartime International Law", and that the Japanese Navy took measures to have naval personnel fully informed of these matters.

The defense will prove through depositions and through the testimony of witnesses that the policy of treatment of prisoners of war of the Central Authorities of the Japanese Navy set forth in these books in no way changed during war time, that a little prior to the accused Hara's taking command of the Fourth Fleet, the instructions were clearly relayed by officers from the Central Authorities in Tokyo to all unit commanders on Truk that prisoners of war be sent to the Japanese homeland at the earliest possible moment.

Even if there had been some atrocities visited upon prisoners of war by subordinate units of the Fourth Fleet prior to the time the accused became Commander in Chief of the Fourth Fleet, unless the accused were informed of the matter, such matter cannot constitute knowledge on the part of the accused.

There has been some testimony on offenses from witnesses for the prosecution but the defense will clarify this still further.

V. Character testimony concerning the general reputation of the accused in the community in which he is known and which relate to those traits which are brought into question by the charges under which he is being tried.

Vice Admiral Hara won reputation and honor in the Japanese Navy for his just and smooth settlement of two incidents, one related to the disposal of a dispute between the Japanese Army and Navy involving international relations, and the other related to protection of civilian inhabitants of occupied territory, one while he was a Captain and the other after he became a Rear Admiral.

We will show that he was a deeply sympathetic man, and that he was known for his custom of visiting the patients at hospitals.

As the general reputation of the accused's character in these matters constitute important data in arriving at the accused's verdict, we will introduce such evidence in the last phase of our presentation of the case in accordance with the rules of evidence set forth in Section 164 of Naval Courts and Boards.

Respectfully

Sadamu Sanagi
Sanagi, Sadamu.

Counsel for the accused.

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

E. F. Clark
E. F. CLARK,
Lieutenant, U. S. Navy,
Interpreter.

陳述書

予、既、自命自身、為本忠臣、之、
証言也、之、故、予、自身、陳述、之、
トス

軍法、本、自、諸君、予、之、忠、臣、者、力、
予、軍、田、地、隊、長、官、ト、之、直、面、セ、シ、各、
種、問、題、之、理、解、セ、シ、ト、之、望、ム、ト、リ、
予、之、諸、君、之、正、直、且、率、直、陳、述、セ、シ、ト、
努、力、セ、リ、然、レ、モ、予、之、充、分、シ、ク、物、に、得、
ザ、リ、シ、心、ハ、其、其、海、軍、慣、習、ト、國、
語、異、ニ、國、難、ヲ、シ、タ、ル、ハ、然、レ、モ、貴、大、
官、等、ノ、予、之、勤、勞、其、間、中、最、モ、
困、難、ト、作、戦、状、況、下、ニ、シ、テ、之、故、ト、シ、
予、之、責、任、を、免、シ、ト、ス、ル、ヲ、望、ム、ト、リ、
之、解、セ、シ、ト、之、望、ム、

昭和十九年九月、予、突然米俘虜、
 虐待等ヲ感知セリ、予、力ニ盡カシキ
 過失ヲ予、麾下ニ犯サセ、トニ
 付、懲罰ヲ受ケ、然レモ因ニ斯、
 如キ過失、犯サセ、トニ、問ハレ、解、
 釋セラル、言ハレタリ

予、今次戦争中、十年前支那沿岸
 花、海、勤務中、米海軍ト
 接シ、機會ヲ得、予、職務上、勿
 論、何人トシテ、米海軍士官ニ面談
 シ、常ニ彼等、對、面談ト、女、愛、
 念、有セリ

又、今次戦争中、予、吾等、戦場ニ
 米側ト、相接スル、機會ヲ得、米海軍、
 精神ヲ、知、ラ、得、タ、事、大、敬、意ヲ
 表、ス、タリ

特昭和三十年九月二日予、雙條伴
 降伏後、一、中將、予、優遇、
 予、ト、ミ、島、米、海軍、甚、心、急、設
 ヲ、托、セリ、予、ハ、直ニ、之、ヲ、快、諾、シ、施、設、部
 隊、ヲ、基、幹、ト、ス、大、作、業、兼、隊、ヲ、作、成、
 予、自、ラ、陳、頭、ニ、シ、テ、概、本、米、割、要
 望、ヲ、遂、行、
 予、ハ、四、十、年、海、軍、生、活、ニ、於、テ、職、責
 遂、行、ヲ、懷、古、セ、シ、欲、ス
 予、ハ、予、職、責、ヲ、常、ニ、完、全、ニ、遂、行
 セ、リ、ト、ハ、勿、論、思、考、セ、サ、レ、モ、予、信、條
 知、正、義、ハ、公、平、心、ヲ、無、愧、セ、ル、コ、ト、
 無、之、ト、確、信、ス、ル、モ、ナ、リ
 余、職、責、遂、行、ニ、當、リ、海、軍、軍、人
 ト、シ、テ、又、ハ、一、個、紳、士、ト、シ、テ、予、信、條、ヲ
 ハ、協、セ、シ、タ、ル、コ、ト、米、々、感、ホ、ラ、セ、タ、リ

予が自己に為し証人として証言せし力
如く予、部下の事件ヲ予ニ知らせし
如しセシガ當時状況ナキ

特ニナリナシ之等事件及坂本
宮田等軍国事件、如キ起訴
ニ依リテ知リ

然レトモ主張セシタカ如キ不法事
件ニ予、部下等知ル事実、漸
愧ニ對スル予ノ之等犠牲者並ニ
遺族ニ對シ哀心深甚ト遺憾、
意ヲ表ス

又余ハ余カ義務ヲ完全ニ遂行セシ
ト、信念ニ燃エタシ將官タ、然レモ
不始カシ事件カ發生セシトニシテ
予自身ニ對シ失望感ニイアリ

言つて、書きたる余、何れも何
 りがかりに力に用ゐる、心境説明、
 充分機曾より（さうして）対し謝意を
 表す、貴道、裁断、仰ぐ
 敬白 既

昭和四年四月六日

徐忠一

Statement of HARA, Chuichi

Although I have taken the stand and testified in my own behalf, I would like to make the following personal declaration at this time.

Gentlemen of the commission, I hope you will understand the various problems which I faced as the Commander in Chief of the Fourth Fleet. I have attempted to relate my story frankly and honestly. However, I am afraid I may not have done so well as I might have because of the difference of customs between the American Navy and the Japanese Navy and because of the language difficulties. But I nevertheless hope that you will understand I did not in any manner try to evade my responsibility under the most difficult situation in which I found myself upon reporting and during my tour of duty.

In September 1944, I was taken completely by surprise when I heard about the mistreatment of American prisoners of war. I was stunned and discouraged to learn that such a grievous error had been made within my own command. I trust you will understand that the same mistake was not committed again.

About ten years before the Pacific War, I had an opportunity to come in contact with the United States Navy while I was at sea serving off the coast of China. Not only officially, but also privately, I met and came to know United States Naval officers and had sincere respect and friendship for them.

During the Pacific War, I was confronted by American forces for about three years. I had opportunity in battle to become further acquainted with the spirit of the United States Navy for which I had the greatest respect.

My opinion in this regard was enhanced after my unconditional surrender on September 2, 1945 to Vice Admiral Murray who treated me very kindly and asked me to assist with the construction of the American Naval Base on Truk. I was very glad to assist in that project. I at once organized a large working party constituted mainly from personnel of the construction corps. I, myself, took the initiative in the work on the spot, and fulfilled almost completely the request of the American Navy.

I would like to review the forty years of my naval career in connection with carrying out of my duty.

I perhaps have not always fully performed my duty. I am certain, however, that I have never violated my strict code of justice and fair play. I have never compromised my principles as a naval officer and gentleman in carrying out my duties.


As I testified from the witness stand the circumstances were such that my subordinates kept from me knowledge of these incidents. Such acts as those committed on Nauru and Ocean Islands and the incident of Kempeitai Sergeant Sakamoto, I first learned when I read the charge and specifications.

I sincerely deplore the fact that alleged illegal incidents could have been carried out by my subordinates. I am quite naturally sincerely sorry for the victims of these incidents and their bereaved families. I am also deeply disappointed in myself that these incidents could have happened in spite of the fact that I prided myself upon being an admiral with faith that I could meet every demand of duty and responsibility.

I can say no more. I wish to sincerely express my gratitude for your granting me an opportunity to explain my feelings as to what I did and what I failed to do. I leave my fate to your judgment.

/s/ Japanese characters

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


EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

0056

JUDGE ADVOCATE'S OPENING ARGUMENT

Delivered by:

Lieutenant David Bolton, USN,
Judge Advocate.

As the commission is well aware, this has been a long and in many respects a tedious trial. The nature of the charge and specifications, and the numerous incidents involved has resulted in a very exhaustive presentation of pertinent detail by both the prosecution and the defense. It is not my intention to further burden this commission by an unnecessarily detailed analysis of this evidence. My opening argument will be short and merely touch upon the highlights of the evidence presented. However if defense arguments warrant further discussion of the evidence, I will in my closing argument endeavor to present a terse analysis of the law and of the significant evidence presented by both the prosecution and the defense.

Some of the evidence has been essentially uncontroversial, some of it has been ambiguous, and some has been conflicting and even directly contradictory. The ultimate analysis and evaluation of this evidence is a function of the commission. The commission must determine whether in the light of all the evidence, the prosecution has proved beyond a reasonable doubt, defined and illustrated in Sections 158 and 159 of Naval Courts and Boards, that the accused is guilty as charged.

In his opening statement the judge advocate presented a detailed analysis of the pertinent law, and the evidence which he planned to educe in order to establish the guilt of the accused. With the exception of one very minor item, all of this planned evidence was presented and is before the commission for their evaluation. The insignificant item to which I refer, and as to which the prosecution was unable to present substantial direct evidence, was the inclusion in the training of Japanese military personnel of the idea that to become a prisoner of war was to lose all honor and rights as a human being. Circumstantially however the existence of this training is evidenced by the fact that prisoners of war captured by the armed forces under the accused, were subjected to brutal and inhuman treatment by the subordinates of the accused. The commission is requested to reexamine the opening statement of the prosecution, in the light of the evidence produced.

Despite astute efforts by the defense the essential facts stand out clearly. They unequivocally establish the guilt of the accused as outlined in the prosecution's opening statement. No significant fact presented by the prosecution has been materially weakened or successfully controverted.

The essence of the defense strategy has been to portray the accused Hora in the role of the three innocent monkeys - Hear No Evil - See No Evil - Speak No Evil. Two fundamental factors however destroy the efficacy of this defense. The first factor is that civilized society, and the laws and customs of war, have established an affirmative standard of conduct, a standard of conduct above and beyond that of the anthropoid, and the failure to hear, see, or speak evil does not absolve the accused of his responsibilities under international law to take affirmative steps to control his subordinates and to protect prisoners of war, etc. The second factor which destroys the efforts of the accused to escape responsibility for his failure to control his subordinates and to protect prisoners of war, is the fact that the accused, as demonstrated by his conduct and testimony during the course of this trial, is a man of considerable

intelligence and astuteness - and that despite the efforts of the accused to plead ignorance of the mistreatment and killing of prisoners of war within the area of command, despite his efforts to bolster this plea with minute description of the war conditions, and the difficulties of administering his command, the conclusion is inescapable that this alert and astute accused knew that prisoners of war were being mistreated and killed by his subordinates, particularly that he knew of the incidents that occurred on Truk. If the accused did not know of the details of the incidents, or did not know of certain of the incidents, it is apparent from the personality and ability of the accused that such ignorance was the result of a willing and intentional closing of his eyes and ears to the unconcealed, publicly performed, widely known and commonly rumored incidents of mistreatment and killing of prisoners of war. And, even if such ignorance of these incidents did exist, and the ignorance of the accused was not intentional, the law does not absolve the accused of his guilt, for neither knowledge or wilfulness is an essential element of the crime with which the accused is charged.

To understand the crime, to understand the guilt of the accused, we must understand the purpose, the function, and the essence of the law which the accused is charged with violating. The protection of prisoners of war, etc. is a responsibility which the law and customs of war place upon the commander of armed forces. It is a responsibility which places upon the accused fundamental affirmative duties with regard to the protection of prisoners of war. These are affirmative duties from which the accused cannot escape by merely claiming that proper regulations had been promulgated by the Japanese Navy, and that he was too busy to be concerned with whether or not they were being carried out.

The law and customs of war places the affirmative duty on the commander of armed forces to see that these obligations, these very obligations which the accused contends were placed in the Japanese Naval Regulations, are carried out by his subordinates. The law and customs of war places this responsibility upon the accused as the commander of these armed forces, as well as placing similar obligations upon the subordinates themselves.

The very conditions of intense military efforts and difficulties in control of subordinates engendered by prevailing military conditions, from which the accused seeks to derive justification for, or escape from, his failure to take affirmative steps for the protection of prisoners of war, are the very conditions which the law and customs of war presuppose as the background within which the commander of military forces must take definite and affirmative action, and must, to quote the language of the Supreme Court of the United States "take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war."

It is in these very conditions of tense military situations and difficulties of control that the laws and customs of war are called into play, and the commander of armed forces is called upon, and is responsible to take measures to control the forces under his command. The language of the Supreme Court in the Yamashita case is clear and unequivocal in this regard, and is worthy of repetition. The Supreme Court said "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection."

The failure of the accused to concern himself with the problem of protection of prisoners of war from mistreatment, his failure to take any substantial action to protect or order the protection of prisoners of war, etc. in and of itself constitutes a violation of the law and customs of war. It constitutes the disregard and failure to discharge his duty which is set forth clearly in the specifications and amplified in the opening statement of the judge advocate. The additional factors which are presented in the evidence before the commission go beyond this and establish that the accused should have known, and in fact knew of the incidents of mistreatment and killing of prisoners of war which occurred on Truk. His failure to take action to investigate these incidents, and his failure to punish his subordinates who directly ordered and participated in these incidents constituted a condonation of the crimes which they committed, and an aggravation of the offense with which he is charged.

Respectfully,

David Bolton

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