

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

KOBAYASHI, MASASHI

(13 MAY 1948)

(VOL. I)

(165564)

0002

GENERAL COURT MARTIAL DATA SHEET


KOIBAYAS (Last Name) MASASHI (First Name) (Middle Initial) - THENKREADM. 1LTJN (Rating) (Service)
 A (Review Panel No.) (Reviewing Officer) 165564 (Docket No.)

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

0003

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

2/7/49
(Date)


(Signature of reviewing officer)

0004

Cincpacflt File

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

P13-10

Serial 4885

27 DEC 1948

FIRST ENDORSEMENT on
ComMarianas ltr FF12/
P13-10(3) 02-JDM-fsk
ser 16872 dtd 12 Nov 48.



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

Subject: KOBAYASHI, Masashi, former vice admiral, IJN -
petition for clemency.

1. Forwarded.

J. L. McCREA

JOHN L. McCREA,
Deputy Cincpacflt.

Copy to: (1st end. only)
ComMarianas

0005

FF12/P13-10(3)
02-JDM-fsk
Serial:

OM 807
UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

16872

NOV 18 3 46 PM 1948
12 NOV 1948

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

Subject: KOBAYASHI, Masashi, former vice admiral, IJN -
petition for clemency.

Enclosure: (A) Affidavit from George YAMAOKA, dated 9 August 1948.

1. A military commission convened by the Commander Marianas Area on Guam tried the subject named Japanese for violation of the law and customs of war during the period he was Commander in Chief of the Fourth Fleet, Imperial Japanese Navy. KOBAYASHI was sentenced to ten (10) years confinement. The record in this case has been forwarded to the Commander in Chief Pacific and U.S. Pacific Fleet, the reviewing authority, and will, in accordance with the provisions of Appendix D-14 of Naval Courts and Boards, be referred to the Secretary of the Navy.

2. Enclosure (A) was received by the Commander Naval Forces, Marianas subsequent to trial of KOBAYASHI and is forwarded for such action as may be considered appropriate.

C. A. Powell
C. A. POWELL

0006

----- X
: In the matter of

VICE ADMIRAL MASASHI KOBAYASHI

: AFFIDAVIT
:
----- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

GEORGE YAMAOKA, being duly sworn, deposes and says that he is an American born citizen of the United States and a member of the Bar of New York State and the Supreme Court of the United States, and a member of the firm, Hunt, Hill & Betts, 120 Broadway, New York 5, N. Y.

THAT about the years, 1926 and 1927, while he was a student at Georgetown University in Washington, D. C., he met the above named accused, who was then Assistant Naval Attache of the Japanese Embassy in Washington, D. C. That he saw him at social functions during those years and probably during the early part of 1930, when he later became Naval Attache.

- THAT he does not recall at any time any unfavorable action by the accused, but instead that the accused conducted himself at all such times in correct and gentlemanly manner. In view of his knowledge and association with the United States, it would appear that the accused would be anxious to observe the laws and customs of war and fair play, particularly as the accused must have had many friends and acquaintances in this country.

Sworn to before me this 9th
day of August, 1948.

George S. Bernhard

George Yamaoka

GEORGE S. BERNHARD
Attorney and Counsellor-at-Law
120 Broadway, New York 5, N. Y.
Residing in Orange County

Certified to be
N.Y. Co. Clk. No. 133, Reg. No. A1379-34
Kings Co. Clk. No. 133, Reg. No. 833-3-9
Queens Co. Clk. No. 133, Reg. No. 133-3-9
Commission Expires March 30, 1949

0007

Cincpacflt File

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

F13-10

Serial 4885

27 DEC 1948

FIRST ENDORSEMENT on
ComMarianas ltr FF12/
F13-10(3) 02-JMM-fak
ser 16872 dtd 12 Nov 48.

From: Commander in Chief U. S. Pacific Fleet.
To : Secretary of the Navy (Office of the Judge
Advocate General).
Subject: HONAYASHI, Masachi, former vice admiral, LJE -
petition for clemency.
1. Forwarded.

JOHN L. McCREA,
Deputy Cincpacflt.

Copy to: (1st end. only)
ComMarianas

0008

FW12/P13-10(3)
02-JDM-fsk

16872

12 NOV 1948

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

Subject: KOBAYASHI, Masashi, former vice admiral, IJN -
petition for clemency.

Enclosure: (A) Affidavit from George YAMAOKA, dated 9 August 1948.

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2. Enclosure (A) was received by the Commander Naval Forces, Marianas subsequent to trial of KOBAYASHI and is forwarded for such action as may be considered appropriate.

C. A. POWNALL

0009

BEST COPY AVAILABLE

In reply refer to Initials
and No.

Op-222B/wj
Serial 682P22

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



From: Chief of Naval Operations.
To: Judge Advocate General.
Subject: Case of Masashi KOBAYASHI.
Enclosure: (A) File of proceedings in the case of Masashi KOBAYASHI.
1. Enclosure (A) is returned with contents noted.

W. G. Germershausen, Jr.
W. G. GERMERSHAUSEN, JR.
By Direction

RECEIVED
8 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
J.C.M. SECTION

00 10

BEST COPY AVAILABLE

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

CinCPacFlt File
A17

c/o Fleet Post Office,
San Francisco, California

Serial: 4842

20 DEC 1945

The proceedings, finding, and sentence as mitigated in the foregoing case of KOBAYASHI, Masashi, former vice admiral, IJN, and the action of the convening authority thereon are approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

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

0011

*file
ack
sw*

NAVY DEPARTMENT
Office of the Judge Advocate General

5 JUL 1949

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

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

Referred for information.



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

ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

JAG:I:LVC:lmh

OO-Kobayashi, Masashi/A17-10 OQ
(7-11-49) 165594

18 JUL 1949

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

Dan A. Kimball
DAN A. KIMBALL
Acting Secretary of the Navy.

FILED 22 JUL 1949

0013

OO-KOBAYASHI, Masashi/A17-10 OQ
(2-3-49) RGG:bem

zac

MEMORANDUM IN THE MILITARY COMMISSION CASE OF: KOBAYASHI, Masashi,
Former Vice Admiral,
Imperial Japanese Navy.

<u>Place Tried:</u>	<u>Date Tried:</u>	<u>Date Received:</u>
Guam, Marianas Is.	13 May 1948	29 December 1948

CHARGE:

I VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

PLEA:

NG
NG

FINDING:

G
Proved in part

(a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Captl, IJN.

NG

Proved

(b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.

NG

Proved

(c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.

NG

Proved

(d) Killing one POW, not named, on 15 Oct. 43, at Wake, by SAKAIBARA.

NG

Proved

(e) Torture and Abuse of 42 POWs including named LCDR, USNR, on Dublon Is., Truk, from 20 Nov 43 to 28 Nov 43, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.

NG

Not Proved

(f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 43 to 28 Dec. 43, by keeping them trussed without food or water for 12 hours;

NG

Proved

0014

OO-Kobayashi, Masashi/A17-10 OQ
(2-3-49) RGC:bam

denying them adequate medical care,
beatings, burnings, kickings at
Maleolap, Mille and Kwajalein.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 44, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, by IWANAMI, Hiroshi, surgeon Capt., IJN and NABETANI, Reijiro, surgeon Lt. also OKUYAMA, Tokikazu, surgeon cdr., IJN.	NG	Proved
(h) Killing two POWs, names unknown, on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okuyama, Tokikazu, surgeon comdr., IJN, and SAKAGAMI, Shinji, corpsman WO, IJN, and others unknown.	NG	Proved
(i) Killing of five POWs, names unknown, on 2 Feb. 44, on Mille, by beheading, by OISHI, Chisato, Col. IJA, NAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaaki, Capt. IJA, MOORI, Yashuo, 1st Lt. IJA, MOTOMURA, Harushi, ens. IJN, TANAKA, Yutaka, ens. IJN, and MANAKO, Tatsuichi, WO, IJN.	NG	Proved
(j) Killing of seven POWs, names unknown, on 17 Feb. 44, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt. IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHINUMA, Yoshiharu, ens., IJN.	NG	Proved
Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 43 to 23 Feb. 44, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:	NG	P in part
(a) Same as Spec. 1 (a) above	NG	Proved
(b) Same as Spec 1 (b) above	NG	Proved
(c) Same as Spec 1 (c) above	NG	Proved
(d) Same as Spec 1 (d) above	NG	Proved
(e) Same as Spec 1 (e) above	NG	Not proved
(f) Same as Spec 1 (f) above	NG	Proved
(g) Same as Spec 1 (g) above	NG	Proved
(h) Same as Spec 1 (h) above	NG	Proved
(i) Same as Spec 1 (i) above	NG	Proved
(j) Same as Spec 1 (j) above	NG	Proved

OO-Kobayashi, Masashi/A17-10 OQ

SENTENCE: To be confined for a period of ten (10) years.

C. A. ACTION: Proceedings, findings and sentence approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: Proceedings, findings and sentence as mitigated, approved.

FACTS: After having been kept in solitary confinement for two years charges were preferred and the accused brought to trial.

The accused was shown to have been commander in chief of the Fourth Fleet, Imperial Japanese Navy, continuously during the period stated in the specifications. This fact was shown by Exhibit 1, a copy of the military history of the accused. The accuracy of the history was sworn to by the accused at the behest of a commander, U.S.N. The prosecution then showed by Exhibit 2 the composition and area under the jurisdiction of the accused during the times in question. This chart showed that the accused and units named in the specifications, as well as the places under the jurisdiction of the accused as commander in chief,

proved the acts alleged in sub-paragraphs (c), (a) and (d) and 10 consisting of certified copy of extracts of the trial of Sakaibara, Shigematsu, RAdm, IJN, and HORIE, K, who were convicted of the murder of the persons described in the specifications.

Acts alleged in sub-paragraphs (g) and (h) were proved by extracts of the trial of IWANAMI, Hiroshi, surgeon captain, IJN, and SAKAGAMI, Shinji, IJN (Exhibit 7).

Acts alleged in sub-paragraph (i) were proved by extracts from the trial of the persons named in sub-para (i). (Exhibit 8) and by a confession of SATO Oishi, Col., IJA (Exhibit 11).

The acts alleged in sub-paragraph (j) were proved by extracts from the trial of the persons named in sub-paragraph (j) (Exhibit 9).

Exhibit 11 was a statement made by TANAKA, Masaharu (sub-para. 7) made several days before his execution, in which he indicates that he reported at a staff meeting that prisoners had been executed. The accused was not present at this meeting but some of his subordinate commanders and his staff were present. The meeting was held 17 February 1944.

Exhibit 13 was an extract of testimony of MIYAKI, Toshiro, WO, IJN, from the trial of KAWASAKI, Susumu. Testimony went to proof of sub-para.(c).

Exhibit 14 was an affidavit of one of the POWs named in sub-para. (b) to the proof of that sub-para, as did Exhibit 17, an affidavit of the accused, Exhibit 36, deposition of 2nd POW, and Exhibit 55, deposition of the accused.

Acts alleged in sub-para. (f) were proved by Exhibit 16, an affidavit of the accused in that sub-para.

The foregoing summary is not all-inclusive but has been listed to show as proof of the acts alleged in all the sub-paragraphs found proved.

Sub-para. (e) was found not proved. There are numerous other exhibits in the record which show that the acts alleged did, in fact, happen.

Also introduced were statements of the accused (Exhibits 22, 23, 24, and 25) which were given at the behest of a Commander, USN, and which were under oath. Exhibit 22 shows that the accused was shown the spot where the American Prisoners of War were executed on Kwajalein by one of his subordinate commanders. The execution referred to took place before he became commander in chief of the Fourth Fleet. This exhibit also showed that the accused knew there were POWs on Wake and that the local commander was disturbed by their presence in view of the impending invasion. Sub-para (c). The accused did not give any instructions on handling these POWs. Neither did he give any instructions to the Fourth Fleet as to handling POWs nor did he assign the job to any subordinate officers. When informed of the execution of the POWs at Wake (sub-para (c)) he did nothing, but did mention to a subordinate Admiral in the chain of command that the matter should be looked into. Exhibit 23 denies knowledge of the capture of the POWs named in sub-para (b), and details the inspection trips and other movements of the accused while he was commander in chief, Fourth Fleet. Exhibit 24 lists units and officers named in various sub-paras as units and officers under the command of the accused. It also states that there was not standing requirement that he be informed of the capture of POWs and that such matters normally came under the cognizance of one of his staff officers. He denied being told of the incidents mentioned in sub-para. (g) by the officers named therein who were known to him. He gave no specific orders regarding the treatment of one POW captured in Truk in Feb. 1944 when he received a report of the capture. Sub-paras (h) and (j). In Exhibit 25 the accused stated that all Japanese Navy officers receive instructions in international law during their course at the Naval Academy and that each ship and unit has a standard publication dealing with international law. There were no orders from higher authority dealing with POWs except instructions to ship them to Japan after interrogation. The accused did not issue any orders to his fleet along these lines.

The prosecution's theory was that the accused was charged with certain duties imposed by international law, principally the Fourth Hague Convention, and the accused's neglect of these duties ultimately resulted in the incidents alleged in the sub-paras. It is undisputed that the accused did not issue specific orders dealing with the treatment of prisoners of war. The defense theory was that the broad Navy Ministry Orders and the orders of the Combined Fleet, of which the Fourth Fleet was a component part, to the effect, the international law and treaties were to be observed by Japanese Forces, were sufficient to cover the situation. It was also defense theory that such matters as handling POWs would not normally be of primary concern to the Commander in Chief but would be handled by one of the staff. Also the defense showed that the accused was terrifically busy defending against American air raids, bombardments, etc. and that a matter such as handling POWs would not normally come to his attention during times of such stress. It is undisputed that the accused was not present at any execution. As a matter of fact when most of them occurred he was one thousand miles away from the scene. It is also undisputed that the accused was not the immediate commanding officer of any of the units whose officers conducted the executions, experiments, etc. Some of the incidents were conducted by enlisted personnel of the lowest ranks apparently without the knowledge of any of the officers. The accused did know that some prisoners had been executed in his area prior to the time he assumed command. He was informed after execution of the incidents which are the subject of sub-para. (c) and the evidence as to whether he was told of any other executions after execution is conflicting. There is no evidence that he was ever informed that prisoners were to be executed or otherwise mistreated prior to the event. The accused's command covered a geographical

OO-Kobayashi, Masashi/A17-10 OQ

area 2800 nautical miles east and west and 1600 nautical miles north and south. The incidents complained of occurred at widely divergent times and places as alleged in the specifications.

APPLICABLE LAW AND DISCUSSION: This case is strikingly similar to the Yamashita case (327 U.S. 1) in that the overall commander of a certain war area was tried and convicted for violation of the law and customs of war. As a matter of fact the specifications in this case were identical in language with parts of the charge in the Yamashita Case. The Yamashita case was considered by the commission in its ruling on the accused's plea to the jurisdiction and in its ruling on the accused's objection to the specifications i.e. to that part of his objection which went to the legal sufficiency of the specifications, the question of whether they stated offenses and whether they apprised the accused of the offenses stated. The opinion of the Supreme Court in the Yamashita cases has made discussion of these questions academic.

The accused also objected to the specifications on the ground that they contained a "duplication of accusations". Spec. 1 alleges that the accused did "unlawfully disregard and fail to discharge his duty * * * to control * * * the operations of members of his command and persons subject to his control and supervision, by permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows: * * *". The specification then lists sub-paragraphs (a) through (j) which are identical with sub-paragraphs (a) through (j) under the second specification.

Specification 2 alleges that the accused did " * * * unlawfully disregard and fail to discharge his duty * * * to take such measures as were within his power and appropriate in the circumstances to protect * * * American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war * * * in violation of the law and customs of war, as follows: * * *". (Underscoring in each spec. supplied.) It is obvious from even a casual reading of the two specifications in this case the one is a duplication of the other. Even the words which are supposed to describe the offensive acts of the accused are practically the same, i.e., "by permitting" and "in that he permitted". In addition both specifications allege the same neglect of duty and the same results flowing from the neglect of duty. It is impossible to say that these specifications were preferred to provide for the contingencies of proof since both are under the same charge (therefore no question of lack of knowledge before trial of the precise crime committed) and because the convening authority, who, if anyone at all, should know whether they were preferred to provide for contingencies, did not set aside either one. The findings on one of the specifications should be set aside, ~~except that part of the finding which was "not proved" as to sub-para. (a).~~ Cf. C.M.O. 3, 1948, 97; File OO-FURUKI, Hidesaku, 158819, approved 2 February 1948.

It is realized that the setting aside of one of the specifications in this case is not in accord with the case of ASANO (File OO-ASANO, Shimpei, 161779, approved 1 July 1948). In that case specifications 2 and 3 under Charge II and the sub-paragraphs under each specification were similar in language and nature to the two specifications in the instant case. The Asano case was passed as "straight legal". It is submitted that the holding in that case was in error for the reasons noted above. Since it is not a published case it need not be specifically overruled by an opinion holding contra.



OO-Kobayashi, Masashi/Al7-10 OQ

It will be noted that the accused in this case was held in solitary confinement for a period of more than two years before charges were delivered to him. He was, of course, without counsel during that period. His complaint of lack of a speedy trial must fall on deaf ears as well as his objections based on lack of due process. In re Yamashita (327 U.S. 1) holds, although with equivocation, that prisoners of war tried by American Military Commissions are not entitled to any of the Constitutional guarantees embodied in the Fifth Amendment.

Consequently, the fact that the accused spent more than two years in solitary confinement before charges were delivered, although a period much longer than that mentioned unfavorably in Time, 17 January 1949, p. 19, does not affect the "legality" of the proceedings. Neither does the fact that hearsay, opinion, secondary and tertiary evidence were freely admitted to the detriment of the accused affect the "legality" of the proceedings. Such deviations from the rules followed in trials of our own criminals are specifically sanctioned and provided for in the SCAP rules under which military commission cases are tried. It is submitted that no evidence could be improperly admitted under Rule 16 (a) of the SCAP Rules, which were made applicable to Navy military commission cases by JAG dispatch 062125 of March 1946, ^{which} reads in part as follows:

"The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man."

The other rules of evidence specifically enumerate the types of hearsay evidence, opinion evidence, ex parte statements and documents and secondary evidence which may be admitted. And the commission is not limited to those types enumerated. Under such rules, it is considered futile to consider whether any of the evidence admitted in the instant case over the equally futile objections of the accused was properly admitted under an objective standard of law. "A more complete abrogation of the customary safeguards relating to proof, whether in the usual rules of evidence or any reasonable substitute and whether for use in the trial of crime in the civil courts or military tribunals, hardly could have been made. So far as the admissibility and probative value of evidence was concerned, the directive made the commission a law unto itself. It acted accordingly." (Dissenting opinion of Mr. Justice Rutledge in In re Yamashita, supra.) In view of the scope of the SCAP rules, including those which do not relate to evidence, and because of the holding in the Yamashita case that Constitutional guarantees do not apply to Japanese tried by military commission, the undersigned is constrained to recommend with reluctance that the instant case be passed as "legal" subject to the recommendation to set aside the findings on one of the specifications.

CONCLUSION AND RECOMMENDATION: That an opinion be written setting aside the findings on specification 2, ~~except the finding of not proved as to sub para. (a).~~

"Legal" but no
"Trial" P.W.

I have read the foregoing and concur.

Under SCAP rules this case is legal
as noted above. Concur
J. Chester

R. G. Coyne
R. G. COYNE
Major, U.S.M.C.

L. V. GASTRO
Comdr., U.S.N.

CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, by IWANAMI, Hiroshi, surgeon Capt., IJN and NABETANI, Reijiro, surgeon Lt., also OKUYAMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okuyama, Tokikazu, surgeon cdr., IJN, and SAKAGAMI, Shinji, corpsman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Mille, by beheading, by OISHI, Chisato, Col, IJA, NAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaaki, Capt., IJA, MOORI, Yashuo, 1st Lt., IJA, MOTOMURA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and MANAKO, Tatsuichi, WO, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHINUMA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NG to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PF&S approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: PF&S as mitigated, approved.

REMARKS:

MILITARY COMMISSION REFERRAL * CASE NO. 165564		10 May 1949	bem
Name	Rank	Date Received	
KOBAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948	
Trial Held (Place)	Date of Trial		
Guam, Marianas Is.	13 May 1948		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIBARA.
- (e) Torture and Abuse of 42 POWs including named LCDR, USNR, on Dublon Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Maleolap, Mille and Kwajalein.

MILITARY COMMISSION REFERRAL • CASE NO. 165564		10 May 1949	ben
Name	Rank	Date Received	
KORAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948	
Trial Held (Place)		Date of Trial	
Guan, Marianas Is.		18 May 1948	

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HORIE, Kiroka, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIBARA.
- (e) Torture and Abuse of 42 POWs including named LOHR, USNR, on Dublon Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Maleolap, Nille and Kwajalein.



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CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, BY IWANAMI, Hiroshi, surgeon Capt., IJN and MARETANI, Reijiro, surgeon Lt., also OKUYAMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okayama, Tokikazu, surgeon cdr., IJN, and SAKAGAMI, Shinji, corpsman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Nille, by beheading, by OISHI, Chisato, Col, IJA, NAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaki, Capt., IJA, NOORI, Yashuo, 1st Lt., IJA, MOTOMURA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and MANAKO, Tatsuichi, WO, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHINUMA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NG to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PF&S approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CMCPAG ACTION: PF&S as mitigated, approved.

FINDINGS:



MILITARY COMMISSION REFERRAL • CASE NO. 165564		10 May 1949	ban
Name	Rank	Date Received	
KOBAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948	
Trial Held (Place)	Date of Trial		
Guam, Marianas Is.	15 May 1948		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIBARA.
- (e) Torture and Abuse of 42 POWs including named LGRE, USNR, on Dublin Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Malcolap, Mille and Kwajalein.

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CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, BY IWANAMI, Hiroshi, surgeon Capt., IJN and NABETANI, Reijiro, surgeon Lt., also OKUYAMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okuyama, Tokikazu, surgeon cdr., IJN, and SAKAGAMI, Shinji, corpsman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Mille, by beheading, by OISHI, Chisato, Col, IJA, HAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaki, Capt., IJA, MOORI, Yashuo, 1st Lt., IJA, MOTOMURA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and MANAKO, Tatsuichi, WO, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHINUMA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NO to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PF&S approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: PF&S as mitigated, approved.

FINDINGS:



MILITARY COMMISSION REFERRAL • CASE NO. 165864		10 May 1949	ben
Name	Rank	Date Received	
KOBAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948	
Trial Held (Place)	Date of Trial		
Guam, Marianas Is.	18 May 1948		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 95 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Seichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIBARA.
- (e) Torture and Abuse of 42 POWs including named LCDR, USNR, on Dublon Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Maleolap, Mille and Kwajalein.

0026

CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, by IWANAKI, Hiroshi, surgeon Capt., IJN and HABETANI, Reijiro, surgeon Lt., also OKUYAMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okuyama, Tokikazu, surgeon cdr., IJN, and SAWAGAMI, Shinji, corpman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Wille, by beheading, by OISHI, Onisato, Col, IJA, WAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaki, Capt., IJA, MOORI, Yashuo, 1st Lt., IJA, MOTOMURA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and MANAKO, Tatsuichi, O, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHIMURA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NG to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PF&S approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: PF&S as mitigated, approved.

REMARKS:

NAVY DEPARTMENT
Office of the Judge Advocate General

5 JUL 1949

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

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

Referred for information.

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

0028

MILITARY COMMISSION REFERRAL - CASE NO. 100004		10 May 1949	ban
Name	Rank	Date Received	
HORAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948	
Trial Held (Place)	Date of Trial		
Guam, Marianas Is.	15 May 1948		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIRA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIRA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HOMIE, Kiroku, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIRA.
- (e) Torture and Abuse of 42 POWs including named LCDR, USNR, on Dublon Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Malcolep, Mille and Kwajalein.

0029

CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, by IWANAMI, Hiroshi, surgeon Capt., IJN and HASETANI, Keihiro, surgeon Lt., also OKUTOMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okuyama, Tokikazu, surgeon cdr., IJN, and SAWAGAMI, Shinji, corpsman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Wille, by beheading, by OISHI, Oisato, Col, IJA, MAKAO, Otokiti, Major, IJA, TAKARADA, Chojiro, Major, IJA, FUETA, Kiyoshi, Lt., IJN, ABE, Masaki, Capt., IJA, MOORI, Yashuo, 1st Lt., IJA, MOTOHIRA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and HANAKO, Tatsuichi, O, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomoroku, Lt., IJN, and YOSHIMURA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NG to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PWAS approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: PWAS as mitigated, approved.

REMARKS:

MILITARY COMMISSION REFERRAL • CASE NO. 165864			10 May 1949	ben
Name	Rank	Date Received		
KORAYASHI, Masashi,	then a Vice Admiral, IJN	29 December 1948		
Trial Held (Place)		Date of Trial		
Guan, Marianas Is.		15 May 1948		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail 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 American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

- (a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Capt., IJN.
- (b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.
- (c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Seichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.
- (d) Killing one POW, not named, on 15 Oct. 1943, at Wake, by SAKAIBARA.
- (e) Torture and Abuse of 42 POWs including named LOHR, USNR, on Dublon Is., Truk, from 20 Nov. 1943 to 28 Nov. 1943, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.
- (f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 1943 to 28 Dec. 1943, by keeping them trussed without food or water for 12 hours; denying them adequate medical care, beatings, burnings, kickings, at Malcolep, Mille and Kwajalein.

CHARGE AND SPECIFICATIONS - Cont'd.

(g) Killing of six POWs, names unknown, on or about 30 Jan. 1944, on Dublon Is., Truk, by experimenting with injections of virulent bacteria; shock, and other methods unknown, by IWANAMI, Hiroshi, surgeon Capt., IJN and HASETANI, Reijiro, surgeon Lt., also OKUYAMA, Tokikazu, surgeon cdr., IJN.

(h) Killing two POWs, names unknown on 1 Feb. 1944, on Dublon Is., Truk, by explosions of dynamite and strangulation, by Okiyama, Tokikazu, surgeon cdr., IJN, and SAKAGAMI, Shinji, corpman WO, IJN, and others unknown.

(i) Killing of five POWs, names unknown, on 2 Feb. 1944, on Wille, by beheading, by OISHI, Oisato, Col, IJA, MAKAO, Otokiti, Major, IJA, TANAKADA, Chojiro, Major, IJA, FUETA, Eiyoshi, Lt., IJN, ABE, Masaki, Capt., IJA, MOORI, Yashuo, 1st Lt., IJA, MOTOMURA, Harushi, ens., IJN, TANAKA, Yutaka, ens., IJN, and HANAKO, Tatsuichi, WO, IJN.

(j) Killing of seven POWs, names unknown, on 17 Feb., 1944, on Dublon Is., Truk, with swords and firearms, by TANAKA, Masaharu, Capt., IJN, DANZAKI, Tomeroku, Lt., IJN, and YOSHIMURA, Yoshiharu, Ens., IJN.

Spec 2 - Did, while C-in-C of Fourth Fleet, during period from 5 April 1943 to 23 Feb., 1944, during state of war, unlawfully disregard and fail to discharge his duty as C-in-C to take such measures as were within his power and appropriate to protect American POWs under his command and subject to his control and supervision in that he permitted unlawful torture, abuse, inhumane treatment, and killing of POWs in violation of the law and customs of war as follows:

(a) thru (j) same as Spec 1, (a) thru (j) above.

PLEA: NG to Charge and all specifications.

FINDINGS: Guilty - Spec 1, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved);
Spec 2, proved in part (a,b,c,d,f,g,h,i and j, proved; e not proved).

SENTENCE: To be confined for a period of ten (10) years.

C.A. ACTION: PFAS approved, subject to remarks, but in view of fact that accused has been held in confinement since 27 March 1946, the period of confinement is reduced to seven years and five months.

CINCPAC ACTION: PFAS as mitigated, approved.

NAVY DEPARTMENT
Office of the Judge Advocate General

5 JUL 1940

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

The proceedings, findings and sentences in the foregoing
Military Commission case, and the actions of the convening and
reviewing authorities thereon, in the opinion of the Judge Advocate
General, are legal.

Referred for information.

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

0033

CinCPacFlt File

A17

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

Serial

5 JAN 1949

From: Commander in Chief U. S. Pacific Fleet.
To : Secretary of the Navy (Office of the Judge
Advocate General).
Subject: War Crimes Trial of KOBAYASHI, Masashi, former
Vice Admiral, IJN.
Reference: (a) CinCPacFlt serial 4842 of 20 December 1948.
Enclosure: (A) Third Copy of record of proceedings of the
Military Commission, War Crimes Trial of
KOBAYASHI, Masashi, former Vice Admiral, IJN,
consisting of four (4) volumes labelled,
"THIS COPY FOR SECNAV FOR DELIVERY TO UNITED
NATIONS WAR CRIMES COMMISSION".

1. Enclosure (A) is forwarded herewith.

G. Campbell
G. CAMPBELL
Assistant Chief of Staff
for Administration

0034

CinCPacFlt File

A17

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

Serial 34

5 JAN 1949

From: Commander in Chief U. S. Pacific Fleet.
To : Secretary of the Navy (Office of the Judge Advocate General).
Subject: War Crimes Trial of KOBAYASHI, Masashi, former Vice Admiral, IJN.
Reference: (a) CinCPacFlt serial 4842 of 20 December 1948.
Enclosure: (A) Third Copy of record of proceedings of the Military Commission, War Crimes Trial of KOBAYASHI, Masashi, former Vice Admiral, IJN, consisting of four (4) volumes labelled, "THIS COPY FOR SECNAV FOR DELIVERY TO UNITED NATIONS WAR CRIMES COMMISSION".

1. Enclosure (A) is forwarded herewith.

G. CAMPBELL
Assistant Chief of Staff
for Administration

0035

FF12/A17-10
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3443

30 MARCH 1948

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

Subject: Charge and Specifications in the case of KOBAYASHI,
Masaharu.

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

(1)

0036

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, in July 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(b) The unlawful torture, abuse and inhumane treatment of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Seichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

(d) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, on or about October 15, 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(e) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, during the period from November 20, 1943 to November 23, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by confining thirteen of them for about one week in a small cell six feet by eight feet, constantly beating them with clubs, denying them medical care, forcing said Brown to stand at attention for a period of forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six foot two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head, by naval members of the armed forces of Japan on Dublon Island, names to the relator unknown.

(f) The unlawful torture abuse and inhumane treatment of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, during the period from on or about December 15, 1943 to December 28, 1943, (1) by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Maloelap Atoll, Marshall Islands, by members of the crew of said tugboat, names to the relator unknown, (2) by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, during the period from December 16, 1943 to December 19, 1943, at Mille Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown, (3) by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthful cell, and denying him adequate medical care, during the period from December 19, 1943 to December 28, 1943, at Kwajalein Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown.

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

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

(i) The unlawful killing of five (5) unarmed American prisoners of war, names to the relator unknown, on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by beheading, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands.

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

Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said 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, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvio Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) American prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

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

(f) The unlawful torture, abuse and inhumane treatment during the period from on or about December 15, 1943 to December 28, 1943, at or near the Marshall Islands, of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, then and there held captive by the armed forces of Japan, (1) by members of the crew, names to the relator unknown, of a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Maloelap Atoll, Marshall Islands, by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard said tugboat, (2) by members of the armed forces of Japan, names to the relator unknown, during the period from December 16, 1943 to December 19, 1943, at Mille Atoll, Marshall Islands, by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, (3) by members of the armed forces of Japan, names to the relator unknown, during the period from December 19, 1943 to December 28, 1943, at Kwagalein Atoll, Marshall Islands, by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthy cell, and denying him adequate medical care.

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

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

(i) The unlawful killing on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands, of five (5) unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, by beheading.

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

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

CERTIFIED TO BE A TRUE COPY.

James P. Kenny,
Lieut., U.S.N.,
Judge Advocate.

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TO BHP/CO/UNH

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Q111

SUBJECT: MAR 1948 A PASS TO UNH A - EMPLOYEE UNH A MILITARY
COMMISSION 15 JULY 1948 COMMISSIONED IN CASE OF YASUHI KOBAYASHI
FOR THE VIOLATION OF THE CHARGE OF DUTY IN VIOLATION
LAW AND ORDINANCES AND A KOBAYASHI KOBAYASHI CHARGE AND SPECIFICATIONS
ONE AND TWO EXCEPT PARAGRAPH FIRST BOTH SPECIFICATIONS A SENTENCED
TEN YEARS AND DEDUCT

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16 JUL 1948

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

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16 JUL 1948
OFFICE OF ADJUTANT
GENERAL
G.C.R. SECTION

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

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

Serial: 16828

10 NOV 1948



MILITARY COMMISSION ORDER NO. 45

(In the case of former Vice Admiral KOBAYASHI, Masashi, IJN)

1. During period 13 May 1948 to 16 July 1948, KOBAYASHI, Masashi, former vice admiral, Imperial Japanese Navy, was tried by a United States Military Commission, convened by order of the Commander Marianas Area, dated 8 November 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charge and specifications:

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

<u>Spec. Nature of Offense</u>	<u>Place and Date of Offenses</u>	<u>Name of Accused</u>
1 Failed to control operations of members of his command and persons subject to his control and supervision by permitting them to torture, abuse, inhumanely treat and kill American prisoners of war then held captive by the armed forces of Japan as follows:		KOBAYASHI
(a) Killing of one (1) American POW, name to the relator unknown.	Wake Island, July 1943.	
(b) Torture, abuse and inhumane treatment of two (2) American POWs, Louis Silvie ZAMPERINI, captain, USAAF, and Russell Allen PHILLIPS, captain, USAAF.	Kwajalein Atoll, Marshall Islands, 16 July - 27 August 1943.	✓ p. 60 ✓ p. 72
(c) Killing of ninety-six (96) American POWs, names to the relator unknown.	Wake Island, 7 October 1943.	✓ p. 59
(d) Killing of one (1) American POW, name to the relator unknown.	Wake Island, 15 October 1943.	
(e) Torture, abuse and inhumane treatment of forty-two (42) American POWs, George Estabrook BROWN, Jr., lieutenant commander, USNR, and about forty-one (41) other American POWs, names to the relator unknown.	Dublon Island, Truk Atoll, 20 November - 28 November 1943.	✓ p. 63
(f) Torture, abuse and inhumane treatment of seven (7) American POWs, Fred F. GARRETT, captain, USAAF, and six (6) other American POWs, names to the relator unknown.	Marshall Islands, 15 December - 28 December 1943.	✓ p. 66 It is.
(g) Killing of six (6) American POWs, names to the relator unknown.	Dublon Island, Truk Atoll, 30 January 1944.	✓ p. 166 It is. p. 360

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02-JDM-fsk

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

Serial: 16828

10 NOV 1948

MILITARY COMMISSION ORDER NO. 45

(In the case of former Vice Admiral KOBAYASHI, Masashi, IJN)

- (h) Killing of two (2) American POWs, names to the relator unknown. Dublon Island, Truk Atoll, 1 February 1944.
- (i) Killing of five (5) American POWs, names to the relator unknown. Mille Atoll, Marshall Islands, 2 February 1944.
- (j) Killing of seven (7) American POWs, names to the relator unknown. Dublon Island, Truk Atoll, 17 February 1944. ✓ P. 187 E138

Spec. Nature of Offense

Place and Date of Offense Name of Accused

- 2 Failed to protect American prisoners of war then held captive by the armed forces of Japan by persons subject to his control and supervision, as follows:

KOBAYASHI

- (a) Killing of one (1) American POW, name to the relator unknown. Wake Island, July 1943.
- (b) Torture, abuse and inhumane treatment of two (2) American POWs, Louis Silvio ZAMPERINI, captain, USAAF, and Russell Allen PHILLIPS, captain, USAAF. Kwajalein Atoll, Marshall Islands, 16 July - 27 August 1943.
- (c) Killing of ninety-six (96) American POWs, names to the relator unknown. Wake Island, 7 October 1943.
- (d) Killing of one (1) American POW, name to the relator unknown. Wake Island, 15 October 1943.
- (e) Torture, abuse and inhumane treatment of forty-two (42) American POWs, George Estabrook BROWN, Jr., lieutenant commander, USNR, and about forty-one (41) other American POWs, names to the relator unknown. Dublon Island, Truk Atoll, 20 November - 28 November 1943.
- (f) Torture, abuse and inhumane treatment of seven (7) American POWs, Fred F. GARRETT, captain, USAAF, and six (6) other American POWs, names to the relator unknown. Marshall Islands, 15 December - 28 December 1943.
- (g) Killing of six (6) American POWs, names to the relator unknown. Dublon Island, Truk Atoll, 30 January 1944.

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02-JDM-fsk

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

Serial: 16828

10 NOV 1948

MILITARY COMMISSION ORDER NO. 45

(In the case of former Vice Admiral KOBAYASHI, Masashi, IJN)

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- | | |
|--|---|
| (h) Killing of two (2) American POWs,
names to the relator unknown. | Dublon Island,
Truk Atoll,
1 February 1944. |
| (i) Killing of five (5) American POWs,
names to the relator unknown. | Mille Atoll,
Marshall Islands,
2 February 1944. |
| (j) Killing of seven (7) American POWs,
names to the relator unknown. | Dublon Island,
Truk Atoll,
17 February 1944. |

FINDINGS: The commission on 15 July 1948 made the following findings:

As to the accused, Kobayashi, Masashi:

The first specification of the charge proved in part, proved except paragraph (c) thereof which reads as follows: '(c) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, during the period from November 20, 1943 to November 28, 1943 on Dublon Island, Truk Atoll, Caroline Islands, by constantly beating them with clubs, denying them medical care, confining thirteen of them for about one week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six feet two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head, by naval members of the armed forces of Japan on Dublon Island, names to the relator unknown,' which paragraph (c) is not approved.

The second specification of the charge proved in part, proved except paragraph (c) thereof which reads as follows: '(c) The unlawful torture, abuse and inhumane treatment during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by naval members of the armed forces of Japan on said Dublon Island, names to the relator unknown, of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, then and there held captive by naval armed forces of Japan, by constantly beating them with clubs, denying them medical care, confining thirteen of them for about one week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six feet two inch by two inch clubs while he was being interrogated and beating said Brown with a rifle butt upon his bare feet and head,' which paragraph (c) is not proved.

And that the accused, Kobayashi, Masashi, is of the charge guilty."

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

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

Serial: 16828

10 NOV 1948

MILITARY COMMISSION ORDER NO. 45

(In the case of former Vice Admiral KOBAYASHI, Masashi, IJN)

SENTENCE: The commission, on 16 July 1948, sentenced the accused as follows:

"The commission, therefore, sentences him, Kobayashi, Masashi, to be confined for a period of ten (10) years."

2. On 10 November 1948 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings, and sentence in the foregoing case of KOBAYASHI, Masashi, former vice admiral, IJN, are approved.

"In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since 27 March 1 the period of confinement is reduced to seven (7) years and five (5) months.

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

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces Marianas.

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

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON,
Flag Secretary.

FF12/117-10(2)
02-JDM-fsk

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

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"The commission, therefore, sentences him, Kobayashi, Masashi, to be confined for a period of ten (10) years."

2. On 10 November 1948 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings, and sentence in the foregoing case of KOBAYASHI, Masashi, former vice admiral, IJN, are approved.

"In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since 27 March 1946 the period of confinement is reduced to seven (7) years and five (5) months.

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

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces Marianas.

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

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON,
Flag Secretary.

Case of
Kobayashi, Masashi
May 13, 1948

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

165564

VOLUME I

0051

KOBAYASHI, Masashi.

Trial by Military Commission

at Guam

Marianas Islands.

13 May 1948

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TESTIMONY

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FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 20971

Nov 8 1947

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

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

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

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

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

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

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

"A (1)"

0063

FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 20971

Nov 8 1947

Subject: Precept for a military commission.

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

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

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

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

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

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

A TRUE COPY. ATTEST:

David Bolton
DAVID BOLTON, LT, USN.,
Judge Advocate.

"A (2)"

0064

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

Serial 22660

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

From: The Commander Marianas Area.
To: Rear Admiral Arthur G. Robinson, U. S. Navy -
President, Military Commission, Guam.
Subject: Temporary relief of member of commission.

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

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

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

A true copy. Attest:

David Bolton
DAVID BOLTON, LT, USN.,
Judge Advocate.

"B"

0065

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

Serial: 22661

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

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

Subject: Appointment of member of commission.

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

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

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

A true copy. Attest:

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

"C"

0066

417-20/FF12
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 85

3 JAN 1948

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

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

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

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

A true copy. Attest:

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

"D"

0067

FF12/117-20
02-JDM-sh

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 136

6 JAN 1948

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

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

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

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

A TRUE COPY. ATTEST:
David Bolton
DAVID BOLTON, LT, USN.,
Judge Advocate.

"E"

0068

FF12/417-10
02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 4079

13 APR 1948

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

Subject: Change in Membership of Military Commission.

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

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

Copy to:

Captain Raymond F. Garraty, junior, USMC.
CO, Fifth Service Depot, FMF, PAC, Guam.
Major Donald B. Cooley, junior, USMC.
CO, Marine Barracks, Guam.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.

A TRUE COPY. ATTEST.

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

0069

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 12126

12 JUL 1948

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

1. Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, is hereby relieved as a member of the military commission convened by my precept of November 8, 1947, due to illness necessitating immediate hospitalization.

2. The commission, consisting of the remaining five (5) members is authorized to proceed with and complete the current trial of Kobayashi, Masashi.

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

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

A true copy. Attest:

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

"IIIII"

0070

に對する美の中立

昭和二十三年 月 日

守護人

高野純一郎

被告小林には以下述べる理由により本件起訴及四罪状
目につき一々異議を申立てるものである。

第一、非狀項目其の一に於ては被告人カ林が其の部下に對する長官としての監督責任を盡さざりしこと、及び被告人の職務怠慢の責を固ひ四非狀項目其の二に於ては被告人の學席に對する保護義務を懈怠したること、及び被告人の職務怠慢の責を固擬してゐるのである。而て是等三個の非狀項目の基礎とな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軍隊の兵が是等の學席を奇責酷使を待たせ殺害しんとする主張である。換言すれば是等三個の非狀項目は全く同一の主張事實を二つの非狀項目に對する關係と他は其の各條に對する關係との兩面より見て之を被告人の責任を固めてゐるものでありて之は明かに重複提起である。又未だ四艦隊司令長官としての被告人カ林の職務又は職責は常に一國であり唯一であり二國若くはそれ以上に分割され得べき性質のものでもなく又斯くすべきものでない。故に被告の此の主張は之を擬ふれば恰も一國の貨幣を二箇の貨幣と區別し觀て各々別々の種類を有する故を以て之を二箇の貨幣なりと做すの類にしてその矛盾をあらわすや言を採らざらん。されば非狀項目の其一と其二は實に一個の四非狀項目の統一せざるべきものである。是は被告人の實體的權利の侵害であるから茲に異議を申立てる所以である。

亦二、各四非状項目の末尾には、左記の如く戦争法規並に慣習に違反しと記述してあるのであるが、被害人や被虐者が違反せりとするもの、戦争法規並に慣習は果して如何なるものも指すものである。其の具体的な明記は、日本国民たる被害人が日本海軍の艦隊司令長官でありし当時米国の法規に従つて職務を行ふべきものゝみだりしことは自明のことであり、違反之に違反せりとて米国の法規により加罰せらるべき理由は無いのである。而して茲に起訴状に謂ふ所の被害人が違反せり

と主張せらるる戦争法規並に慣習法たるものは舊國に國際法又は國際法的慣習法でなければならぬ。果して然らば如何なる國際法又は國際法的慣習法が被告人の部下の駐留官並職務及び作務の保護義務を課してゐるのであらうか。

アメリカ法理學(An Anglo-American Jurisprudence)は次の如く説いてゐる。
「……一般的に言へば故意慢行なるものは法律に依つて課せられ、
特殊の義務の不履行に該當せざる限り之を許さざるべき
は……」

と論じ更にその注として

「凡そ或る人が或る行為を為すことが其の人の特別なる義務である場合、其の行為を為さぬ(と)言ふておくれは不作爲による犯罪となる故意慢行は不注意なるものはあり得ない。」

と説明してゐる。(アメリカ法理學解題の項九條六五の頁)
之を知らぬが故に被告は適当且充分なる保護を準備するを得ざるが故に被告が違反、因に以て戦争犯罪を犯せしと爲す戦争法規並に慣習法を具體的に明記せざる本件起訴状は海峽律(Harbour & Boats)第三七節の規定に反すると三(一)であり且被告の憲法的権利を侵害するものである。

第三、凡そ作爲又は不作爲が犯罪を構成する場合にはその成立要件として故意(犯意)若しくは過失があり且その作爲は不作爲と客觀的事実との間に因果關係が必ず存在することとを要する。而してこの因果關係たるは無限の拡張せらるべきものとなくして合理的且物理的因果關係に限定せらるべきものなることは刑法學上の定説である。且つ斯くの因果關係の不作爲又は不作爲は假令それが思想的間接の連脈があるもの如く觀せらるるものがあるとしても何等該犯罪と刑法學上の因果關係(相當因果關係)とはいふのであり其の作爲又は不作爲自体他の別箇の独立した犯罪を構成するものでない。唯假令法規上の規定ありとすれば懲戒的違法行為を得るのみ。

「故意慢は成文法により犯罪ありと宣明せられてはじめて犯罪とふるべきである。」(アメリカ法理學解題の項六五の頁)

本件に於ては各犯罪項目に列記せられたる據察官主張の被告の部下の者の犯行と被告人の所謂職務懈怠との間には何等合理的且物理的因果關係ありと爲すを得ない。問には假し假し被告人の所謂不作爲が犯罪を構成すると爲すか否か

は法上の根拠がなければならぬ。従つて本件起訴状には
の法的根拠が欠けてゐる。
訴へ得べき怠慢の要素を問ひて又その法理を次の如く記
述してゐる。即ち

「怠慢に於ける訴の原因の基礎となるべき不法行為
は或る人が他人を危害(又は侵害)し、或は保護すべき義務
あるに拘らずその義務を違反せしことと其の義務懈怠の直
近の結果として其の保護を受けるべき人が侵害を受けたること
構成要件としてゐる。此の義務其の違反侵害と言ふ是
等の要素が即ち訴へ得べき怠慢の必須要件である。若し
是等の要件の何れか一を欠くことは怠慢に於ける訴の
原因は認められず(又その法理を懈怠の項第十一條大五頁)
同様の過失原因として次の如く設けられてゐる。

「或る人の怠慢行為が有罪であるも其の人の怠慢行為が直
近の原因として生ずるべき結果としてそれ以上の侵害に付てのみ
民事上の責任を負ふことと、而して怠慢に關する訴の有
力なる原因の陳述に極く重要なことは原告の主張に於て
被告の当該怠慢行為が原告の訴を提起してゐる其の侵
害の直近の原因であると言ふことを立証することである。原告
は主張せられざる被告の怠慢行為とそれより生ずるべき主
張せらるる侵害の結果との間の因果関係の存在すること
立証しなくてはならぬ。若し原告がこれを立証せらるるとは訴
原告の主張は訴の原因の陳述に欠ける理由として其の請求
は棄却せらるることとなるのである。抽象的に怠慢の責任
を問ふことは出来ないのである。原告の主張の義務の違反は其の直
近の原因でなければならぬ。且その主張せらるる事実は被告
の怠慢行為と請求せらるる侵害との間の因果関係を明
示しなくてはならぬのである。原告は被告の怠慢の直接結果
として侵害を受けることを被ったと言ふ事実は申すのみでは
充分なる訴求とはならぬのである。

の種別項目其の一及び其の二は「前記第四編隊司令長官と
其の職務を遂行するに無関係に、……と裁せられ、……の違
反の三箇の主張が記載せられてゐる。即ち一は如何にと被告
が修業に於ける本件主張の義務を負担し、……は被告
人の其の義務を果さざりし各箇の事情状況三は被告の例に
於ける被告の部下。これらとせらるる種々の事実是非と
裁せられざる被告の部下。これらとせらるる種々の事実是非と

権利の侵害の因果関係が父から子に及ぶ。仍て被害人の主体的

中四、四非狀態目其の一の四のい及其の二の四のい、於ては何れも当局には姓名不詳の日本漁業年人か、又は当局には姓名不詳の日本年人か、或は当局には姓名不詳の曳船の乗組員か、と記載せられてゐる。即ち被害人の動向調査責任或は保護責任を問ふ人とする基を設けたる犯行の主体は何人であるか明示せられてゐない。凡そ或る人の行為(犯行を含めて)を他の行為より区別する標準即ち行為の同一認識。標準は当該行為の日時場所主客体、行為の内言性、結果等であつて就中行為の主体は同一認識の爲には必要不可欠の要素である。主体を明示せざれば行為は客観的具體性を有し得ない。犯行の同一認識の要素、而も最も重要なる此の主体の同一要素を明記せざる此事の記載は不十分である。殊に被害人数、林、村、其、語、下、行為、記載、程度、主責任を問ふ以上、その下、何人、亦、を、見、て、明、可、する、程、度、の、具、体、的、之、を、明、示、する、の、要、が、ある。蓋し、誰、の、行為、である、か、判、明、する、もの、として、被害人は責任を負ふ、得、ない、から、である。

才也。是非狀項目其の一及其の二の如に於て「...カリシ諸島」云
 の「環礁」夏島に於て「当局」は姓名不詳の夏島の日本酒字兵八
 か「...米国会要國酒字を備へ佐び」ジエスタブに「クアラウ」ジ
 ニヤ及「当局」は姓名不詳の「其他」の人々も其の如十三名を横大吠
 八吠の小「犬」独座に於て一箇箇監禁し根柢を絶え不設計し「...」
 と記述せられてゐる。此の「是非狀項目」を見ても四十二人の如十三名に對し
 は虐待の主張事實が掲げられてゐるけれども他の二十九名に對する
 虐待事實酷使及虐待の何等の事實も明記せられてゐない。又
 ならば四十二名全部に對して「違法」な苛責酷使及虐待が行は
 れたと見えてゐる。兩「是非狀項目」の書き方によつては被害人の「主體的
 権利」を侵害するものとして「大正義」を申立てざるを得ない。

第一、非狀項目其の一及其二の（イ）及（ロ）
 其の他三名の事件は一、二既済と云ふ事件であるけれども、更に
 更に該事件の再審の申立が為され、その結果を
 見るまじは、被告人の採るべき起訴状の非狀項目中の之
 を加へることは不当であるが、之も亦被告人の憲法的権利を
 侵害するものとして異議を述べ、被告の
 叙上の理由により被告人は本件起訴及非狀項目に対し異議
 を申立てる次第である。

高野純一郎

OBJECTIONS TO THE CHARGE AND SPECIFICATIONS IN THE CASE OF KOBAYASHI
MASASHI, DELIVERED BY MR. JUNJIRO TAKANO.

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

1. In Specification 1 of the charge the accused KOBAYASHI is charged with neglect of duty in that he failed to control his subordinates as Commander-in-Chief, IJN, while in specification 2 he is charged with neglect of duty in that he failed to protect prisoners of war. The fundamental facts alleged in both of the Specifications are entirely identical; it is alleged in both of them that members of the armed forces of Japan, who were subject to the accused, tortured, abused, inhumanely treated and killed prisoners of war. In other words, these two specifications view the fundamental facts from two different phases -- one from the relation between the facts and the doers of the crime, and, the other from the relation between the facts and the victims of the crime. They allege the exact same facts in accusing Kobayashi of the liability of neglect of duty. This is clearly a duplication of accusations. The duty of the accused KOBAYASHI as Commander-in-Chief of the 4th Fleet was and actually had been, always and consistently, an integral whole which in essence was never divisible. This allegation of the judge advocate can be compared with an assertion that one coin is in actuality two because of two different surfaces - one on each side. Needless to say this is missing the mark. That is to say Specifications 1 and 2 should be consolidated into one. This is most prejudicial to the substantive rights of the accused, so we hereby object to it.

2. At the end of each Specification, it is alleged, "...in violation of the law and customs of war, as follows" but it is not specifically shown what law and customs the accused KOBAYASHI violated. It is only too natural, however, that the accused, a Japanese national, while he was Commander-in-Chief of a Japanese fleet, was not supposed to perform his duty in accordance with American laws, and so there is no reason why he should be punished by American law for his violation thereof. Therefore, the law and customs of war which the accused is alleged to have violated in the charge and specifications should always be international law and customs. If such be the case, we should be apprised which international law and customs impose upon the accused the duty to control his subordinates and to protect the prisoners. It is stated in the American Jurisprudence as follows: "...Generally speaking, a negligent act is not indictable unless it amounts to the non-performance of a specific duty imposed by law..." and, by way of a note thereof: "There can be no criminal negligence or carelessness by omission to act unless it was the special duty of the party to perform the act omitted." (Am.Jur. NEGLIGENCE S.9, p. 650). Since the accused cannot prepare a proper and adequate defense without knowing what the law and customs above referred to are, the allegation of the charge which simply states that the accused committed a war crime by violating the law and customs of war and fails to specifically show what such law and customs are is not merely a violation of the provisions of Naval Courts and Boards, Section 27, but also it is most prejudicial to the substantive rights of the accused.

3. For an act or omission to constitute an offense, it is necessary that there exist a wilfulness (a criminal intent), or a fault, on the part of the doer and that there be a direct line of causation between such act or omission and the objective facts. This causal relation should not be extended limitlessly but should be delimited within a reasonable and physical sequence - this is a long and well established rule of the criminal law. An act or an omission, bearing no such causal relation with the facts, even though it might seem to our thinking as if it had some indirect relation, has no so-called causal relation or proximate causation in criminal law, with the alleged crime, and such act or omission itself can not constitute another independent offense. It can only give rise to a matter of disciplinary measures if a statute so provides. "Negligence becomes criminal when so declared by statute". (Am.Jur. NEGLIGENCE, 34, P. 650).

"R (1)"

0075

In each Specification of the present case, there is no reasonable and physical causal connection whatsoever between the alleged crimes committed by the subordinates of the accused and the alleged neglect of duty on the part of the accused. In order to say that such omission of the accused constitutes an offense, there should be a legal ground, while in the charge and specifications of the instant case no such legal ground is set forth. American Jurisprudence sets forth with reference to the Elements of actionable negligence, thus: "The primary wrong upon which a cause of action for negligence is based consists in the breach of a duty on the part of one person to protect another against injury, the proximate result of which is an injury to the person to whom the duty is owed. These elements of duty, breach, and injury are essentials of actionable negligence. In the absence of any one of them, no cause of action for negligence will lie." (NEGLIGENCE, S.11, p.651). And it further treats of the Proximate Cause, saying "One although guilty of a negligent act is civilly liable only for an injury or injuries proximately caused by that neglect act, and it is essential to the statement of a good cause of action in negligence that the plaintiff's pleading show that the defendant's negligence as set forth was the proximate cause of the injury of which the plaintiff complains. He must show a causal connection between the supposed negligent act of the defendant and the injury which it is alleged resulted therefrom; unless he does so, his pleading is open to demurrer for the want of a statement of a cause of action. It is not sufficient to charge negligence in the abstract. The breach of duty relied upon must have been the proximate cause of the injury, and the facts pleaded must disclose the causal connection between the defendant's negligent act and the injury complained of. Mere averments that the plaintiff suffered injuries as the direct and proximate result of the negligence of the defendant will not render the complaint sufficient..." (NEGLIGENCE, S.264, Proximate Cause, p. 955). In Specifications 1 and 2, it is alleged, "...unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said 4th Fleet...", but the term "unlawfully" which is alleged therein is improper and not right.

Furthermore, the Specifications fail to contain allegations of (1) the legal ground as to how the accused owed the alleged duty to the prisoners of war; (2) particular circumstances attending a failure by the accused to perform that duty; (3) a causal connection between the alleged negligence of duty (omission) on the part of the accused and the various alleged war crimes committed by his subordinates, which are specified therein. Such Specifications are not sufficient and prejudicial to the substantive rights of the accused, accordingly.

4. In Specifications 1 and 2, paragraphs b.e. and f. respectively, it is alleged, "...by naval members of the armed forces of Japan...names to the relator unknown", "by members of the crew of said tugboat, names to the relator unknown", or "...by members of the armed forces of Japan, names to the relator unknown". Thus it is not clearly shown who the doer(s) of the alleged crimes are or what the basic facts are for charging the accused with his neglect of duty of controlling and protecting. Generally speaking, the criterion for discriminating acts (including offenses) of a person from those of others, or the criterion for identification of acts of a person lies in time, place, doer, object, substance, nature and consequence of the alleged acts. In particular, the doer(s) of the acts is inter alia an essential element for their identification. Acts can not have objective concreteness without showing their doer(s). The allegation which does not clearly state the element concerning the doer of the alleged acts which is the most essential element for the identity of the crime is insufficient. So long as the judge advocate intends to charge the accused KOBAYASHI with his failure to discharge his duty to control his subordinates, it is necessary that these subordinates be clearly and specifically shown so that anybody may know who these subordinates are. The accused can in no way take the responsibility for the crimes without knowing who committed them.

"R (2)"

0076


5. In both Specifications 1 and 2, para. e., it is alleged, that, "...of about 42 American prisoners of war, namely, George Estabrook Brown, Jr., Lieutenant Commander, USNR, and others whose names are to the relator unknown, ...on Dublon Island, Truk Atoll, Caroline Islands, by confining thirteen of them for about a week in a small cell of six feet by eight feet, constantly beating them with clubs, ..." In this paragraph it is alleged that 13 of the 42 prisoners were mistreated but it is not clearly shown if the other 29 were tortured, abused, or inhumanely treated. Therefore, this paragraph which purports as though all of the 42 prisoners had been subject to unlawful torture, abuse and inhumanely treatment is most prejudicial to the substantive rights of the accused, and we hereby object to it.

6. Although the case against IWANAMI, Hiroshi and two others stated in Specification 1 and 2, paras. g. and h. respectively, was already adjudged, a request for a new trial of this case has recently been made. Therefore, it is not proper or right to allege the Iwanami, et al case in the Charge and Specifications against the accused KOBAYASHI before the request is replied and proper measures are taken. This is also prejudicial to the substantive rights of the accused so we hereby object to it.

On the grounds above mentioned, the accused raises this objection to the Charge and Specifications.

TAKANO, Junjiro.

I hereby certify the forgoing, consisting of 2½ typewritten pages, to be a true and complete translation, to the best of my ability, of the original document in Japanese.


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

"R (3)"

0077

OBJECTION TO THE CHARGES AND SPECIFICATIONS IN THE CASE OF
KOBAYASHI, MASASHI, DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR.

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

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

The charge does not set forth an offense either at common law or by statute. We know of no international law which impose upon a seagoing commander of a fleet, a duty to personally protect prisoners of war held by navy units in islands hundreds and even a thousand miles away from his flagship. 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 flagship.

We know of no international law which defines the duty of a commander in chief of a fleet under battle conditions.

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, KOBAYASHI, Masashi, 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 KOBAYASHI. The time, if there ever was a time, is long past when prejudice can decide a case against the Japanese. Neither international law nor local law defines the duties of a seagoing admiral like KOBAYASHI, and the Commission should decide that the prosecution has not brought a legal charge against KOBAYASHI, Masashi.

Even Mr. Justice Stone in the majority opinion in the Yamashita case quoted General Order 264, Headquarters of Philippines, September 9, 1902 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 KOBAYASHI could have prevented the murders.

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.

"S (1)"

0078

The specifications are also objectionable because they are misleading. Paragraph (a), (c), (d), (e), (g), (i), and (j) of both specifications vary considerably from the specifications of the original trials.

The specification under paragraph (i) illustrates how misleading it is to the accused. An army colonel and several army and navy officers are charged with beheading five Americans. There were two charges in the original trial. On the face of this present specification an army colonel is the ranking offender. What circumstances, and shouldn't it be alleged, makes the navy senior officer on the Mille Atoll responsible for this crime, or is he excepted from responsibility? If the navy commander on Mille is excepted, how then can the commander in chief of the Fourth Fleet be responsible? We object because the second charge in this instance isn't included in paragraph (e).

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.

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 would be charged with the same offense ad finitum and could be found guilty of the same offense many times.

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

The prosecution cannot blow hot and cold 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, 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;


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Scales v. State, 46 Tex. Crim. Rep. 1014.

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

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.

Respectfully,


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

"S (3)"

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REPLY TO THE OBJECTIONS OF THE ACCUSED KOBAYASHI, MASASHI
TO THE CHARGE AND SPECIFICATIONS

Delivered by
Lt. James P. Kenny, USN, Judge Advocate

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

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

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predicated upon a statute, the words of which are in the alternative, then the alternative offenses thus provided for should, if it be desired to allege more than one offense, be set out in separate specifications."

The accused objects to the form of paragraphs (a), (c), (d), (e), (g), (i), and (j) of the specifications as being misleading because they vary from the verbiage of the specifications used in the trial of the accused's subordinates for the same incidents. This is not a valid objection. In charging this accused with a neglect of his duty for permitting these crimes to occur, there naturally would be a variation from the language used when charging the subordinates with the actual commission of the crimes.

The accused, in his objections, attempts to argue evidence when he speaks of the causal relationship of the accused to the alleged criminal acts. This is a matter of proof and has no bearing upon the form or technical correctness of the charge and specifications.

The accused objects to paragraphs (b), (c), and (f) of Specification 1 and 2 because they do not supply the names of the particular members of the armed forces of Japan who performed the alleged offenses. Since the names of these people are unknown to the convening authority, it is impossible to furnish them. However, the convening authority has sufficiently identified these third parties in describing them as members of the armed forces of Japan. 27 American Jurisprudence, Indictments and Informations, Section 81, states: "The names of third persons who are necessary parties to the consummation of the offense charged in the indictment or who constitute a necessary part of the description of the offense should, if known, be alleged; but unless a statute requires it, the name of a third person whose identity is not an essential element of an offense or material to the commission thereof need not be stated." The identity of these third parties insofar as they were members of the armed forces of Japan and subject to the command of the accused is an essential element of the offense charged against the accused but their identity insofar as their names are concerned is not.

The accused objects to the form of paragraph (e) of Specifications 1 and 2 on the ground that one reading these paragraphs would believe that it alleges that the entire forty-two American prisoners of war were mistreated, whereas, it is his impression that the description of the alleged mistreatment only applies to the thirteen who it is alleged were confined in a small cell for one week. When the accused states that these paragraphs "purport as though all of the forty-two prisoners" were subjected to unlawful torture, abuse, and inhumane treatment, he is correct. That is what was intended by the language of the convening authority and evidently the accused has not been misled thereby. Mr. Justice Stone, in delivering the opinion of the court in the Matter of Yamashita, stated that "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."

The accused objects to paragraphs (g) and (h) of Specifications 1 and 2 on the ground that IWANAMI, Hiroshi has made a request for a new trial, and to charge the accused with neglect of duty because of these incidents before this request has been acted upon is prejudicial to his substantive rights. This contention is without merit. An application for a new trial has no bearing upon the validity and finality of the proceedings. The proceedings and findings in the case of IWANAMI, Hiroshi, et als have been approved by the convening and reviewing authorities.

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

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

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FF12/A17-13
02-DB-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

14 May 1948

From: Lieutenant David Bolton, U. S. Navy, Judge Advocate,
Military Commission, Guam.
To : The Commander Marianas Area.
Subject: Corrections in the charge and specifications in the case of
KOBAYASHI, Masashi, dated 30 March 1948 - request for.

1. The military commission convened by your precept of 8 November 1947 has found the subject charge and specifications not in due form and technically correct in that technical errors are noted in paragraph (e) of specification 1 and paragraph (e) of specification 2. In order to eliminate certain ambiguity it is requested that paragraph (e) of specification 1 and paragraph (e) of specification 2 be corrected to read as follows:

Specification 1

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

Specification 2

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

David Bolton
DAVID BOLTON.

A TRUE COPY: ATTEST:

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

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FF12/A17-13
02-DB-sh

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10228

15 MAY 1948

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

Subject: Corrections in the Charge and Specifications in the case of
KOBAYASHI, Masashi dated 30 March 1948 - authorization for.

1. You are hereby authorized and directed to change the charge
and specifications preferred by me on 30 March 1948 against KOBAYASHI,
Masashi, former vice admiral, Imperial Japanese Navy, as follows:

In Specification 1 delete paragraph (e) and substitute the
following paragraph:

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

In Specification 2 delete paragraph (e) and substitute the
following paragraph:

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

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

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

"v"

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FF12/A17-10
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 2413

30 MAR 1948

From: The Commander Marianas Area.
To: Lieutenant David BOLTON, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.
Subject: Charge and Specifications in the case of KOBAYASHI,
Masashi.

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

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Received a true and correct copy, both in English and Japanese, of
the Charge and specifications thereunder on the 30th day of March 1948.

Kobayashi Masashi
KOBAYASHI, Masashi

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

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

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FF12/A17-10
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3443

30 MARCH 1948

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

Subject: Charge and Specifications in the case of KOBAYASHI,
Masashi.

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

CORRECTED COPY OF CHARGES AND SPECIFICATIONS. Corrected in accordance with Commander Marianas ltr. FF12/A17-13 over 02-DB-sh, serial 10226, dated 15 May 1948 (Original prefixed marked "V").

AA (1)

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CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masachi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, in July 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(b) The unlawful torture, abuse and inhumane treatment of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

(d) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, on or about October 15, 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

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

(f) The unlawful torture abuse and inhumane treatment of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, during the period from on or about December 15, 1943 to December 28, 1943, (1) by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Maloelap Atoll, Marshall Islands, by members of the crew of said tugboat, names to the relator unknown, (2) by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, during the period from December 16, 1943 to December 19, 1943, at Mille Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown, (3) by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthful cell, and denying him adequate medical care, during the period from December 19, 1943 to December 28, 1943, at Kwajalein Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown.

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

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

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(1) The unlawful killing of five (5) unarmed American prisoners of war, names to the relator unknown, on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by beheading, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands.

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

Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said 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, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvia Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) American prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

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

(f) The unlawful torture, abuse and inhumane treatment during the period from on or about December 15, 1943 to December 28, 1943, at or near the Marshall Islands, of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, then and there held captive by the armed forces of Japan, (1) by members of the crew, names to the relator unknown, of a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Maloclap Atoll, Marshall Islands, by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard said tugboat, (2) by members of the armed forces of Japan, names to the relator unknown, during the period from December 16, 1943 to December 19, 1943, at Mille Atoll, Marshall Islands, by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, (3) by members of the armed forces of Japan, names to the relator unknown, during the period from December 19, 1943 to December 28, 1943, at Kwajalein Atoll, Marshall Islands, by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthful cell, and denying him adequate medical care.

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

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

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(i) The unlawful killing on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands, of five (5) unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, by beheading.

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

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

CERTIFIED TO BE A TRUE COPY.

James P. Kenney
James P. Kenney,
Lieut., U.S.N.,
Judge Advocate.

0093

アメリカ合衆國太平洋艦隊
アメリカ合衆國司令官

施
アメリカ合衆国 太平洋軍六師 予ビツド ホルノ
アメリカ合衆国 太平洋軍六師 ビエーグス P-11

В. 9 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. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848.

前記の人は、我々が積金を付たる軍法を、軍法に於て左記の
起訴又是非訴訟目にて、裁判することであり、第一、吾等が其の
旨は軍法委員に通報し裁判の日、之を被告と通知し、様
事例詳讀の全証人を召喚せよ。

0094

5600

起訴

戰爭法規並に慣習の違反

罪狀項目一

日本帝國海軍中四艦隊司令長官當時海軍中將小林仁
は前記第四艦隊司令長官として動務中アメリカ合衆國連
合諸國暴行を遂げ日本帝國と戰爭状態に在つた昭和
十八年四月六日より昭和十八年二月二十三日に至る間
下の地域（ミッドウェー島、マーシャル諸島、クワール、
マカオ、フィリピン、ボルネオ、スマタラ、及び他の諸
場所）に於て、海軍中將、大佐、少佐、中尉、少尉、
人々の行動を監視し、海軍中將、大佐、少佐、中尉、
賣をせしめ、海軍中將、大佐、少佐、中尉、少尉、
せす低く、日本海軍に損害を及ぼすことを企て、海軍
酷使虐待を施し、殺害することと許可し、左記の如く戰爭法規
並に慣習に違反した。

(1) 昭和十八年七月ウエーキ島に於てウエーキ島の大五
隊司令官當時海軍大佐酒井原繁松が當局には姓名不
詳の一名の武將として、海軍中將、大佐、少佐、中尉、
の被害したと。

(4) 昭和十八年七月十六日から昭和十八年八月二十七日に至る間
ミッドウェー島をセリン環礁に於て當局には姓名不詳のウエ
セリン環礁の日本海軍軍人が三名のアメリカ海軍中將、大佐、
カ合衆國陸軍軍艦三太尉、ミッドウェー島のアメリカ合衆國
國陸軍軍艦三太尉、ミッドウェー島のアメリカ合衆國
は射より実験し、小、不健康、他房に約四十三日間監
禁し、食糧及び水と與へることを拒否し通
切らざる医療と與へず前記サベリニを反復改訂し、過度に
病弱且被るゝのた前記サベリニに何同く無難とするとも
強制し又前記サベリニの被るゝ玉に四り熱湯を掛り、
いより違法明か可責酷使虐待を行つたこと。

(1) 昭和十八年十月七ウエーキ島に於てウエーキ島の大五
隊司令官當時海軍大佐酒井原繁松が當局には姓名不
詳の一名の武將として、海軍中將、大佐、少佐、中尉、
の被害したと。

(5)

三

Σ

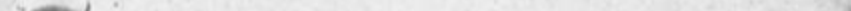
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(八) 昭和十八年十月七日頃ウエキ島に於てウエキ島の日本帝國海軍軍事施設に配属せしむるウエキ島第六十五警備隊司令官時海軍大佐酒井原敏松當時海軍大尉磯部第一當時海軍兵曹長堀江喜大其他も当局には姓名不詳の人々が同時同処に於て上則記第六十五警備隊の留守に留められてゐた當局には姓名を不詳の九十六名のウエキ島の留守に在りて違法時に殺害せられた



(1) 昭和十九年一月三十日頃カニン諸島上より環礁奥又島に於て

油軍病院付當時油軍軍医中佐奥山景一が油軍病院に於て
當時油軍大尉鍋谷禮次郎其地当局に姓名不詳の人名が
同時同処に於て日本軍隊に抑留されたる当局に姓名不
詳の六名。又その傍ら毒害毒菌を注射し衛害を加へ其地当
局には詳細不明の定数を行ひ違法時に殺害したと

(4) 昭和十九年二月二日頃カニン諸島上より環礁奥又島に於てカ
ニン諸島上より環礁奥又島が油軍病院に於てカ
ニ中佐奥山景一が油軍病院に於てカニン諸島上より環礁奥又島に於てカ
曲長以上信次最其地当局に姓名不詳の人名が同時同処
に於て日本軍隊に抑留されたる当局に姓名不詳の二名
又その傍ら毒害毒菌を注射し衛害を加へ其地当局には
殺害したと

(11) 昭和十九年三月二日頃カニン諸島上より環礁奥又島に於てカ
ニ中佐奥山景一が油軍病院に於てカニン諸島上より環礁奥又島に於てカ
曲長以上信次最其地当局に姓名不詳の人名が同時同処
に於て日本軍隊に抑留されたる当局に姓名不詳の二名
又その傍ら毒害毒菌を注射し衛害を加へ其地当局には
殺害したと

(2) 昭和十九年三月十七日頃カニン諸島上より環礁奥又島に於て
カニン諸島上より環礁奥又島が油軍病院に於てカニン諸島上より環礁奥又島に於てカ
曲長以上信次最其地当局に姓名不詳の人名が同時同処に於て日本軍隊に抑留されたる当局に姓名不詳の二名
又その傍ら毒害毒菌を注射し衛害を加へ其地当局には
殺害したと

C A 本一不
アメリカ合衆国海軍少将
コリン・スミス

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, in July 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(b) The unlawful torture, abuse and inhumane treatment of two (2) American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

(d) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, on or about October 15, 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

"AA (2)"

0101

(e) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by constantly beating them with clubs, denying them medical care, confining thirteen of them for about one week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six feet two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head, by naval members of the armed forces of Japan on Dublon Island, names to the relator unknown. 813

~~(e) The unlawful torture, abuse and inhumane treatment of about forty-two (42) American prisoners of war, namely, George Estabrook Brown, Jr., lieutenant commander, USNR, and others whose names are to the relator unknown, during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands, by constantly beating them with clubs, denying them medical care, confining thirteen of them for about one week in a small cell six feet by eight feet, forcing said Brown to stand at attention for a period of forty-eight (48) hours except for intervals of questioning and beating, beating said Brown with six feet two inch by two inch clubs while he was being interrogated, and beating said Brown with a rifle butt upon his bare feet and head, by naval members of the armed forces of Japan on Dublon Island, names to the relator unknown.~~ 813

(f) The unlawful torture, abuse and inhumane treatment of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, during the period from on or about December 15, 1943 to December 28, 1943, (1) by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Isaloelap Atoll, Marshall Islands, by members of the crew of said tugboat, names to the relator unknown, (2) by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, during the period from December 16, 1943 to December 19, 1943, at Wille Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown, (3) by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthful cell, and denying him adequate medical care, during the period from December 19, 1943 to December 28, 1943, at Kaejalein Atoll, Marshall Islands, by members of the armed forces of Japan, names to the relator unknown. 813

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

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

(i) The unlawful killing of five (5) unarmed American prisoners of war, names to the relator unknown, on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by beheading, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands.

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

"AA (4)"

0103

Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said 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, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) American prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

"AA (5)"

0104

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

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

28

(f) The unlawful torture, abuse and inhumane treatment during the period from on or about December 15, 1943 to December 28, 1943, at or near the Marshall Islands, of seven (7) American prisoners of war, namely, Fred F. Garrett, former captain, United States Army Air Forces, and others whose names are to the relator unknown, then and there held captive by the armed forces of Japan, (1) by members of the crew, names to the relator unknown, of a Japanese tugboat, name and further description to the relator unknown, on or about December 15, 1943, at or near Maloelap Atoll, Marshall Islands, by keeping them trussed without food or water for a period of twelve hours, denying them medical care, and beating and striking them about the head with a club, aboard said tugboat, (2) by members of the armed forces of Japan, names to the relator unknown, during the period from December 16, 1943 to December 19, 1943, at Mille Atoll, Marshall Islands, by repeatedly beating and kicking them, denying medical care to said Garrett, and threatening to kill said Garrett if he refused to disclose military information, (3) by members of the armed forces of Japan, names to the relator unknown, during the period from December 19, 1943 to December 28, 1943, at Kwajalein Atoll, Marshall Islands, by striking and slapping said Garrett, burning said Garrett with cigarette butts, confining said Garrett in an unsanitary and unhealthful cell, and denying him adequate medical care.

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

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

"AA (6)"

0105

(i) The unlawful killing on or about February 2, 1944, at or near Mille Atoll, Marshall Islands, by OISHI, Chisato, then a colonel, IJA, NAKAO, Otokiti, then a major, IJA, TAKARADA, Chojiro, then a major, IJA, FUETA, Kiyoshi, then a lieutenant, IJN, ABE, Masaaki, then a captain, IJA, MOORI, Yashuo, then a first lieutenant, IJA, MOTOMURA, Harushi, then an ensign, IJN, TANAKA, Yutaka, then an ensign, IJN, and MANAKO, Tatsuichi, then a warrant officer, IJN, all attached to the military installations of the Imperial Japanese armed forces, Mille Atoll, Marshall Islands, of five (5) unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, by beheading.

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

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

"AA (7)"

0106

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, May 13, 1948.

The commission met at 10 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Corporal Carrol Edmon Glenn, U. S. Marine Corps, entered with the accused
and reported as provost marshal.

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

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

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

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

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate did not object to any member.

The accused did not object to any member.

The judge advocates and each member were duly sworn.

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

An interpreter read an English translation of the plea to the juris-
diction by Mr. Takano, appended marked "H."

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

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

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

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

No witnesses not otherwise connected with the trial were present.

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

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

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

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

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

No witnesses not otherwise connected with the trial were present.

The judge advocate read a written reply to the accused's plea to the jurisdiction, appended marked "J."

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

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the plea to the jurisdiction was not sustained.

Commander Martin E. Carlson, a counsel for the accused, read a motion for a change of venue, appended marked "K."

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

The judge advocate read a written reply to the motion for a change of venue, appended marked "L."

The accused waived the reading of the judge advocate's reply to the motion for a change of venue in Japanese in open court.

The commission announced that the motion for a change of venue was not sustained.

Commander Martin E. Carlson, a counsel for the accused, requested that the accused be allowed to take the stand and testify on his voir dire, to verify statements contained in his plea in bar of trial, before such plea in bar was made.

The judge advocate replied, stating that he had no objection to such procedure.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the accused would be permitted to testify on his voir dire before making his plea in bar of trial.

The accused was, at his own request, duly sworn on voir dire as a witness in his own behalf, and was examined on his voir dire as follows:

Examined by the judge advocate:

1. Q. What is your name?
A. Kobayashi, Masashi.
2. Q. Are you the accused in the instant case?
A. Yes.
3. Q. Do you desire to testify in your own behalf in connection with the plea in bar of trial?
A. Yes.

Examined by the accused:

4. Q. When were you first arrested?
A. At the Second Demobilization Bureau on March 13, 1946 I was informed by persons at the Second Demobilization Bureau that I was to be arrested in accordance with instructions from SCAP.
5. Q. Who arrested you?
A. No one arrested me. I went to Sugamo Prison myself on March 27th of the same year. The date I gave as the 27th, I believe it was on the 26th.
6. Q. Were you placed in confinement when you reported at Sugamo Prison?
A. Yes.
7. Q. The persons that placed you in confinement there at Sugamo Prison, did they have a warrant for your arrest?
A. No, they did not have any warrant for arrest.
8. Q. At the time of your arrest were you charged with a crime?
A. No, I was not.
9. Q. Did anyone interrogate you at Sugamo Prison?

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

The accused made no reply.

The commission announced that the objection was sustained.

10. Q. At the time of your arrest, what were you charged with?
A. I was not charged.

11. Q. How did you get to Guam?

A. I left Sugamo on May 22, 1946 and arrived at Guam at dawn on the twenty-third.

12. Q. Were you extradited from Japan to Guam?

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

The accused made no reply.

The commission announced that the objection was sustained.

13. Q. What happened to you when you got to Guam?

A. As soon as I arrived on Guam I was placed in the War Criminals Stockade.

14. Q. In solitary confinement?

This question was objected to by the judge advocate on the ground that it was irrelevant to the issues of the plea in bar.

The accused made no reply.

The commission announced that the objection was not sustained.

A. Yes.

15. Q. Were you charged with a crime?

A. No.

16. Q. When were you first served with the charges and specifications?

A. On March 30th of 1948.

17. Q. Where were you living at the time you reported to Sugamo Prison?

A. I was living in Tokyo.

18. Q. At what address?

A. Number 49, Taira-machi, Meguro-ku, Tokyo.

19. Q. Was this your address on record with the Japanese Naval Ministry?

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. Yes.

Cross-examined by the judge advocate:

20. Q. When you reported to Sugamo Prison, was that because you were on SCAP's list of persons wanted for arrest?

A. Yes.

21. Q. Were you confined in Sugamo Prison as a suspected war criminal?

A. I think that may be so.

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

The commission did not desire to examine this witness.

The witness resumed his status as accused.

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

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

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

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

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

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

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

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

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

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

The accused stated that he had received two copies of the charge and specifications preferred against him, one in English and one in Japanese, on March 30, 1948.

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

The accused replied in the affirmative.

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

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

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

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

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

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

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Friday, May 14, 1948.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Friday, May 14, 1948.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The commission was opened and all parties to the trial entered. The
commission announced that it, having found the charge and specifications not
in due form and technically correct, directed the judge advocate to send a
communication to the convening authority, copy prefixed marked "U," and would
await a reply.

The commission then, at 11 a. m., adjourned until 9 a. m., tomorrow,
Saturday, May 15, 1948.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, May 15, 1948.

The commission met at 9:15 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate read a letter from the convening authority, prefixed
marked "V," directing him to make changes in the charge and specifications,
and stated that the same had been made both in the original English and
Japanese translation and in the copies in the possession of the accused.

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

Commander Martin E. Carlson, a counsel for the accused, made a motion
for a directed acquittal on behalf of the accused, appended marked "W."

The judge advocate made an oral reply, a brief of which is appended
marked "X."

The commission announced that the accused's motion for a directed
acquittal was not sustained.

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

The accused replied in the negative.

The commission announced that it found the charge and specifications in
due form and technically correct.

Commander Martin E. Carlson, a counsel for the accused, read a motion
for a bill of particulars, appended marked "Y."

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

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

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

The commission announced that the motion for a bill of particulars was not sustained.

The accused stated that he was ready for trial.

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

An interpreter read the charge and specifications in Japanese, prefixed marked "BB."

The judge advocate arraigned the accused as follows:

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

A. Not guilty.

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

A. Not guilty.

Q. To the charge, guilty or not guilty?

A. Not guilty.

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

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

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

No witnesses not otherwise connected with the trial were present.

The prosecution began.

The judge advocate read his written opening statement, appended marked "CC."

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

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

1. That during the years 1943 and 1944 a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies.

2. That the Marshall Islands, Caroline Islands, and Wake Island are part of the Commander Marianas Area.

3. Hague Convention No. IV of 18 October 1907.

4. The Annex to Hague Convention No. IV of 18 October 1907, particularly the following portions thereof:

Article 1

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

"1. To be commanded by a person responsible for his subordinates."

Article 4

"Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated."

5. The Geneva Prisoners of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Title 1, Article 2 thereof, which reads as follows:

"Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them.

"They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.

"Measures of reprisal against them are prohibited."

6. The Potsdam Declaration of 26 July 1945, particularly paragraph 10 which reads in part as follows:

"We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

An interpreter read a Japanese translation of this request.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the request of the judge advocate on judicial notice, appended marked "DD."

An interpreter read an English translation of this written objection to the request for judicial notice, appended marked "EE."

The judge advocate replied.

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

The commission made the following ruling:

The commission rules that the objections raised by the defense are not sustained and the commission will take judicial notice of items one through six as requested by the judge advocate.

The commission then, at 11:15 a. m., adjourned until 9 a. m., Monday, May 17, 1948.

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, May 17, 1948.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Kocs, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and station.
A. Herbert L. Ogden, commander, U. S. Navy, attached to the office of the
Director of War Crimes, Pacific Fleet.
2. Q. If you recognize the accused, state as whom.
A. Vice Admiral Kobayashi.
3. Q. Are you the legal custodian of certain documents?
A. I am.
4. Q. Are you attached to the office of the Director of War Crimes, Pacific
Fleet, Commander Marianas?
A. I am.
5. Q. Are these documents which you have with you part of the official
files of that office?
A. They are.
6. Q. Do you have a document, identified as prosecution document number
114, in your possession?
A. I have.

7. Q. What does this document consist of?

A. This document is a statement of Vice Admiral Kobayashi dated 12 March 1948.

8. Q. How did this particular document come into your possession, and will you tell the commission what you know about this document?

A. On the twelfth of March 1948, at the War Criminal Stockade, Guam, Vice Admiral Kobayashi was shown a statement of the military and biographical history of Kobayashi as made up by the legal section, investigation division, GHQ, SCAP, dated 2 April 1947. Admiral Kobayashi was asked to examine this report as to its being complete and correct. He did so and he was asked to make a written statement identifying this statement and certifying it to be correct. He also made one correction and one addition. He attached the SCAP report to his statement as a part of his statement and certified it as being true, before me.

9. Q. Do you have the original of that statement and its attached biographical history?

A. I have.

The document marked Prosecution Document No. 114, produced by the witness, was submitted to the accused and to the commission and by the judge advocate offered in evidence.

The accused requested permission to cross-examine this witness as to the admissibility of this document.

The commission announced that permission was granted.

Cross-examination by the accused concerning Prosecution Document No. 114:

10. Q. What do you mean by the SCAP report?

A. The SCAP report is a report made by the investigation division of SCAP in Tokyo.

11. Q. Who asked SCAP to make this report?

A. Most of these reports originate at our request, or the request of our liaison officer in Tokyo.

12. Q. Who requested this particular report dated 2 April 1947?

A. The Director of War Crimes requested such reports on all suspects taken into custody.

13. Q. Then I understand that the Director of War Crimes requested this particular report?

A. I don't know whether this particular report was requested by name or not. It may have been simply a blanket request.

14. Q. Do you know where Kobayashi was on 2 April 1947?

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.

15. Q. This statement dated April 2, 1947, is this an original statement?
A. The SCAP report is a Commander Marianas copy.

16. Q. Do you know where the original is?
A. I presume that SCAP has the original.

17. Q. Therefore, if the original is available, it should be offered in evidence?

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 sustained.

18. Q. Where was Admiral Kobayashi on March 12, 1948?
A. He was confined at the War Criminals Stockade, Guam.

19. Q. Do you know by whose order he was in solitary confinement on that date?
A. I do not know.

20. Q. Do you know how long he had been held in solitary confinement on that date?
A. I do not know when he was confined.

21. Q. Do you know if he had been confined for a period of almost two years?

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

The accused made no reply.

The commission announced that the objection was sustained.

22. Q. Do you know why Kobayashi made this statement in English, when his native tongue is Japanese?
A. When Admiral Kobayashi was interrogated he was asked whether he desired to make his statements in Japanese or English and he expressed a preference for English.

23. Q. When you showed this document, which was made by SCAP, to the accused, did you ask him whether the matters pertaining to his biography were complete and correct?
A. Yes.

24. Q. What did the accused reply to your question?
A. He replied that it was true and correct, except for one word which he changed and one period of duty which was omitted.

25. Q. Did you ask the accused if this SCAP report was a complete and true copy of the document of military biography which was in the custody of the Japanese government at that time?

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

The accused withdrew the question.

26. Q. Did the accused, in reply to your question, say that this report was complete with regard to his biographical history?

A. He did, with the exception of the time I have mentioned and the changes he made in the copy of the SCAP report.

27. Q. Do you know if this SCAP report, with regard to the accused's biographical history, is a true and complete copy of the one that is held in custody by the Japanese government?

A. All I know is that it was received by the Director War Crimes as a Commander Marianas carbon copy.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the introduction of Prosecution Document No. 114 in evidence, appended marked "FF."

The judge advocate read a written reply to the objection, appended marked "GG."

The commission announced that the objection was not sustained.

There being no further objection, the document was received in evidence, and is appended marked "Exhibit 1."

Reexamination by the judge advocate concerning Exhibit 1:

28. Q. Will the witness read the statement dated 12 March 1948 which is a part of Exhibit 1?

A. (The witness read the statement dated 12 March 1948 which is a part of Exhibit 1).

29. Q. Was the accused, at the time of the making of this statement, furnished a translation in Japanese?

A. I believe Admiral Kobayashi translated this statement himself into Japanese.

30. Q. Will you read from the biographical history which is attached to this statement of Admiral Kobayashi some of the highlights of his career, covering in particular his duty from 5 April 1943 to 23 February 1944?

A. (The witness read from the biographical history of Kobayashi which is a part of Exhibit 1).

The accused requested permission to recross-examine the witness at this time concerning this document.

The commission announced that permission was granted.

Recross-examination by the accused concerning Exhibit 1:

31. Q. When you say that you believe that Vice Admiral Kobayashi translated this into Japanese, do you mean that he read it to you in Japanese or that he wrote out a translation?

A. In that respect, I would like to clarify my previous answer. Admiral Kobayashi wrote out the Japanese of the report dated 2 April 1947. The Japanese of his statement dated 12 March 1948 was made by one of the interpreters in our office.

32. Q. Wasn't an interpreter available at the time you questioned Kobayashi on March 12th?

A. An interpreter was available and present at all times when Admiral Kobayashi was interrogated.

33. Q. Who was the interpreter who was present at this time?

A. Frederick A. Savory.

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 1.

The commission did not desire to examine this witness concerning Exhibit 1.

Examination by the judge advocate concerning Prosecution Document No. 5:

34. Q. Does the witness have with him a document dated 19 September 1947, referred to as Prosecution Document No. 5?

A. I have.

35. Q. Is this an official document of the office of Director of War Crimes, Pacific Fleet, Commander Marianas?

A. It is.

36. Q. What does this document consist of?

A. This document consists of a letter of transmittal from the Chief of Liaison Section, Central Liaison Office, Japanese government, and encloses some charts and tables of organization of the Fourth Fleet of the Japanese navy.

37. Q. Do you have the original of that document in your possession here in court?

A. I have.

At the request of the judge advocate, this original document was marked "Number 1" for identification.

38. Q. Do you have certified copies from that document?

A. I have.

39. Q. Who certified these to be true copies?

A. I did.

A certified copy from the original document marked "Number 1" for identification was submitted to the accused and to the commission and by the judge advocate offered in evidence. *OK*

The accused requested permission to cross-examine this witness as to the admissibility of this document in evidence.

The commission announced that permission was granted.

Cross-examination by the accused concerning Prosecution Document marked "Number 1" for identification:

40. Q. Is this document Number 5 an original document?

A. It is.

41. Q. Where are the references (a,) (b,) (c,) (d,) and (e) of the document that is marked Number 1 for identification?

A. Those references, I believe, are in the hands of SCAP. It is possible that our office may have copies of them. I'm not sure.

42. Q. Have they been made available to the defense?

A. I believe they would be available to the defense.

43. Q. Have they been made available?

A. I would say they are available in our office to the defense if they are there.

44. Q. But so far they have not been made available to the defense, have they?

A. We have received no request to make them available.

45. Q. At the time these documents were made up, was the accused or his counsel given the right to be present?

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

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

Stewart R. Smith, 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-examination by the accused concerning Prosecution Document marked Number 1 for identification continued.)

46. Q. Do you know what this reference (a) in the original document that was marked as an exhibit is?

A. In obtaining these documents from the Japanese government, we make our request through our liaison officer in Tokyo, who in turn makes the request to SCAP, who in turn makes the request to the Central Liaison Office of the Japanese government. Reference (a) would be the request from SCAP directed to the Central Liaison Office for the information desired by our office.

47. Q. Do you know if the information that you received was the information that you requested in reference (a)?

This question was objected to by the judge advocate on the ground that it was improper in form, because the witness has not testified that he made the request in reference (a); it was made by the Legal Section, SCAP.

The accused made no reply.

The commission directed counsel to reframe the question.

48. Q. Do you know if the information that was received was the information that was requested by reference (a)?

A. I would say it is.

49. Q. These tables of organization, do they show the organization as of July, 1943?

The question was objected to by the judge advocate on the ground that the document offered in evidence was the best evidence.

The accused made no reply.

The commission announced that the objection was sustained.

50. Q. How was the document that you are offering in evidence, prosecution document No. 5, made up?

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

The accused replied.

The commission announced that the objection was sustained.

51. Q. Is the document that is being offered in evidence the identical document or a copy of the document that has been entered as an exhibit?

This question was objected to by the judge advocate on the ground that the original document has not been offered in evidence, so the document offered could not be identical; it is a certified copy.

The accused replied.

The commission announced that the objection was sustained.

52. Q. Is the document that is being offered in evidence, dated 1 April 1943 and 1 January 1944, a certified copy of the original document?

This question was objected to by the judge advocate on the ground that the question was ambiguous in that counsel was apparently referring to two tables in that document, and not to the date of the document as a whole, and, secondly, that the accused misread those dates of the tables which read: "As of 1 April 1943," and "As of 1 January 1944."

The accused replied, requesting a fifteen minute recess in order to examine the document offered in evidence, on the ground that the accused had had no opportunity to examine the document.

This request was objected to by the judge advocate on the ground that the accused had had an opportunity to examine the document prior to its offer into evidence.

The commission announced that the request for a recess was not granted, and that the objection to the question was sustained.

53. Q. Is the accused Kobayashi charged with having committed a crime on 1 April, 1943?

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

The accused made no reply.

The commission announced that the objection was sustained.

54. Q. Is there available in the office of Director, War Crimes a table of organization of the Fourth Fleet as of July, 1943? JK

This question was objected to by the judge advocate on the ground that it was irrelevant to the admissibility of this document in evidence.

The accused made no reply.

The commission announced that the objection was sustained.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written motion for the postponement of the introduction of prosecution document number five into evidence, appended marked "HH."

An interpreter read an English translation of this motion, appended marked "II."

The judge advocate read a written reply to the accused's motion for the postponement of the introduction of prosecution document number five into evidence, appended marked "MM."

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

The commission announced that the motion for postponement was not sustained.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt in evidence of prosecution document number five, appended marked "JJ."

An interpreter read an English translation of this objection, appended marked "KK."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the introduction into evidence of prosecution document number five, appended marked "LL."

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

The judge advocate made a reply to the accused's objection, appended marked "MM."

The commission announced that the objections to the introduction of prosecution document number five were not sustained. There being no further objection, it was so received in evidence, appended marked "Exhibit 2." *JK*

The witness was duly warned.

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

Present: All the members, the judge advocates, the accused, 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.

Examination by the judge advocate concerning Exhibit 2:

55. Q. Will the witness examine the covering letter dated 19 September 1947 from the Chief of the Liaison Section of the Central Liaison Office, Tokyo, which is one of the certified copies from the document marked number one for identification and which has been admitted in evidence, and read therefrom paragraph two? *JK*

A. (The witness read paragraph two of the letter of transmittal of Exhibit 2.)

56. Q. Would you examine the annex table number three which is part of the Exhibit 2 and tell us what period of time it purports to cover?

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

The judge advocate withdrew the question.

57. Q. Will you tell us what the dated portion of that annex table reads? *JK*

A. Annex table number three is dated as of 1 April 1943.

58. Q. What date is shown on annex table number four?

A. As of 1 January 1944.

59. Q. What are the dated periods on annex chart number one?

This question was objected to by the accused on the ground that the charts had not been received in evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This chart contains dates running from January, 1941, to July, 1943.

60. Q. And annex chart number two?
A. August, 1943, to February, 1944.

61. Q. Will you examine annex table number three and read the name of the commanding officer of the Fourth Fleet therefrom?
A. Kobayashi, Masashi.

62. Q. Would you give the names of the major naval units shown on that table?
A. Kashima, flagship of Fourth Fleet, 14th Squadron, Third Special Base Force, Fourth Base Force, Fifth Special Base Force, Sixth Base Force.

63. Q. Is the Second Escort Group also shown?
A. Yes, also the Second Escort Group.

64. Q. Does this table give the name of the guard unit on Truk?
A. The table shows under the Fourth Base Force, the Forty-first Naval Guards, Truk. JK

65. Q. Does this table give the names of various commanding officers of that unit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The table shows the commanding officers of the Forty-first Naval Guards as Kimie, Tanetsugu; early April, Kobayashi, Matsushi; early July, Naito, Atsushi; late September, unknown; Mid-December, Tanaka, Seiji. JK

66. Q. Does the table show the name of the commanding officers of the Fourth Base Force?

A. It shows the names to be Takeda, Moriji, 15 July; Nakabayashi, Seisaku. It shows the name with an "N" which is a typographical error. JK

67. Q. Does the table show the location of the Headquarters of the Sixth Base Force?

A. Kwajalein.

68. Q. What is the name of the commanding officer there listed?

A. Abe, Koozoo, late September, Akiyama, Monzoo.

69. Q. Under the Sixth Base Force, is the guard unit at Wake shown?

A. The Sixty-fifth Naval Guards at Wake.

70. Q. What does the table show with relation to the commanding officer of that unit?

A. Sakaibara, Shigematsu, until termination of war.

71. Q. Will the witness examine the annex table number four? What is the date at the top of the annex table?

A. 1 January 1944.

72. Q. Will the witness read the names of the major units shown on that table?

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. Nagara, Fourteenth Squadron, Twenty-second Air Squadron, Third Special Base Force, Fourth Base Force, Fifth Special Base Force, Sixth Base Force, Thirtieth Special Base Force. JH
JH

73. Q. Does the table show the name of the commanding officer of the Fourth Base Force?

A. Wakabayashi, Seisaku.

74. Q. Does the table show the Forty-first Naval Guard Unit as a unit under the Fourth Base Force?

A. It does, at Truk.

75. Q. Does it show the name of the commanding officer of that unit and will you read the portion that pertains thereto?

A. Tanaka, Seiji; Asano, Shimpei since late in February.

76. Q. Does the table show the location of the Sixth Base Force?

A. Kwajalein.

77. Q. Does the table show the name of the Guard Unit under the Sixth Base Force which was at Maloelap?

A. It shows the Sixty-third Naval Guards at Maloelap. JH

78. Q. Does it show the name of the commanding officer of those guards?

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. Kamada, Shoichi, up to the end of war.

79. Q. Does the table show the Sixty-first Naval Guards at Kwajalein?

A. It does.

80. Q. Will the witness go back to annex table number three and there read the entry as to the commanding officer of the Sixty-third Guards at that time?

A. Late September, Kumazawa, Sotozo; mid-October Kamada, Shoichi.

81. Q. Will the witness also read from that same table the entry regarding the Sixty-first Naval Guards?

A. Narita, Kiyoji; 1 May, Arima, Seisuke; mid-September, Yamagata, Seiji.

82. Q. Is that Guard Unit listed to be on Kwajalein?
A. It is.

83. Q. Will the witness now return to annex table number four. What does the table show with reference to the name of the commanding officer of the Sixty-sixth Naval Guard Unit at Mille?
A. Shiga, Masanari, up to the end of war.

The accused requested permission to cross-examine this witness in regard to this document.

The commission announced that permission was granted.

Cross-examination by the accused concerning Exhibit 2:

84. Q. This prosecution document number five states that it contains four blueprints and six tables showing the geographical organization of the Fourth Fleet. Is that organization a geographical organization and a geographical jurisdiction which was requested?
A. It is.

85. Q. Do the tables or the charts explain what is meant by a geographical jurisdiction?
A. No more detailed statement is included other than that it is the area of jurisdiction of the Fourth Fleet.

86. Q. Then this geographical jurisdiction and organization is not necessarily a naval organization and jurisdiction, is that true?

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

The accused replied.

The commission announced that the objection was not sustained.

A. The Fourth Fleet is a naval organization.

87. Q. Is the geographical jurisdiction and organization necessarily the same as a naval and military jurisdiction and organization of the Fourth Fleet?
A. In my opinion, it is.

88. Q. When you read, in reference to the Forty-first Naval Guards, Truk, from annex table number three, you read early April and early July. Early April and early July of what year?
A. Unless otherwise stated, the year would be 1943.

89. Q. You say the table shows that the Fourth Base Force was a unit under the Fourth Fleet. For what purpose was the Fourth Base Force under the Fourth Fleet?
A. So far as I know, for all purposes.

90. Q. But doesn't the covering letter show that it is for geographical jurisdiction and geographical organization only? *JK*

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

The accused made no reply.

The commission announced that the objection was sustained.

91. Q. Table number four under the Sixty-first Naval Guards, Kwajalein, shows that Yamagata, Seiji, was the officer up to early February, unknown since. Will the witness explain why the year was not included in that?
A. In this table, unless otherwise stated, the dates are 1944.

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 2.

The commission did not desire to examine this witness concerning Exhibit 2.

The accused moved that Exhibit 2 be stricken from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

The accused requested permission from the commission to forward interrogatories to the head of the Liaison Section, Central Liaison Office, Japanese Government.

The judge advocate replied, stating that this was not the procedure previously followed.

The commission announced that the previous procedure would be followed in the matter of submitting interrogatories. The accused was directed to submit all interrogatories for handling by the judge advocate.

Examination by the judge advocate concerning prosecution document number 8: Jx

92. Q. Will you examine this document and tell us if you recognize it and if it is one within your official custody?

A. I do. This is a statement from the Chief of the Liaison Section, Central Liaison Office, Japanese Government, giving the tours of duty of the officers of the Fourth Fleet and dated 16 September 1947 and 2 October 1947.

At the request of the judge advocate, this original document was marked "Number 2" for identification.

93. Q. I hand you a document which purports to be a certified copy of the document marked number two for identification and ask you if you certified that as a true copy?

A. I did.

The document produced by the judge advocate was submitted to the accused and to the commission and by the judge advocate offered in evidence.

The accused objected to the introduction of this document in evidence on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objections, the document was received in evidence, and is appended marked "Exhibit 3."

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

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

94. Q. Will the witness read from Exhibit 3 the portions relating to the period of duty of Kobayashi?

A. "Name - Kobayashi, Masashi; rank - vice admiral; post - commander in chief 4th Fleet; tenure by official announcement of appointment - 1 April 1943 until 18 February 1944; actual period of assuming duty - 23 February 1944 until the end of the war."

95. Q. Would you read the portions with regard to Wakabayashi, Seisaku from this exhibit?

A. "Name - Wakabayashi, Seisaku; rank - vice admiral; post - commandant, 4th Base Force and Second Escort Force; tenure by official announcement of appointment - 15 July 1943 until 18 February 1944; actual period of assuming duty - July 1943 until 23 February 1944."

96. Q. Will the witness read from the second paragraph of the letter dated 2 October 1947 the portion referring to the date on which Wakabayashi took over this duty?

A. "2. In regard to the date on which ~~ex~~-vice admiral Wakabayashi, Seisaku actually took office as Commander of the Fourth Naval Base Force and concurrently Commander of the Second Naval Escort Force, ex naval Captain Yamada, Tadashi, then Aide-de-Camp of the Fourth Fleet stated that the date in question was presumed to have been 24 or 25 July 1943."

The accused did not desire to cross-examine this witness concerning Exhibit 3.

The commission did not desire to examine this witness concerning Exhibit 3.

Examination by the judge advocate concerning prosecution document number 9:

97. Q. Are you the official custodian of the document bearing the date 5 March, 1948?

A. I am.

98. Q. Is this a part of the official files in the office of the Director, War Crimes, Pacific Fleet, Commander Marianas Area?

A. It is.

99. Q. Was this document obtained from the Central Liaison and Coordination Office of the Japanese Government?

A. It was.

100. Q. Do you have the original of that document in your possession?

A. I do.

At the request of the judge advocate this original document was marked "number three" for identification.

101. Q. I show you what purports to be a certified copy and ask you if you prepared the certification from that document?

A. I did.

Cross-examination by the accused concerning prosecution document number 9:

102. Q. Isn't the alleged maker of this document, "K. Yoshida", presently in Japan and therefore available as a witness?

A. As far as I know he is presently in Japan.

The certified copy of the document marked "number three" for identification was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

There being no objection, the document was so received in evidence, appended marked "Exhibit 4."

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 4.

The commission did not desire to examine this witness concerning Exhibit 4.

Examination by the judge advocate concerning prosecution document number 7:

103. Q. Are you the official custodian of the document dated 15 September, 1947, from the Central Liaison Office, Tokyo?

A. I am.

104. Q. Is this an official document from the files of the Director, War Crimes, Pacific Fleet, Commander Marianas Area?

A. It is.

At the request of the judge advocate, this original document was marked "number four" for identification.

105. Q. I show you a document which consists of a covering letter and an enclosure, both of which are in English and ask you if these are certified copies which have been taken from document marked "number four" for identification?

A. They are.

106. Q. Did the original document which has been marked "number four" for identification contain in addition to this covering letter and the English enclosure of which you have made a certified copy, an original document in Japanese from which this enclosure is purported to be a translation?

A. It did.

A certified true copy of the document marked "number four" for identification was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to this document being received in evidence, appended marked "NN."

An interpreter read an English translation of this objection, appended marked "OO."

Commander Martin E. Carlson, a counsel for the accused, further objected to this document being received in evidence on the ground that the so-called enclosure is neither dated nor signed and that by no rule of evidence is an accused bound by an undated and an unsigned document.

The judge advocate read a written reply to this objection, appended marked "PP."

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

The commission made the following ruling:

The commission authorizes the change to be made in the copies of this document as indicated by the judge advocate in his reply which removes objection number one raised by the counsel for the accused. The second objection is not sustained. There being no further objection, the document was so received in evidence, appended marked "Exhibit 5."

Examination continued by the judge advocate concerning Exhibit 5.

107. Q. Will the witness read paragraph roman numeral number one and paragraph roman numeral number two of the enclosure of Exhibit 5?

A. "I. There were no regulations whatever in the laws or ordinances issued by the Japanese Government or the regulations or orders issued by the Navy Ministry or by the Naval General Staff charging any specified staff officer with responsibility for the custody of POWs detained in a unit, their administration or their operation. II. The duties of staff officers and aides-de-camp in a headquarters are fixed by the commander-in-chief or the commandant. It follows therefore that in a headquarters there should always be a staff officer or an aide-de-camp assigned to the duty of handling POWs. The competence of such staff officer in carrying out his assigned duty is in any case the competence of a staff member of the commander-in-chief or the commandant; a staff officer in the Navy is never authorized to issue orders,

directions, etc., by himself."

Neither the accused nor the commission desired to examine this witness concerning Exhibit 5.

The witness was duly warned.

The commission then, at 4:10 p. m., adjourned until 9 a. m., tomorrow, Tuesday, May 18, 1948.

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, May 18, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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.

A document produced by the judge advocate was, at his request, marked "Number 5" for identification.

Examination by the judge advocate concerning document marked "Number 5" for identification:

108. Q. I show you a chart which is marked for identification "Number 5" and ask you if you recognize this chart?

A. I do. That is Hydrographic Office Chart Number 6050 of Eten Anchorage, Caroline Islands and Truk Island, which was shown to Admiral Kobayashi in the course of his interrogation, and on this chart Admiral Kobayashi marked various navy installations on Dublon Island. It was also shown to Admiral Wakabayashi and Captain Inoue.

109. Q. Was this chart shown to Admiral Kobayashi at the same time it was shown to Admiral Wakabayashi?

A. The chart was shown first to Admiral Kobayashi and on the same day it was also shown to Admiral Wakabayashi in Admiral Kobayashi's presence. Both agreed on the location of the units marked on the chart.

110. Q. How were the markings made and are the names of the markings anywhere in evidence on the chart?

A. The units were marked with capital letters from A to H and were identified in a written statement made by Admiral Kobayashi on 10 March 1948. This chart was then attached to that statement.

111. Q. To whose statement was this chart attached?

A. This chart was attached to Vice Admiral Kobayashi's statement dated 10 March 1948.

112. Q. Is it indicated any place on the face of this chart what the names of the installations are, or does it merely have an alphabetic letter in the location of the various units that are unnamed and are otherwise unmarked on the chart?

A. The units are not named on the chart.

113. Q. I observe, in the right hand lower corner of this chart, the initials "MK" and "SW." Will you testify what they signify and when they were placed there, if you know?

A. These are the initials of Vice Admiral Kobayashi and Vice Admiral Wakabayashi and were placed there in my presence at the time they marked this chart. They were placed there by Admiral Kobayashi and Admiral Wakabayashi.

Commander Martin E. Carlson, a counsel for the accused, made an objection to the procedure used by the judge advocate in allowing a witness to testify from this document without allowing the defense an opportunity to inspect it before the judge advocate questioned the witness in regard to it, on the ground that it denied the accused his rights and that the procedure was highly irregular.

The judge advocate replied.

The commission announced that the objection was not sustained.

Neither the accused nor the commission desired to examine this witness concerning the document marked "Number 5" for identification.

Examination by the judge advocate concerning prosecution document number 301:

114. Q. Are you the official custodian of a record in the case of Rear Admiral Shigematsu Sakaibara, tried by a military commission?

A. I am.

115. Q. Do you have that document with you in court?

A. I have.

116. Q. Is that an official document from the files of the Director, War Crimes, Pacific Fleet, Commander Marianas?

A. It is an official certified copy of the record of proceedings, Commander Marianas.

117. Q. Does this record which you have here in court contain the action of the convening authority, the reviewing authority and the record of the military commission?

A. It does.

118. Q. Have you examined this record?
A. I have.

119. Q. Does this record establish the conviction of Shigematsu Sakaibara for any crimes committed from April 5, 1943 to February 23, 1944?
A. It shows that Rear Admiral Sakaibara was convicted of murder on Wake Island on October 7, 1943, of murder on Wake Island during the month of July 1943, and murder on Wake Island on 15 October 1943. OK

120. Q. Does this record also show convictions with relation to any of these crimes with regard to Tachibana, Shohichi?

This line of questioning was objected to by the accused on the ground that if the judge advocate was going to have the witness read from the document he should show the document to the accused, since the document has not been offered in evidence.

The judge advocate replied, pointing out that counsel for accused has had an opportunity to examine this document and did examine it in the office of the Director, War Crimes. He also pointed out that the witness was not reading from the document.

The commission was cleared.

The commission was opened. All parties to the trial entered.

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

The commission made the following ruling:

The commission announces at this time that the desired procedure to be followed in regard to the introduction of portions of the records of proceedings of previous trials will be to follow the spirit and general purport of Section 198, Rule 3, and Section 200, Rule 5, of Naval Courts and Boards.

At the request of the judge advocate this original document was marked "Number 6" for identification.

121. Q. Has the witness prepared certified extracts from the official record in the case of Rear Admiral Shigematsu Sakaibara and others which relate to Shigematsu Sakaibara and Tachibana, Shohichi covering the alleged crimes committed within the period of April 5, 1943 to February 23, 1944?
A. I have prepared excerpts from the charges and specifications, the findings of the military commission, the action of the convening authority, and reviewing authority and the action of the confirming authority in this case. OK

122. Q. Were these certified to be true copies by you on the 15th of May, 1948?
A. They were.

A certified copy of prosecution document number 301 was submitted to the accused, and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document number 301:

123. Q. You state that you excerpted certain portions from the record of trial of Admiral Shigematsu Sakaibara. Did the record of proceedings of that trial contain the testimony of the accused, Admiral Sakaibara, as a witness in his own behalf?

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

The accused made no reply.

The commission announced that the objection was sustained.

124. Q. On what basis did you take out of the record of the trial of Sakaibara these excerpts that are now being offered in evidence?

A. These excerpts were prepared solely to show that portion of the record which indicated what Sakaibara and Tachibana were charged with; what they were convicted of and what action was taken by the convening, reviewing and confirming authorities. In other words - what convictions were upheld.

125. Q. Do the excerpts show who was found responsible for the crimes that were committed?

This question was objected to by the judge advocate on the ground that it was ambiguous, vague and abstract and called for the opinion of the witness. *JK*

The accused replied.

The commission announced that the objection was sustained.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to prosecution document number 301 being received in evidence, appended marked "QQ."

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

The judge advocate read a written reply, appended marked "RR."

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

The commission announced that the objection was not sustained. There being no further objection, the document was so received, appended marked "Exhibit 6."

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

Reexamined by the judge advocate concerning Exhibit 6:

126. Q. Will the witness read from Exhibit 6 the charges and specifications set forth therein which relate to Sakaibara, Shigematsu and Tachibana, Shohichi?

The witness read the charges and specifications as it appears in Exhibit 6.

127. Q. Will the witness read the excerpts from the findings of the military commission in that case? JK

The witness read the excerpts from the findings as they appear in Exhibit 6.

128. Q. Will the witness read the excerpt from the action of the convening authority?

The witness read the excerpt from the action of the convening authority as it appears in Exhibit 6. JK

129. Q. Will the witness read the excerpts from the action of the reviewing authority in that case?

The witness read the excerpts from the action of the reviewing authority as they appear in Exhibit 6. JK

130. Q. Will the witness read the action of the Secretary of the Navy with relation to that case?

The witness read the excerpt from the action of the Secretary of the Navy as it appears in Exhibit 6.

Recross-examined by the accused concerning Exhibit 6:

131. Q. You testified that these excerpts were taken from the record of the case of Sakaibara, et al. Is that true?

A. From the record of proceedings in that case.

132. Q. Will the witness then read from the action of the convening authority in this trial the comment of Rear Admiral William K. Harrill, the convening authority of that trial, the paragraph beginning with "The question of....." and ending with "..... he issued the order"?

A. "The question of 'military necessity' raised in defense of Rear Admiral Sakaibara was a question of fact to be decided by the Military Commission. The responsibility of ordering the executions was assumed by Rear Admiral Sakaibara, he having admitted in court and in his statements that he issued the order."

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

The accused replied.

The commission announced that the motion to strike was not sustained.

133. Q. Will the witness read from "Exhibit 8" of that trial the interrogatories of Admiral Sakaibara, the questions and answers there to - question 35? JK

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

The accused replied.

The commission announced that the objection was sustained.

The judge advocate did not desire to reexamine this witness concerning Exhibit 6.

The commission did not desire to examine this witness concerning Exhibit 6.

Examination by the judge advocate concerning prosecution document number 302:

134. Q. Is the witness the official custodian of the files in the office of the Director, War Crimes, Pacific Fleet, Commander Marianas Area, with regard to the case of Iwanami, Hiroshi, et al?

A. I am. JK

135. Q. Does the witness have the official record of the Director of War Crimes, Pacific Fleet, Commander Marianas, in the case of Iwanami, Hiroshi, et al?

A. I have.

The original of the document, at the request of the judge advocate, was marked "Number 7" for identification.

136. Q. Has the witness prepared certified excerpts from this official record concerning alleged crimes committed by Iwanami, Hiroshi, within the period from April 5, 1943 through February 23, 1944?

A. I have.

The certified extracts from prosecution document number 302 were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt of these excerpts in evidence, appended marked "SS."

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

The judge advocate read a written reply to the objection of the accused, appended marked "TT."

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

The commission was cleared.

The commission was opened. All parties to the trial entered.

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

The commission made the following ruling:

The commission rules that the objections raised by the defense are not sustained and the document will be received in evidence. However, when the final action of the Secretary of the Navy is received by the judge advocate it is directed that it be offered in evidence and appended to this exhibit. 9K

There being no further objections, the document was so received, appended marked "Exhibit 7."

137. Q. Will the witness read the excerpted portions from the charges and specifications in the case of Iwanami, Hiroshi, et al, as set forth in Exhibit 7?

The witness read the excerpted portions of the charges and specifications in the case of Iwanami, Hiroshi, et al, as set forth in Exhibit 7.

138. Q. Will the witness read the excerpt from the action of the convening authority in the case of Iwanami, Hiroshi, et al, as set forth in Exhibit 7?

The witness read the excerpted portion of the action of the convening authority as set forth in Exhibit 7.

139. Q. Will the witness read from Exhibit 7 the action of the reviewing authority?

The witness read the action of the reviewing authority in the case of Iwanami, Hiroshi, et al, as set forth in Exhibit 7.

Cross-examination by the accused concerning Exhibit 7:

140. Q. Will the witness read from serial 12147, dated 8 May 1947, specification one of charge two?

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

The accused replied.

The commission was cleared.

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

The commission announced that the objection was not sustained.

A. (Reading from document marked number seven for identification.) "Charge II, Violation of the law and customs of war. Specification 1. In that Iwanami, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said Fourth Naval Hospital, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 30 January 1944,

at a time when a state of war existed between the United States of America, its Allies and Dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commanding Officer of the Fourth Naval Hospital to control the operations of members of his command, and persons subject to his control and supervision, namely, Okuyama, Tokikazu, deceased, then a Surgeon Commander, Imperial Japanese Navy, attached to the Fourth Naval Hospital and Nabetani, Reijiro, deceased, then a Surgeon Lieutenant, Imperial Japanese Navy, attached to the Fourth Naval Hospital, and others unknown, permitting them the aforesaid persons and persons unknown, to kill unlawfully and cause to be killed unlawfully, on or about 30 January 1944, at Dublon Island, Truk Atoll, Caroline Islands, with medical and other experiments, six (6) American Prisoners of War, names to the relator unknown, then and there held captive by the armed forces of Japan at said Atoll, this in violation of the law and customs of war. Certified to be a true copy. Signed James P. Kenny, Lieutenant, U. S. Navy, Judge Advocate."

141. Q. Will the witness read specification two of charge two?

A. (Reading from document marked number 7 for identification.) "Specification 2. In that Iwanami, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at the said Fourth Naval Hospital, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 1 February 1944, at a time when a state of war existed between the United States of America, its Allies and Dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commanding Officer of the said Fourth Naval Hospital to control the operations of members of his command and persons subject to his control and supervision, namely, Okuyama, Tokikazu, deceased, then a Surgeon Commander, Imperial Japanese Navy and Sakagami, Shinji, then a Corpsman Warrant Officer, Imperial Japanese Navy, and other persons unknown, permitting them, the aforesaid persons and persons unknown to kill unlawfully and cause to be killed unlawfully, on or about 1 February 1944, at Dublon Island, Truk Atoll, Caroline Islands, by explosions of dynamite and strangulation, two (2) American Prisoners of War, names to the relator unknown, then and there held captive by the armed forces of Japan at the said Atoll, this in violation of the law and customs of war. Certified to be a true copy. Signed James P. Kenny, Lieutenant, U. S. Navy, Judge Advocate." JK

142. Q. Will the witness read specification three of charge two?

A. (Reading from document marked number 7 for identification.) "Specification 3. In that Iwanami, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at the said Fourth Naval Hospital, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 1 February 1944, at a time when a state of war existed between the United States of America, its Allies and Dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duties as Commanding Officer of the said Fourth Naval Hospital to take such measures as were within his power and appropriate in the circumstances to protect two (2) American Prisoners of War, names to the relator unknown, then held captive by the armed forces of Japan, at Dublon Island, Truk Atoll, Caroline Islands, as it was his duty to do, in that he permitted the unlawful killing with explosions of dynamite and strangulation, by members of his command and JK

persons subject to his control and supervision, of the said two (2) American Prisoners of War, this in violation of the law and customs of war. Certified to be a true copy. Signed James P. Kenny, Lieutenant, U. S. Navy, Judge Advocate."

143. Q. Will you read the findings of the military commission as regards specifications one, two and three of charge two?

A. (Reading from document marked number 7 for identification.) "As to the accused, Iwanami, Hiroshi: The first specification of the second charge proved. The second specification of the second charge, proved. The third specification of the second charge, proved. And that the accused, Iwanami, Hiroshi, is of the second charge, guilty."

144. Q. Will the witness read from specification two of charge one, the words in this specification which have been omitted from the excerpt, beginning with the words "Iwanami, Hiroshi"? JK

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

The accused replied.

The commission announced that the objection was not sustained.

A. (Reading from document marked number 7 for identification.) "Iwanami, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital and."

145. Q. Will the witness read the word which is omitted in the second line of this specification in this excerpt, after the word "hospital" and before the word "attached"?

A. "Both."

146. Q. Will the witness read from the record the findings of the military commission in regard to specification two of charge one?

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. (Reading from document marked number 7 for identification.) "As to the accused, Iwanami, Hiroshi: The second specification of the first charge not proved."

147. Q. Will the witness read from the findings of the military commission the words that are omitted in the third line of the findings before the words "which words are not proved," as to the accused Sakagami?

A. "Iwanami, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital and."

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 19, 1948.

SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Wednesday, May 19, 1948.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

Reexamined by the judge advocate:

148. Q. Will the witness read from the official record, which has been
marked for identification "number seven," the second paragraph of the con-
vening authority's action which deals with specification one of charge two?
A. "Specification 1 of Charge 1 alleges 'that IWANAMI, Hiroshi, then a
surgeon captain, Imperial Japanese Navy, commanding officer of the Fourth
Naval Hospital, attached to the military installations of the Imperial
Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so
serving at the said Fourth Naval Hospital, with OKUYAMA, Tokikazu, deceased,
then a surgeon commander, Imperial Japanese Navy, attached to the Fourth
Naval Hospital, and NABETANI, Reijiro, deceased, then a surgeon lieutenant,
Imperial Japanese Navy, attached to the Fourth Naval Hospital, and others
unknown, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about
30 January 1944, at a time when a state of war existed between the United
States of America, its Allies and Dependencies, and the Imperial Japanese
Empire, wilfully, feloniously, with premeditation and malice aforethought,
and without justifiable cause, assault, strike, injure, infect, and kill,
by experimenting with injections of virulent bacteria, with exposures to
shock and with other methods, the exact nature and character of which are to
the relator unknown, six (6) American Prisoners of War, names to the relator

JK
JK
JK

unknown, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.' Specification 1 of Charge II alleges that the accused, IWANAMI, acting in the same capacity and at the same time and place, did, unlawfully disregard and fail to discharge his duty to control members of his command and other persons then subject to his control, in that he permitted the aforesaid persons to unlawfully kill and unlawfully cause to be killed the same prisoners alleged to have been killed in specification 1 of Charge I. The allegations of killing of the prisoners (specification 1, Charge I) and the failure of the accused, IWANAMI, to exercise proper control over those under his control (specification 1 of Charge II) being based on the same circumstances, were preferred to provide for the contingencies of proof. Since the accused, IWANAMI, stands convicted on two offenses growing out of one act the finding on specification 1 of Charge II is set aside."

149. Q. Will the witness read from the official record the second paragraph on page two of the convening authority's action?

A. "The proceedings, findings of guilty, except on specifications 1, 4, and 5 of Charge II as to the accused IWANAMI, Hiroshi, and the sentences in the foregoing case of IWANAMI, Hiroshi; KAMIKAWA, Hidehiro; OISHI, Tetsuo; ASAMURA, Shunpei; SAKAGAMI, Shinji; YOSHIZAWA, Kensaburo; HOMMA, Hachiro; WATANABE, Mitsuo; TANABE, Mamoru; MUKAI, Yoshihisa; KAWASHIMA, Tatsusaburo; SAWADA, Tsuneo; TANAKA, Tokunosuke; AKABORI, Toichiro; KUWABARA, Hiroyuki; TSUTSUI, Kisaburo; NAMETAME, Kazuo; TAKAISHI, Susumu; and MITSUHASHI, Kichigoro, are approved."

150. Q. Are those portions which you have read from the action of the convening authority the full action of the convening authority as it relates to the specifications from Charge II which were read in court by you yesterday in cross-examination?

A. They are.

151. Q. In "Exhibit 7" which consists of the certified extracts which you made from this official record marked in identification "number seven," did you include the entire action of the reviewing authority in that Iwanami case?

A. The excerpts from the action of the reviewing authority includes the entire action.

152. Q. Does the witness have in his possession the official record of the Director of War Crimes, Pacific Fleet, Commander Marianas Area, in the case of Colonel Chisato Oishi?

A. I have.

The original document produced by the judge advocate was, at his request, marked "number eight" for identification.

153. Q. Has the witness prepared true excerpts from the official records of that case?

A. I have.

154. Q. Are these excerpts certified by you?

A. They are.

The certified extracts from prosecution document number 303 were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt of these excerpts in evidence, appended marked "UU."

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

The judge advocate read a written reply, appended marked "VV."

The commission announced that the objections were not sustained. There being no further objections, the document was so received, appended marked "Exhibit 8."

155. Q. Will the witness read from "Exhibit 8" the extracts from the charges and specifications in the case of Chisato Oishi, et al?

A. (The witness read from "Exhibit 8" the extracts from the charges and specifications in the case of Chisato Oishi, et al.)

156. Q. Will the witness read the extracts from the findings of the military commission in that case as recorded on page one hundred and forty-two of the record?

A. (The witness read from "Exhibit 8" the extracts from the findings of the military commission as recorded on page one hundred and forty-two of the record.)

157. Q. Will the witness read the extracts from the action of the convening authority?

A. (The witness read from "Exhibit 8" the extracts from the action of the convening authority.)

158. Q. Will the witness read the extracts from the action of the reviewing authority, the Commander in Chief United States Pacific Fleet and Pacific Ocean Areas?

A. (The witness read from "Exhibit 8" the extracts from the action of the reviewing authority.)

159. Q. Will the witness read the extracts from the action of the confirming authority, the Secretary of the Navy?

A. (The witness read from "Exhibit 8" the extracts from the action of the confirming authority.)

Neither the accused nor the commission desired to examine this witness concerning this exhibit.

The commission then, at 10:15 a.m., took a recess until 10:50 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Examination by the judge advocate concerning prosecution document number 304:

160. Q. Does the witness have in his possession the official record of the Director, War Crimes, Pacific Fleet, in the case of Tanaka, Masaharu, et al?
A. I have.

The document produced by the judge advocate was, at his request, marked "number nine" for identification.

161. Q. Has the witness prepared certified excerpts from the official record?
A. I have.

162. Q. Are they certified by you to be true excerpts from the record of this case?
A. They are. JK

A certified copy of prosecution document number 304 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused read a written objection to the receipt of these excerpts in evidence, appended marked "W.W."

The judge advocate read a written reply to the objection of the accused, appended marked "XX."

The commission announced that the objection was not sustained. There being no further objection, the document was so received, appended marked "Exhibit 9."

163. Q. Will the witness read the excerpt from the charges and specifications as set forth in Exhibit 9?

The witness read the excerpts from the charges and specifications in the case of Tanaka, Masaharu, et al, as set forth in Exhibit 9.

164. Q. Will the witness read the excerpt from the findings of the military commission?

The witness read the excerpt from the findings of the military commission in the case of Tanaka, Masaharu, et al, as set forth in Exhibit 9.

165. Q. Will the witness read the excerpts from the action of the convening authority in that case?

The witness read the excerpts from the action of the convening authority in the case of Tanaka, Masaharu, et al, as set forth in Exhibit 9.

166. Q. Will the witness read the action of the reviewing authority?

The witness read the excerpts from the action of the reviewing authority in the case of Tanaka, Masaharu, et al, as set forth in Exhibit 9. JK

167. Q. Will the witness read the action of the Secretary of the Navy?

The witness read the excerpts from the action of the Secretary of the Navy in the case of Tanaka, Masaharu, et al, as set forth in Exhibit 9.

Recross-examination by the accused concerning Exhibit 9:

168. Q. Will the witness read from the excerpts of the Tanaka case, Specifications 1 and 2 of Charge III, neglect of duty in violation of the law and customs of war?

A. "Specification 1. In that Tanaka, Masaharu, then a captain, IJN, Commanding Officer of the 41st Naval Guard Unit, attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, and while so serving at said military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, unlawfully disregard, neglect and fail to discharge his duty as Commanding Officer of the said 41st Naval Guard Unit, to properly protect seven (7) American prisoners of war, held captive, by the armed forces of Japan on said island, as it was his duty to do, in that he did neglect and fail to take steps to prevent, and to prevent the unlawful killing by members of his command and other persons unknown, then under his control, by assaulting, striking, and stabbing with swords, and shooting with a loaded firearm, further description to the relator unknown, on or about said date, on the sea wall, at the Headquarters of the said 41st Naval Guard Unit, of said seven (7) American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, at the Headquarters of the said 41st Naval Guard Unit, and he, the said Tanaka, through said neglect and failure, did suffer the said American prisoners of war to be unlawfully killed at the time and place aforesaid in violation of the laws and customs of war. Specification 2. In that Tanaka, Masaharu, then a captain, IJN, Commanding Officer of the 41st Naval Guard Unit, attached to the military installations of the Imperial Japanese armed forces, Dublon Island, Truk Atoll, did, on or about 17 February 1944, on Dublon Island, Truk Atoll, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, unlawfully disregard, neglect and fail to discharge his duty as Commanding Officer of the said 41st Naval Guard Unit, to control and restrain members of his command, namely, Danzaki, Tomeroku, then a lieutenant, IJN, Ishii, Yujiro (Seizo), then a lieutenant, IJN, Yoshinuma, Yoshiharu, then an ensign, IJN, and other persons unknown, then subject to his control, as it was his duty to do, in that he permitted and allowed the aforesaid persons, and persons unknown, to unlawfully kill by assaulting, striking, stabbing with swords and shooting with a loaded firearm, further description to the relator unknown, on or about said date, on the sea wall at the Headquarters of the said 41st Naval Guard Unit, seven (7) American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan at the Headquarters of the said 41st Naval Guard Unit, and he, the said Tanaka, through said neglect and failure, did suffer the said American prisoners of war to be unlawfully killed at the time and place aforesaid in violation of the laws and customs of war."

169. Q. Will the witness read from the excerpts of the findings of the commission in reference to this Charge III?

A. "As to the accused, Tanaka, Masaharu: The first specification of the third charge proved. The second specification of the third charge proved. And that the accused, Tanaka, Masaharu, captain, Imperial Japanese Navy, is of the third charge guilty."

gk

Reexamination by the judge advocate concerning Exhibit 9:

170. Q. Will the witness read any action of the convening authority which relates specifically to Charge 3?

A. The excerpt included Charge 3 and the specifications thereunder in the action of the convening authority.

171. Q. Do the excerpts that have been submitted contain the action of the reviewing authority with relation to Charge 3?

A. They do.

172. Q. Does the excerpt which has been submitted contain the action of the Secretary of the Navy as relates to Charge 3?

A. It does.

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 9.

The commission did not desire to examine this witness concerning Exhibit 9.

The witness was duly warned.

The commission then, at 11:30 a. m., adjourned until 9 a. m., tomorrow, Thursday, May 20, 1948.

SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, May 20, 1948.

The commission met at 9:30 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the sixth 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.

Examination by the judge advocate concerning prosecution document number
305:

173. Q. Does the witness have in his possession the official record from the
office of the Director of War Crimes, Pacific Fleet, Commander Marianas Area,
in the case of Captain Kawasaki, Susumu, Imperial Japanese Navy, et al?
A. I have.

The document produced by the judge advocate, was, at his request, marked
"number ten" for identification.

174. Q. Has the witness prepared certified excerpts from the official record
in the case of Captain Susumu Kawasaki?
A. I have.

175. Q. Are these the certified excerpts that you have prepared?
A. They are.

The certified extracts from prosecution document number 305 were sub-
mitted to the accused and to the commission and by the judge advocate offered
in evidence.

Cross-examination by the accused concerning prosecution document number 305:

176. Q. Who is the person who prepared the excerpts from the official record in the case of Kawasaki, Susumu, et al?

A. I did.

177. Q. Has the witness examined this entire official record?

A. I have.

178. Q. In this record, did you find the findings of the military commission?

A. The Commander Marianas file record does contain the findings of the military commission, but those findings are not certified.

179. Q. Is there a record of the action of the convening authority contained in this record?

A. The file copy is incomplete in that it does not contain a copy of the action of the convening authority or the reviewing authority.

180. Q. Do you know why the findings and the action of the convening authority, and the action of the reviewing authority is not included in these excerpts which the judge advocate is now intending to introduce as evidence?

A. I do not know why the record is incomplete in this respect.

181. Q. Didn't you ask anyone why this record was incomplete as to these points?

A. I had the files of our office thoroughly checked and the missing portions are not to be found.

Reexamination by the judge advocate concerning prosecution document number 305:

182. Q. While the excerpts prepared by you and certified by you do not contain a copy of the findings of the commission in the case of Kawasaki, Susumu, doesn't the record copy which you have contain those findings?

A. The record does contain the findings.

183. Q. That copy of the record, however, is not certified, is that correct?

A. That is correct.

184. Q. However, that is the only official record of that case in the office of the Director, War Crimes, Pacific Fleet, Commander Marianas, isn't it?

This question was objected to by the accused on the ground that the word "official" must be proved by the judge advocate, and that the judge advocate was interposing into the record evidence in his questioning.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This is the only Kawasaki record and the official Kawasaki record in our office, but it is not a certified copy of the record.

185. Q. Is there prefixed to this record the action of the Secretary of the Navy in that case?

A. The original of the action of the Secretary of the Navy is made a part of this record.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the receipt of these excerpts in evidence, appended marked "YY."

An interpreter read an English translation of this objection, appended marked "ZZ."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt of these excerpts in evidence, appended marked "AAA."

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

The judge advocate read a written reply to the objection of the accused, appended marked "BBB."

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

The commission announced that the objections were not sustained. There being no further objection, the document was so received, appended marked "Exhibit 10."

Examination by the judge advocate concerning Exhibit 10:

186. Q. Will the witness read from this document which is marked Exhibit 10 the excerpts containing specification two in regard to Horie, Kiroku, lieutenant, junior grade, Imperial Japanese Navy?

A. (The witness read Specification 2 from Exhibit 10).

187. Q. Will the witness read the excerpts from the action of the acting Secretary of the Navy which relates to Horie, Kiroku, in the Kawasaki case?

A. (The witness read from Exhibit 10 the excerpts from the action of the acting Secretary of the Navy in the Kawasaki case). JK

Cross-examination by the accused concerning Exhibit 10:

188. Q. Will the witness read the heading from the charges and specifications dated April 6, 1946?

A. "Charges and specifications - in the case of Captain Kawasaki, Susumu, Imperial Japanese Navy, Commander Hikaru Cho, Imperial Japanese Navy, and Lieutenant (junior grade) Kiroku Horie, Imperial Japanese Navy."

189. Q. Does the action of the Secretary of the Navy show that Captain Kawasaki, Susumu and Horie, Kiroku were tried in joinder with Hikaru Cho?

A. The subject on the action of the Secretary of the Navy so states. Also, the action of the military commission in that document.

190. Q. Will the witness then read from that document from the Secretary of the Navy dated 10 March 1947, the first paragraph starting with the words "The commission.."? JK

A. "The commission, therefore, sentences him, Kawasaki, Susumu, Imperial Japanese Navy, to be shot to death by musketry, two-thirds of the members concurring."

191. Q. Will the witness read from the testimony of Miyaki Toshiro, questions and answers 44, 59, and 60? JK

A. "44. Q. What was the time of this execution?

A. This execution was performed on the evening of the 7th of October 1943.

"45. Q. Describe to the commission just what you saw in the course of that evening?

A. On this date, I recall seeing 96 prisoners of war being led to a beach near the headquarters. These prisoners were all executed or killed on the beach.

"59. Q. What units, if you know, carried out the execution of these prisoners?

A. As far as I know, the execution was performed by First, Second and Third Platoons of the Headquarters Company.

"60. Q. Who were the platoon leaders of those platoons of the Headquarters Company?

A. I am not sure. However, to the best of my knowledge, Ensign Nonaka, of the First Platoon, Warrant Officer Nakamura of the Second Platoon, and Warrant Officer Horie of the Third Platoon."

The commission then, at 10:30 a. m., took a recess until 11:20 a. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

The commission announced that on its own motion it is directed that the questions and answers introduced by the accused from the testimony in the record of the proceedings in the case of Captain Susumu Kawasaki, et al, be stricken from the record on the ground that it was beyond the scope of the direct examination. The commission stated that questions of this nature should properly be deferred until such time as the defense presents its case.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a directed acquittal, appended marked "CCC."

The commission announced that the motion was not sustained.

The judge advocate moved that the commission reconsider its ruling as to the striking of the testimony from the Kawasaki, et al case from the record. JK

The commission announced that the motion to reconsider was not sustained.

The witness was duly warned.

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

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

Stewart R. Smith, 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.

Neither the judge advocate nor the accused desired ^{further} to examine this witness concerning Exhibit 10. JK

The commission did not desire to examine this witness concerning Exhibit 10.

Examination by the judge advocate concerning prosecution document number 261:

192. Q. Does the witness have in his possession from the official records of the Director of War Crimes, Commander Marianas, the record in the case of Colonel Oishi, et al?

A. I have.

193. Q. Does this record, which was marked for identification "number eight" contain an Exhibit 7?

A. It does.

194. Q. Have you a certified copy of that Exhibit 7 of the Oishi record?

A. I have.

195. Q. What is this Exhibit 7 in the Oishi case?

A. This exhibit is a statement made by Colonel Oishi, Chisato, dated October 24, 1945. JK

196. Q. Is this a certified copy of the exhibit?

A. It is.

The certified extract from prosecution document number 261 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

197. Q. Do you know where the signer of that statement that you have certified is?

A. He is presently confined in Sugamo Prison in Japan.

Cross-examination by the accused concerning prosecution document number 261:

198. Q. This statement by Oishi, where was it made?
A. At Majuro Atoll, Marshall Islands.

199. Q. Do you know how it was that Oishi was at Majuro at this time?
A. I do not know.

200. Q. Do you know under what circumstances and where at Majuro Oishi made this statement?
A. I do not.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt of prosecution document number 261 in evidence, appended marked "DDD."

An interpreter read an English translation of this objection, appended marked "EEE."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt of this document in evidence, appended marked "FFF."

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

The judge advocate read a written reply to the objection of the accused, appended marked "GGG."

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

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the objections were not sustained and that the document would be received in evidence.

There being no further objection, the document was so received, appended marked "Exhibit 11."

Examination by the judge advocate concerning Exhibit 11:

201. Q. Will the witness read Exhibit 11?
A. (The witness read Exhibit 11).

The accused did not desire to cross-examine this witness concerning Exhibit 11.

The commission did not desire to examine this witness concerning Exhibit 11.

Examination by the judge advocate concerning prosecution document number 271a:

202. Q. Do you have in your possession, from the official files of the Director of War Crimes, Pacific Fleet, Commander Marianas, a sworn statement made by one Tanaka, Masaharu, dated 22 September, 1947?
A. I have.

203. Q. When was that statement made?

A. On 22 September, 1947.

204. Q. Was this statement made voluntarily?

A. It was.

205. Q. Was this statement made in English or in Japanese?

A. The statement was made in Japanese.

206. Q. Do you have the original statement made in Japanese in your possession?

A. I have.

207. Q. Do you have a translation of that statement in your possession?

A. I have.

208. Q. Was this statement signed and sworn to in your presence?

A. It was.

209. Q. Was the oath administered in Japanese to the maker of the statement?

A. It was.

210. Q. Do you know if said Tanaka, Masaharu is available as a witness?

A. The records of the office of the Director of War Crimes reveal that Tanaka, Masaharu was executed on 24 September 1947.

The original statement in Japanese and a certified English translation thereof produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence. JK

Cross-examination by the accused concerning prosecution document number 271a:

211. Q. How did Tanaka come to write this statement?

A. I interrogated Captain Tanaka concerning the facts set forth in this statement and in turn asked him to write a statement of these facts.

212. Q. When you interrogated Tanaka with regard to the contents of this statement, did you know that Tanaka had testified to the same at his trial?

A. In a general way, yes.

213. Q. Then did you notice any discrepancy in the testimony that Tanaka gave in his trial and the statement that he wrote in your presence?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, and that it was not relevant to the validity or admissibility of this document.

The accused replied.

The commission announced that the objection was sustained.

214. Q. Is it correct that Tanaka made this statement two days prior to his being executed?

A. That is correct.

215. Q. When Tanaka ^{wrote} ~~read~~ this statement had he already been informed of the fact that he was to be executed? JK

A. As I recall, he had not.

216. Q. When Tanaka signed his name at the very end of his statement, did he take an oath that he had made this statement voluntarily?

This question was objected to by the judge advocate on the ground that it was irrelevant to the admissibility of this statement.

The accused made no reply.

The commission announced that the objection was sustained.

217. Q. Do you know when Captain Tanaka was executed?

A. I have a report of his execution.

218. Q. Do you know what date it was?

A. 24 September, 1947.

219. Q. Who was present when this statement was made by Captain Tanaka that is being offered in evidence?

A. An interpreter, Mr. Frederick A. Savory.

220. Q. Is he available as a witness?

A. He is.

221. Q. You said that you questioned Captain Tanaka and as a result of these questions the statement was made by Captain Tanaka. Did you question Captain Tanaka through the interpreter, Frederick Savory?

A. I did.

222. Q. How many times did you question Captain Tanaka before you got the statement?

A. I questioned Captain Tanaka a number of times. I don't believe that I questioned him on this identical matter previous to this time.

223. Q. So that you believe that you only questioned him on this matter this one time?

A. That is the best of my recollection.

224. Q. Isn't it true that in questioning Captain Tanaka you asked him to implicate both Admiral Wakabayashi and Admiral Kobayashi, in making a statement?

A. That is not true.

225. Q. Were you satisfied with the statement that you did receive?

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

The accused made no reply.

The commission announced that the objection was sustained.

226. Q. After you got this one statement which appears to implicate Vice Admiral Wakabayashi, did you ask Captain Tanaka for any further statements?
A. Regarding what?

227. Q. Regarding this matter that you were questioning him on?
A. Captain Tanaka at the time of the taking of this statement indicated that the facts set forth in this statement were the full and complete facts as he recalled them at that time, and I did not solicit any further statement from him.

228. Q. Why did you ask Captain Tanaka for a statement when you had his sworn testimony as a witness at his own trial?

This question was objected to by the judge advocate on the ground that it was irrelevant to the admissibility of this statement.

The accused replied.

The commission announced that the objection was sustained.

229. Q. Was this statement of Captain Tanaka which you did get from him requested by you in order to be used at the trial of Admiral Wakabayashi?

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

The accused replied.

The commission announced that the objection was sustained.

230. Q. Did Captain Tanaka say that he had not been given a full opportunity to testify regarding this matter at his own trial?
A. He did not.

231. Q. Did he say that this statement of his was different from his testimony at his own trial?

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. He stated at the time he made this statement that he had recalled some additional information to which he had not previously testified.

232. Q. And what did you do with this additional information that you received from Captain Tanaka at this time?

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

The accused replied.

The commission announced that the objection was sustained.

233. Q. Do you know whether this statement of Captain Tanaka made two days before he was actually hanged is different from his testimony that he gave on the witness stand?

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 sustained.

Reexamination by the judge advocate concerning prosecution document number 271a: JK

234. Q. Is this original Japanese statement by Tanaka made in his handwriting?

A. The statement and the diagram were made in Tanaka's own handwriting.

The judge advocate pointed out that the English translation of prosecution document number 271a had a minor variance with the original Japanese, namely, the juxtaposition of one phrase, and required the substitution of the word "unit" for the word "section," these differences not relating to the document's admissibility and consisting merely of clerical errors, which would be corrected.

The commission approved the correction of these errors.

The witness was duly warned.

The commission then, at 3:20 p. m., took a recess until 3:50 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt of this statement in evidence, appended marked "HHH."

An interpreter read an English translation of this objection, appended marked "III."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt of this statement in evidence, appended marked "JJJ."

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

The judge advocate read a written reply to the objection of the accused, appended marked "KKK."

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

The commission announced that the objections were not sustained. There being no further objection, the document was so received, appended marked "Exhibit 12."

Examination by the judge advocate concerning Exhibit 12:

235. Q. Will the witness read the corrected translation of Exhibit 12 which has just been received in evidence?

A. (The witness read Exhibit 12).

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 12.

The commission did not desire to examine this witness concerning Exhibit 12.

The witness was duly warned.

The commission then, at 4:20 p. m., adjourned until 9 a. m., tomorrow, Friday, May 21, 1948.

EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Friday, May 21, 1948.

The commission met at 9:15 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the seventh 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.

Examination by the judge advocate concerning prosecution document number
306:

236. Q. Does the witness have in his possession a copy of the testimony of
Miyaki, Toshiro, from the record of Kawasaki, Susumu, tried before military
commission April 11, 1946?

A. I have.

237. Q. Have you certified this to be a true copy taken from the files of
the Director of War Crimes, Pacific Fleet, Commander Marianas, which record
has been marked "number 10" for identification?

A. I have.

238. Q. Does this excerpt consist of all testimony of Miyaki, Toshiro,
including direct examination, cross-examination, and redirect examination?

A. It does.

Prosecution document number 306 produced by the witness, was submitted
to the accused and to the commission, and by the judge advocate offered in
evidence.

Cross-examination by the accused concerning prosecution document number
306:

239. Q. This exhibit from which you have taken this testimony, is this the original record in the case of Captain Kawasaki?

A. The excerpt is not taken from the exhibit, it is taken from the office file copy of the Director of War Crimes, Pacific Fleet.

240. Q. And that record is not a complete record of the case, is it?

A. It is not.

241. Q. This testimony that you have excerpted from the record, does it in any way mention either by name or inference the accused Kobayashi, Masashi?

A. It does not.

242. Q. Is this the same evidence that was stricken from the record yesterday?

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

The accused made no reply.

The commission announced that the objection was sustained.

Reexamination by the judge advocate concerning prosecution document number 306:

243. Q. To the best of your knowledge, is Miyaki, Toshiro within the area of Commander Marianas?

A. To the best of my knowledge this witness would be in Japan.

Recross-examination by the accused concerning prosecution document number 306:

244. Q. Have you or the office of the Director of War Crimes made any effort ~~or~~ attempt to secure Miyaki, Toshiro as a witness in this case? 9K

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 not sustained.

A. No request has been made for this witness.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt of this document in evidence, appended marked "LIL." 9K

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

The judge advocate read a written reply, appended marked "MEM."

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

The accused requested a recess to inspect the document offered in evidence.

The commission announced that the recess was granted.

The commission then, at 9:55 a. m., took a recess until 10:10 a. m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

The commission announced that the objection to the introduction of prosecution document number 306 was not sustained. There being no further objection, it was so received in evidence, appended marked "Exhibit 13."

Examination by the judge advocate concerning Exhibit 13:

245. Q. Will the witness read question 23 and the answer thereto from Exhibit 13?

A. The witness read question and answer 23 from Exhibit 13.

246. Q. Will the witness read question 43 and the answer thereto?

A. The witness read question and answer 43 from Exhibit 13.

247. Q. Will the witness read question 44 and the answer thereto?

A. The witness read question and answer 44 from Exhibit 13.

248. Q. Will the witness read question and answer 45 from Exhibit 13?

A. The witness read question and answer 45 from Exhibit 13.

249. Q. Will the witness read the question and answer 59 from Exhibit 13?

A. The witness read question and answer 59 from Exhibit 13.

The accused moved to strike out this answer on the ground that the answer contained in the exhibit was hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

250. Q. Will the witness read the question and answer 60?

A. The witness read question and answer 60 from Exhibit 13.

251. Q. Will the witness read question and answer 61?

A. The witness read question and answer 61 from Exhibit 13.

252. Q. Will the witness read question and answer 69?

A. The witness read question and answer 69 from Exhibit 13.

253. Q. Will the witness read question and answer 70?

A. The witness read question and answer 70 from Exhibit 13.

Cross-examination by the accused concerning Exhibit 13:

254. Q. Will the witness read question and answer 12?
A. The witness read question and answer 12 from Exhibit 13.
255. Q. Will the witness read question and answer 14?
A. The witness read question and answer 14 from Exhibit 13.

Neither the judge advocate, the accused, nor the commission desired further to examine this witness concerning Exhibit 13.

Examination by the judge advocate concerning prosecution document number 233:

256. Q. Does the witness have in his possession, from the official files of the Director of War Crimes, Pacific Fleet, Commander Marianas, an affidavit made by Louis S. Zamperini, dated 1 November 1945?
A. I have a photostatic copy.
257. Q. When and where was this statement made?
A. The statement was made in Los Angeles County, California.
258. Q. Is that statement sworn and subscribed to?
A. It is.
259. Q. Is that a classified document?
A. The document was originally classified confidential but was declassified by Commander Marianas letter, serial 4574, dated 24 April, 1948. 9K
260. Q. To the best of your knowledge, is the affiant of that statement within the Commander Marianas Area?
A. He is not. I believe Zamperini's home address is Torrance, California.

Prosecution document number 233, produced by the witness, was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examination by the accused concerning prosecution document number 233:

261. Q. You say you believe the home address of Zamperini to be Torrance, California. Is there any basis for that belief on your part?
A. The statement so shows. 9K
262. Q. When was that statement made?
A. November 1, 1945.
263. Q. Where was the affiant on that date?
A. He was in the Birmingham General Hospital, Van Nuys, California.
264. Q. You say the statement shows the date of November 1, 1945. Is that the date of the original statement?
A. That was the date the certificate was sworn to.
265. Q. Doesn't the photostatic copy show the original dated 1 October was deleted and changed to another date?
A. The date originally typed on the affidavit was 1 October 1945. This appears to have been changed to November 1, 1945, when the affidavit was executed.

266. Q. Were you present when this affidavit was made?
A. I was not.

267. Q. Was the accused Kobayashi present?

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.

268. Q. Do you know if Zamperini was a mental patient in this hospital at the time he made this statement?

A. I do not know why he was hospitalized.

269. Q. Has any attempt been made to find out?

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.

270. Q. Do you know if Commander Currie attempted to locate this Louis S. Zamperini the last time he was in the United States?

A. Commander Currie told me that he talked to Zamperini the last time he was in the States.

271. Q. And where was Zamperini at that time?

A. In the state of California, at Torrance, California.

272. Q. In a hospital?

A. No.

273. Q. Do you know why an affidavit was not secured from him at that time by a member of the Director of War Crimes office who could have witnessed as to the truth of that statement?

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

The accused replied.

The commission announced that the objection was sustained.

274. Q. Do you know if another affidavit was secured from Zamperini by Commander Currie?

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

The accused made no reply.

The commission announced that the objection was sustained.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt of this document in evidence, appended marked "NNN."

An interpreter read an English translation of the objection of Mr. Sanagi, appended marked "OOO."

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt of this document in evidence, appended marked "PPP."

The judge advocate read a written reply to the objections, appended marked "QQQ."

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

The commission announced that the objection was not sustained.

There being no further objection, the document was so received in evidence, appended marked "Exhibit 14."

Examination by the judge advocate concerning Exhibit 14:

275. Q. Will the witness read this document?
A. The witness read Exhibit 14.

The accused moved that the document be stricken from the record on the ground that it was irrelevant, immaterial, and contains opinions.

The judge advocate replied.

The commission announced that the motion was not sustained.

The witness was duly warned.

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

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

Stewart R. Smith, 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.

Examination by the judge advocate concerning prosecution document number 206:

276. Q. Does the witness have in his possession, from the official files of the Director of War Crimes, Pacific Fleet, Commander Marianas, a statement made by one George Estabrook Brown, junior, dated 10 July, 1946?
A. I have.

277. Q. Where and when was this statement taken?

A. It was taken at the Third Naval District Legal Office, 90 Church Street, New York, New York, on 10 July, 1946.

278. Q. Is that statement sworn and subscribed to?

A. It is.

279. Q. Is that statement classified?

A. This statement was originally classified Confidential but it was declassified by SecNav dispatch of 23 April, 1948.

280. Q. To the best of your knowledge is the witness within the Commander Marianas Area?

A. He is not.

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

Commander Martin E. Carlson, a counsel for the accused, made a motion to suppress this document as a perpetuation of testimony of George Estabrook Brown, Jr., on the ground that no notice of filing of interrogatories, or an opportunity to file cross-interrogatories, was given the accused.

The judge advocate replied.

The commission announced that the motion to suppress this document was not sustained.

Cross-examination by the accused concerning prosecution document number 206:

281. Q. Does the witness know why it was necessary to perpetuate the testimony of George Estabrook Brown, junior, at this time?

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

The accused replied.

The commission announced that the objection was sustained.

282. Q. Does the witness know if George Estabrook Brown, junior, is still alive?

A. So far as I know he is still alive and residing in New York.

283. Q. Was any notice given the accused at the time these interrogatories were put to George Estabrook Brown?

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

The accused made no reply.

The commission announced that the objection was sustained.

284. Q. Does the witness know if these interrogatories, this perpetuation of his testimony, was taken solely to be used as evidence in the trial of Kobayashi, Masashi?

A. It was taken simply because it involved the mistreatment of prisoners of war.

285. Q. Does the document in any place mention the name of the accused, Kobayashi, Masashi?

A. It does not.

286. Q. Does the document pertain to the mistreatment of George Estabrook Brown?

A. It pertains to the mistreatment of George Estabrook Brown and members of his crew.

287. Q. Does the document state or do you know why George Estabrook Brown was asked to give his testimony?

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

The accused made no reply.

The commission announced that the objection was sustained.

288. Q. Does the statement pertain to the treatment that George Estabrook Brown received at Omari Prison Camp?

A. It does.

289. Q. Was this prison camp a part of the command of the accused Kobayashi?

A. It was not.

290. Q. Does the affidavit pertain to the mistreatment of George Estabrook Brown at Mitsushima Prison Camp No. 22D?

A. It does.

291. Q. Was this prison camp a part of the command of the accused, Kobayashi? *OK*

A. It was not.

292. Q. Do these interrogatories pertain to the mistreatment of George Estabrook Brown at Ofuna Prison Camp?

A. It does.

293. Q. Was this Ofuna Prison Camp a part of the command of the accused, Kobayashi?

A. It was not.

294. Q. Were you present at the time these interrogatories were taken?

A. I was not.

295. Q. Do you know who was present?

A. Only from what is shown by the document itself.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written objection to the receipt of this document in evidence, appended marked "RRR."

An Interpreter read an English translation of this objection, appended marked "SSS."

Commander Martin E. Carlson, a counsel for the accused, made an oral further objection to the receipt of this document in evidence, a brief of which is appended, marked "TTT."

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

The judge advocate made an oral reply to the objections, a brief of which is appended, marked "UUU."

The judge advocate read an additional written reply to the objections, appended marked "VVV."

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

The commission announced that the objections were not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 15."

Examination by the judge advocate concerning Exhibit 15:

296. Q. Will the witness read that portion of the affidavit which relates to the mistreatment of George Estabrook Brown and others, during the period from November 20, 1943 to November 28, 1943, on Dublon Island, Truk Atoll, Caroline Islands?

A. (Reading from Exhibit 15:) "Question: Please state the date of your capture and the dates and locations where you were held as a prisoner of war. Answer: The date of my capture was November 19, 1943. From November 20, 1943 to about November 28, 1943, I was at Truk Island; from November 28, 1943 to December 5, 1943, en route to Japan on board a Japanese auxiliary carrier, former NYK converted liner; from December 5, 1943 to January 15, 1945, retained in the Ofuna secret questioning and intimidation camp, Ofuna, Japan, eight miles from Tokyo; from January 15, 1945 until March 1, 1945, Omari Prison Camp, Tokyo POW Camp No. 1; from March 1, 1945 until September 4, 1945 at Mitsushima Prison Camp, Mitsushima, Japan, Tokyo Detached Camp No. 2." JK

297. Q. Will the witness please read the first sentence of the last answer, and the last sentence of that answer?

A. (Reading from Exhibit 15:) "Answer: Thirty-nine men and two officers and myself were taken aboard the Japanese destroyer. Then they returned me to the group of men on the forecastle of the destroyer and proceeded to Truk."

298. Q. Will the witness now read the last question and answer on that page, continuing on to the next page?

A. (Reading from Exhibit 15:) "Answer: I was blind-folded, bare-footed and the only clothing I had was a pair of torn underdrawers. We were forced to walk across a coral beach bare-footed with a Jap guard prodding us with rifles; our hands were handcuffed with rope. We were pushed into a truck and taken to a small detention camp or prison on the far side of this island. Upon arrival at this camp, still blind-folded, we were forced out of the truck and made to walk across more sharp coral and forced into small 8 x 6 cells, with thirteen men to each cell. The Japanese guards were poking clubs and beating the men who were near the door. After ten minutes in this cell I was removed and again blind-folded and hands bound and led across the coral to a table set up in the yard behind which a Japanese Rear Admiral and five or six other ranking officers of the Japanese Navy were seated. They proceeded to question me through an interpreter. The method of questioning was to have two Japanese enlisted men stationed behind the personnel with six foot, 2 x 2 clubs. Upon a signal from the Admiral, the Japanese seamen would apply four or five swats across the back and legs of the personnel being questioned, then the Admiral would ask a question through the interpreter. Upon the person's giving his answer, true or false, the admiral would again signal and another rain of blows would be showered from behind. At one time during the questioning, the force of the blows were such that they lifted me off the ground and across the table and I fell upon the Japanese Admiral. I was then dragged off and severely beaten for daring to attack a Japanese Admiral. After this questioning I was led blind-folded to a pill-box and made to stand at attention for 48 hours, broken only by intervals of questionings and beatings. At any time that I relaxed from a position of rigid attention, the guard would drop his rifle on my bare foot or kick me in the shins and beat me over the head with his rifle butt. After two days the more serious part of the questioning seemed to cease and I was returned to the cell block where my enlisted men were. The Japanese made no segregation of the wounded and the healthy men and gave no medical treatment while in Truk. We were constantly harassed and clubbed by guards stationed in the compound of the cell block for the ten days we were on Truk. There was only sufficient space in the cell for three men to lie down at a time. Therefore ten men had to squat or stand while three rested for a short period. After ten days we were removed from the cell block and marched across the coral to small boats and were taken out to two Japanese converted NYK carriers."

Cross-examination by the accused concerning Exhibit 15:

299. Q. Will the witness read the question on the second page and the answer thereto, beginning, "Can you describe or give the names...?"

A. (Reading from Exhibit 15:) "Can you describe or give the names of any of the persons responsible for the beating or torture to which you were subjected?" Answer: "I don't remember anything about any of the personnel on the destroyer. However, a Japanese captain in the naval intelligence who was in charge of the questioning at the Ofuna Prison Camp, knows the name of the skipper of this destroyer. This Japanese captain was known by Commander John Fitzgerald, U.S.N., of the Grenadier, and Captain Mayer, former gunnery officer of the Houston, whose name could be found in their reports under the nick-name of the 'little commander.' This same intelligence captain was also attached to the Japanese Embassy in Washington at the time of Pearl Harbor and was detained at Hot Springs, Virginia. He was a post-graduate of the Princeton University and University of Vermont."

300. Q. In the second answer, will the witness read the sentence beginning, "When they were through questioning the enlisted men they called me and proceeded to beat me...."?

A. (Reading from Exhibit 15:) "When they were through questioning the enlisted men they called me and proceeded to beat me with their fists and a small club for having given them false information about the name of the ship, the skipper and the tonnage."

301. Q. Will the witness read on the third page, the answer to the question, "What information did the admiral seek to obtain from you"?

A. (Reading from Exhibit 15:) "The admiral sought to obtain information concerning the operation of other submarines in the Truk area, the operation of submarines from Pearl Harbor, fleet operations in Pearl Harbor and the Solomons; information concerning radar; information concerning construction and engineering problems aboard the Sculpin; information concerning other war patrols made; information concerning past naval history, education, naval schooling, health conditions, and what I believe was for his own personal information, morale conditions of Americans and their allies, and code and communication information."

302. Q. Will the witness read the answer to the question, "Did these beatings or any one particular blow cause you any continuing disability"?

A. (Reading from Exhibit 15:) "Answer: I don't believe so."

Neither the judge advocate nor the accused desired further to examine this witness concerning Exhibit 15.

The commission did not desire to examine this witness concerning Exhibit 15.

The witness said that he had nothing further to state.

The judge advocate announced that he desired to interrupt the testimony of this witness at this time, in order to make a more orderly presentation of the prosecution's case, and that, in accordance with the tentative order of proof, the judge advocate would like to recall this witness near the conclusion of the prosecution's case.

The commission announced that the above procedure was approved.

The witness was duly warned and withdrew.

The judge advocate requested a short recess, to await the arrival of a document which the prosecution's next witness would produce.

The judge advocate's request for a recess was granted.

The commission then, at 2:50 p. m., took a recess until 3 p. m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present station?
A. Maurice E. Currie, commander, U. S. Naval Reserve, war crimes investigator for the Director of War Crimes, Pacific Fleet.
2. Q. If you recognize the accused, state as whom?
A. Vice Admiral Kobayashi.

Examination by the judge advocate concerning prosecution document number 201:

3. Q. Do you have in your possession, from the official files of the Director of War Crimes, Pacific Fleet, Commander Marianas, a statement made by one Fred F. Garrett, dated 7 January 1948?
A. I do.

4. Q. When and where was this statement made?
A. It was made in Los Angeles, California, on the seventh day of January, 1948.

5. Q. Was this statement sworn and subscribed to in your presence by the affiant, Fred F. Garrett?
A. It was.

6. Q. To the best of your knowledge, is this affiant within the Commander Marianas Area?
A. He is not.

7. Q. To the best of your knowledge, where is Fred F. Garrett?
A. In Los Angeles, California.

The document produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examination by the accused concerning prosecution document number 201:

8. Q. In what capacity did you take this affidavit?
A. As an investigator for the Director of War Crimes, Pacific Fleet.

9. Q. Is not your authority confined to the Marianas area?
A. I had specific orders from Commander Marianas Area to interview possible witnesses on the mainland of the United States.

10. Q. Where was this affidavit made?
A. In Los Angeles, California.

11. Q. In what kind of place was this affidavit made?
A. In the home of Mr. Fred F. Garrett.

12. Q. Were there any witnesses when he made that statement?
A. His wife would come in the room occasionally.

13. Q. Then does that mean that those two who were constantly in the room were the affiant and yourself, the two of you alone?
A. That is right.

14. Q. Around what time did this happen?

A. January 7, 1948.

15. Q. Was this affidavit completed within the scope of this day, January 7, or was it over a period of more than one day?

A. It was completed in one day.

16. Q. Did the affiant type this affidavit out himself, or did you listen to what the affiant had to say and then typed it out for him?

A. The affiant wrote down notes, I took these down to my office and had them typed and brought it back; and at that time he read it and swore to it.

17. Q. Then the day on which the affiant gave you these written notes and the day on which he affixed his signature onto the affidavit were two different days?

A. The same day.

18. Q. Did you, in writing up this affidavit, tell the affiant for what purpose it would be used?

A. I did.

19. Q. How did you explain that to the affiant?

A. I explained to him that it would be used in the prosecution of suspected war criminals.

20. Q. Did you give the specific name of the suspected war criminal?

A. I did not.

21. Q. Had you met this Mr. Garrett before?

A. I had not.

22. Q. How, then, did you identify this man to be Fred F. Garrett?

A. Through informants.

23. Q. In writing out these notes, did the affiant refer to some notebook or did he write straight from his memory?

A. He wrote from his memory.

24. Q. Then he did not possess any notebooks or anything to refer to, is that correct?

A. He didn't show them to me.

25. Q. He then wrote his rough notes in front of you?

A. He did.

26. Q. Is it not possible to have the affiant brought to this courtroom?

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

The accused withdrew the question.

27. Q. Do you know whether it is possible to have the affiant here in this courtroom?

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

The accused replied.

The commission announced that the objection was sustained.

28. Q. Do you know if the affiant was willing to appear in this courtroom?

A. I asked the affiant if he would be willing to appear.

29. Q. What was the answer the affiant made at that time?

A. He said that he would like to appear in this court or any court in the prosecution of war criminals, but that he had lost one leg in the war and it was difficult for him to travel. He had just obtained a new job and he felt it would be impossible to make the journey.

30. Q. And because Garrett was reluctant to travel, is that why he wasn't brought to Guam as a witness?

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

The accused made no reply.

The commission announced that the objection was sustained.

31. Q. Do you know why Garrett wasn't brought here to Guam as a witness?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I passed on the information that I have given in the previous question to higher authority. I do not know any more.

32. Q. Was any notice given the accused that you were going to take this affidavit from Fred F. Garrett?

This question was objected to by the judge advocate on the ground that it was irrelevant to the admissibility of this document into evidence.

The accused replied.

The commission announced that the objection was sustained.

33. Q. Was the accused given the benefit of counsel on January 7, 1948? At the time you took this affidavit?

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

The accused made no reply.

The commission announced that the objection was sustained.

34. Q. Was this affidavit that you secured made to be used at this trial of the accused Kobayashi?

A. It was not specifically done so.

35. Q. Does the document mention the accused Kobayashi?

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. As I remember, it does not.

36. Q. You stated that the affiant, Garrett, lost a leg. Do you know if the affiant, Fred F. Garrett, is drawing disability pay from the United States Government?

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

The accused replied.

The commission announced that the objection was sustained.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the receipt of prosecution document number 201 in evidence, appended marked "WWW."

An interpreter read an English translation of this objection, appended marked "XXX."

Commander Martin E. Carlson, a counsel for the accused, made an oral further objection to the receipt of this document in evidence, a brief of which is appended, marked "YYY."

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

The judge advocate made an oral reply to the objection of the accused, a brief of which is appended marked "ZZZ."

The judge advocate read a written further reply to the objection of the accused, appended marked "AAAA."

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

The commission announced that the objections and motion included therein were not sustained.

There being no further objection, the document was so received, appended marked "Exhibit 16."

The commission instructed defense counsel that if the accused desires to make a motion for production of a witness, such motion should, in conformity with the customary procedure, be made separately from the objection to the prosecution's offer of evidence. JK

The commission then, at 3:50 p. m., took a recess until 4:05 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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 by the judge advocate concerning Exhibit 16:

37. Q. Will the witness read Exhibit 16?
A. The witness read Exhibit 16.

The accused did not desire to cross-examine this witness concerning Exhibit 16.

The commission did not desire to examine this witness concerning Exhibit 16.

The witness was duly warned.

The commission then, at 4:20 p. m., adjourned until 9 a. m., tomorrow, Saturday, May 22, 1948.

NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, May 22, 1948.

The commission met at 9:10 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Kocs, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the eighth 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.

Examination by the judge advocate concerning prosecution document
number 232:

37a. Q. Do you have in your possession from the official files of the
Director of War Crimes, Pacific Fleet, Commander Marianas, a statement made
by Russell Allen Phillips, dated 11 January 1948?

A. I do.

38. Q. Was this statement sworn and subscribed to before you?

A. It was.

39. Q. Where was this statement taken?

A. Albuquerque, New Mexico.

40. Q. To the best of your knowledge is the witness within the Commander
Marianas Area?

A. He is not.

41. Q. To the best of your knowledge, where is this witness currently?

A. Albuquerque, New Mexico.

Prosecution document number 232 produced by the witness, was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examination by the accused concerning prosecution document number 232:

42. Q. Had you a previous acquaintance with this Mr. Phillips in this affidavit?

A. I had not.

43. Q. How did you identify this man to be the affiant?

A. His name appeared in the files of the Director of War Crimes as one who had been shot down over the Pacific, so from informers in the United States I obtained his address and visited him.

44. Q. Through that procedure you got in touch with the affiant?

A. Yes.

45. Q. Where did you take this affidavit?

A. At the Army Air Station, Albuquerque, New Mexico.

46. Q. Where were there any witnesses present on that occasion?

A. There were none.

47. Q. Could you explain briefly and clearly the circumstances under which you took this affidavit?

A. After obtaining former Captain Phillips address, I went to Albuquerque, got in contact with him and we went to the Army Air Station where we would have facilities for typing any affidavit he might like to make.

48. Q. Did the affiant himself use the typewriter?

A. He did not.

49. Q. Who then used the typewriter?

A. Army personnel.

50. Q. Was the typing from something or from his dictation?

A. He was typing from notes that I had made.

51. Q. And you made up your notes from listening to the affiant?

A. I did.

52. Q. Did you tell the affiant the reason for making up the affidavit?

A. I told the affiant the affidavit he was making would be used in connection with war crime trials on Guam.

53. Q. You did not state specifically the name of the suspected war criminal for whose case this affidavit would be used?

A. I did not.

54. Q. Before making this affidavit, did you meet Mr. Zamperini?

A. I did.

55. Q. When taking this affidavit from Mr. Phillips did you mention that you had previously taken this affidavit of Mr. Zamperini?

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. Mr. Phillips asked me if I had seen and talked to Zamperini prior to talking to him. I told him that I had already seen Mr. Zamperini and that I had taken an affidavit from him.

56. Q. Didn't Mr. Phillips ask you at that point what Mr. Zamperini had said to you previously?

A. He did ask me that question and I asked him to tell me his story and we would discuss what Zamperini had told me.

57. Q. You did not at that point show the affidavit of Mr. Zamperini to Mr. Phillips before Mr. Phillips wrote out his affidavit?

A. Not before he dictated to me the affidavit he wanted under his own name.

58. Q. You then showed it to him after the dictation?

A. I did.

59. Q. Were there no corrections made in the affidavit and were there no re-typed pages of the affidavit made?

A. I made no corrections in the notes I had already made after Phillips read the affidavit of Zamperini.

60. Q. Then the army personnel who typed your notes typed them as they stood?

A. That is right.

61. Q. Was the accused, Kobayashi's, representative present at the examination and interrogation of Russell Allen Phillips on January 11, 1948?

A. No.

62. Q. What was the reason, if any, for not giving the accused, Kobayashi, notice of taking this affidavit?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial? 9K

The accused made no reply.

The commission announced that the objection was sustained.

63. Q. Under what authority did you take this affidavit from Phillips?

A. I was ordered by Commander Marianas to the United States to interview possible witnesses in war crimes trials in the Pacific.

64. Q. Did your authority state the reasons for taking the affidavit of Phillips? 9K

A. My orders stated that I was to go to the United States in regard to war crimes. My oral orders stated that I was to interview possible witnesses of atrocities in the Pacific Ocean Areas.

65. Q. Did the accused, Kobayashi, ever waive the giving of notice of your taking this affidavit?

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.

66. Q. Why doesn't the affidavit show by what authority you took this affidavit of Phillips?

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.

67. Q. In the affidavit you state subscribed and sworn to before me this eleventh day of January 1948. What oath did you give to Phillips?

A. I asked him to swear that this was the truth, the whole truth, and nothing but the truth. JK

68. Q. Did you examine Phillips on the basis of the charge and specifications against Kobayashi?

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. No.

69. Q. Does this affidavit of Phillips comply with the statutory requirements for the taking of affidavits in the state of New Mexico?

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

The accused replied.

The commission announced that the objection was sustained.

70. Q. Did you have authority to take affidavits in the state of New Mexico? JK

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

The accused made no reply.

The commission announced that the objection was sustained.

71. Q. Doesn't the state of New Mexico require the oath of an affiant to be in statutory form and that the affidavit recite the form of the oath?

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

The accused made no reply.

The commission announced that the objection was sustained.

72. Q. Doesn't the state of New Mexico require that an affidavit to be used as evidence in a criminal case show whether the accused or his representative was present at the time the affidavit was taken?

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.

73. Q. Is the affiant, Russell Allen Phillips, on active duty with the United States Air Force or the United States Army?

A. At the time I interviewed him he was employed by the Santa Fe Railway.

Mr. Junjiro Takano, a counsel for the accused, read a written objection to the receipt of this document in evidence, appended marked "BBBB."

An interpreter read an English translation of Mr. Takano's objection, appended marked "CCCC."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt of this document in evidence, appended marked "DDDD."

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

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

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

Stewart R. Smith, 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.

The judge advocate made an oral reply to the accused's objections to the receipt in evidence of prosecution document number 232, a brief of which is appended marked "EEEE."

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

The commission announced that the objections were not sustained and that the document would be received in evidence and given its proper weight and evaluation.

There being no further objection, the document was so received, appended marked "Exhibit 17."

Mr. Takano, Junjiro, a counsel for the accused, read a written motion to have the deponent of Exhibit 17 brought before this commission, appended marked "FFFF."

An interpreter read an English translation of this motion, appended marked "GGGG."

The judge advocate read a written reply to this motion, appended marked "HHHH."

An interpreter read the judge advocate's reply in Japanese.

The commission announced that the motion was not sustained.

Examination by the judge advocate concerning Exhibit 17:

74. Q. When you interviewed the affiant, Phillips, in New Mexico, did you ascertain whether he was willing to come to Guam to testify in war crimes trials if his testimony was required?

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 asked Lieutenant Phillips if he could come to Guam to testify in the war crimes trial. He said he felt it would be impossible for him to come, since he had just obtained this new job and he did not think it would be possible for him to leave that long.

75. Q. Will the witness read Exhibit 17?

A. (The witness read Exhibit 17.)

The accused did not desire to cross-examine this witness concerning Exhibit 17.

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 11:10 a.m., adjourned until 9 a.m., Monday, May 24, 1948.

TENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, May 24, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. What is your name and former rank in the Imperial Japanese Navy?
A. Former Vice Admiral Wakabayashi, Seisaku, Imperial Japanese Navy.
2. Q. Are you presently confined at Guam?
A. Yes.
3. Q. If you recognize the accused state as whom?
A. Vice Admiral Kobayashi, Masashi.

The judge advocate made the following statements:

At this point the judge advocate requests the commission to advise the witness that he has a personal privilege against incrimination. In view of the fact that this witness is himself a suspected war criminal, the judge advocate desires to have the record show that the witness is fully apprised of this personal privilege against self incrimination and of the fact that he is at liberty to refuse to answer questions which have the effect of self incrimination.

The commission announced as follows:

The witness is advised that he may decline to answer any questions which may tend to incriminate him. Advise him that this is a personal

privilege that must be claimed by the witness and not by counsel.

An interpreter translated this into Japanese for the witness.

The witness stated that this was understood by him.

4. Q. Was the Fourth Base Force a subordinate command of the Fourth Fleet during the period from July 1943 to February 24, 1944?

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

The judge advocate replied.

The commission announced that the objection was sustained.

5. Q. Were you the commanding officer of the Fourth Base Force from the period July 26, 1943 to February 24, 1944?

A. There is a slight discrepancy in the date - July 24, 1943.

6. Q. From July 24, 1943 to February 24, 1944, is that the answer?

A. Yes, that is so.

7. Q. To what command was the Fourth Base Force subordinate?

A. It is under the command of the Fourth Fleet.

8. Q. What were the units under the command of the Fourth Base Force?

A. May I use my notes?

The provisions of Section 281, Naval Courts and Boards, relative to the use of memoranda, were explained to the witness.

A. (Continued.) The Forty-first Naval Guard Unit at Truk; the Forty-second Naval Guard Unit at Ponape; the Forty-third Naval Guard Unit at Palau; the Fourth Harbor Master Section at Truk; the Third Communications Corps at Palau, and the Nine Hundred and Second Air Group at Truk. JK

9. Q. What was the name of the commanding officer of the Forty-first Naval Guard Unit during the month of February in 1944?

A. Captain Tanaka, Masaharu, I.J.N.

10. Q. I show you a chart which has been previously marked for identification "Number 5" in these proceedings and ask you if you have ever seen this chart before?

A. Yes, I have seen it before.

11. Q. At various places on this chart there are letters from "A" to "H," can you identify what units were located at these places on this chart?

A. Yes, I remember the units.

12. Q. What unit was located at the place marked "A"?

A. "A" stands for the headquarters of the Fourth Fleet.

13. Q. At location "B"?

A. The Forty-first Naval Guard Unit.

14. Q. At location "C"?

A. At "C" was the Submarine Base.

15. Q. At "D"?

A. The Fourth Construction and Repair Corps.

16. Q. At "E"?

A. At "E" was the Nine Hundred and Second Air Group.

17. Q. At "F"?

A. The Fourth Supply Section.

18. Q. At "G"?

A. Headquarters of the Fourth Base Force.

19. Q. At "H"?

A. Fourth Naval Hospital at "H."

20. Q. Are these your initials at the lower right hand corner of this chart?

A. The lower one is Kobayashi, Masashi's signature and the upper one is mine.

The document marked "Number 5" for identification, produced by the judge advocate, was submitted to the accused, and to the commission, and by the judge advocate offered in evidence. gk

The accused objected to the admission of this document in evidence on the grounds that it was irrelevant and immaterial to the issues here being tried. In addition the prosecution has not laid a proper foundation for the introduction of that document in evidence. gk

The judge advocate replied.

The commission announced that the objections were not sustained. There being no further objections, the document was so received, appended marked "Exhibit 18."

21. Q. At what unit were POW's confined when they arrived at Truk?

A. They were taken charge of at the Forty-first Naval Guard Unit.

22. Q. Is that at Dublon Island, Truk Atoll?

A. Yes.

23. Q. Were all POW's who landed at Truk Atoll confined at the Forty-first Guard Unit at Dublon Island?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. That is so. However, at the time, the Combined Fleet was stationed at Truk and I do not know about their prisoners of war. The Combined Fleet was

in the Truk Atoll and those prisoners of war who landed on Dublon Island were sent to the Forty-first Guard Unit, but I do not know of others who were taken in by the Combined Fleet in the atoll.

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

The commission announced that the motion was not sustained.

24. Q. Were all POW's who landed on Truk Atoll confined at the Forty-first Guard Unit at Dublon Island?

A. That is so.

25. Q. During your tour of duty as commandant of the Fourth Base Force, were you always present on Truk Atoll?

A. Outside of trips to Mortlock and Ponape I remained on Truk through my tour of duty.

26. Q. When did you make this trip to Mortlock Island and how long did you remain there?

A. I went to Mortlock in the middle of October 1943 - stayed over night and returned the next day.

27. Q. When did you make this trip to Ponape and how long did you stay there?

A. It was in the latter part of November or the beginning of December of 1943 that I made my trip to Ponape. It was immediately prior to the inspecting of Ponape by the commander in chief of the Fourth Fleet and I stayed two days and made an inspection.

28. Q. What was the total amount of time that you were away from Truk at that time?

A. I left in the morning and returned in the evening two days later - three days and two nights I was away from Truk.

29. Q. When you made this trip to Ponape where was Admiral Kobayashi?

A. He was on Dublon Island.

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

The commission directed that the answer be stricken.

30. Q. Do you know where Admiral Kobayashi was when you made this trip to Ponape?

A. When I left Dublon Atoll, Admiral Kobayashi was there and when I returned from Ponape he was still there, and as I did not receive any dispatches telling me of his movements, I am convinced that Kobayashi was on the island.

31. Q. What was the procedure when POW's arrived at Truk Atoll?

A. When the prisoners of war were brought to the Naval Guard Unit a report was made by that unit to the Commander in Chief of the Fourth Base Force, and the Fourth Base Force in turn reported to the Fourth Fleet. That was the official order.

The accused moved to strike out this answer on the ground that it was immaterial, irrelevant, and the opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

32. Q. What was the procedure when prisoners of war departed from Truk?
A. There were two methods of procedure. One - the Fourth Fleet Headquarters would give the order for the dispatching of prisoners of war and the second - would be for either the Forty-first Naval Guard Unit or the Fourth Base Force to propose to the Fourth Fleet that certain prisoners of war be removed. Basically, the Fourth Base Force planned the dispatch of prisoners of war. The staff was consulted on what ships or mail transports were available. In emergency cases the air transport was used.

33. Q. Was the staff of the Commander in Chief of the Fourth Fleet apprised of the departure of POW's?

This question was objected to by the accused on the ground that it was immaterial, irrelevant and too broad in scope.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. What I said just now was the general procedure on how this dispatching of prisoners would be conducted. I know of only one incident where a prisoner was sent home and this took place while headquarters, Fourth Fleet, was absent from Truk. It was done under orders of the Combined Fleet. That is the sole example that I experienced.

34. Q. When you took over your duties as commandant of the Fourth Base Force did you examine the standing orders and instructions issued to your predecessor?

A. When I took over the post of commandant I saw and received from my predecessor the standing orders of the Fourth Fleet and Combined Fleet and also the orders issued by the Fourth Base Force.

35. Q. Did any of these standing orders either issued by your predecessor or issued to your predecessor concern the handling, treatment or protection of POW's?

A. There were none.

36. Q. During your tour of duty as commandant of the Fourth Base Force, did you receive any orders concerning the handling, treatment or protection of POW's?

A. I did not receive any orders.

37. Q. During your tour of duty did you issue any orders with regard to the handling, treatment or protection of POW's?

A. I did not issue any orders. I did not find any necessity for such action.

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

The commission announced that the motion was not sustained.

38. Q. Did any of the standing orders or subsequent orders received by you establish any system of accounting or reporting the number of POW's confined on Truk?

A. There were no such regulations.

39. Q. Did you establish any such procedure?

A. As such data would be reported by the commander of the Naval Guard Unit, I did not set up any forms such as you mention.

40. Q. Did you inspect the Forty-first Naval Guard Unit?

A. During my tour of duty I inspected the Forty-first Guard Unit twice in my official capacity and on numerous other occasions I visited the different parts of the Forty-first Guard Unit, which covers a large territory.

41. Q. Could you estimate about how many times a month you visited the Forty-first Guard Unit?

A. The installations and facilities of the Forty-first Guard Unit were scattered all over the island of Truk and almost daily tours were made to one or more of the installations or facilities and I would inspect or pay a visit to them about fifteen times during the course of a month and about half that number - about seven or eight times - I would drop in at headquarters of the Forty-first Guard Unit.

42. Q. On what island was this headquarters of the Forty-first Guard Unit located?

A. It is marked in that chart on Dublon Island.

43. Q. You have testified that there was one incident where the prisoners left Truk when Kobayashi, the commander in chief of the Fourth Fleet, was not aboard at Truk. When did these prisoners of war leave Truk?

A. I was referring to the submarine prisoners of war.

44. Q. Will you continue with your answer; when did they leave Truk?

A. It was around the end of November or the beginning of December 1943. When exactly it was, I do not remember.

The commission then, at 1015 a. m., took a recess until 10:30 a. m., at which time it reconvened. OK

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

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

No witnesses not otherwise connected with the trial were present.

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.

(Examination continued.)

45. Q. When did these submarine prisoners of war arrive on Truk?

A. They arrived on Truk after the twentieth of November 1943. I believe the twenty-second or twenty-third.

46. Q. Was the commander in chief of the Fourth Fleet on Truk when these prisoners of war arrived?

A. He was in the Marshalls and absent from Truk.

47. Q. Where were these prisoners of war confined?

A. They were handed by the Combined Fleet to the Forty-first Naval Guard Unit where they were confined.

48. Q. How many prisoners of war were in this group that was confined?

A. According to the report submitted by the Forty-first Naval Guard Unit Commandant, there were forty-two prisoners.

49. Q. Do you recall the seventeenth and eighteenth of February 1944?

A. I remember. Truk was exposed to an air raid on these two days.

50. Q. Briefly, what occurred on these two days?

A. At dawn of the twelfth, the Fourth Base Force was informed of a radar contact of approaching American planes. This report was relayed to the Fourth Fleet. Simultaneously with sending a report to the Fourth Fleet, the air raid alarm was sounded by siren which was installed inside the headquarters of the Fourth Base Force informing Fourth Fleet of the alert. At the time I was sick in bed and a staff officer reported to me that a report had been made to Fourth Fleet and that an alarm had been sounded. JK

The accused moved to strike the words "At the time I was sick in bed and a staff officer reported to me that a report had been made to Fourth Fleet and that an alarm had been sounded" out of the answer on the ground that they were hearsay.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

A. (Continued.) The first raid materialized at dawn of the seventeenth and the second at around eleven o'clock in the morning as I remember. Of course, prior to the air raid alarm an air raid alert had been sounded and all the units were at their battle stations by the time this alarm was sounded and ready for combat. The raids on the first day were mainly concentrated on the surface craft and it seemed that the casualties on land were not great. As to casualties on land they were on air facilities. There was also a raid on the second day. By this raid the airplanes on Eten and at the 902nd Air Group were completely wiped out. We discovered the approach of a second major enemy group approaching Truk and when we did so there were air units over Truk defending the atoll. We, therefore, did not undergo a second attack on the second day because of this Japanese air support over Truk because the Americans retired. The first attack of the second day was mainly directed on land installations on Dublon and we received casualties. On that occasion the oil tanks of the supply unit which were exposed blew up and clouds of smoke reached into the sky and the tanks continued burning for two days and nights.

51. Q. On the first day of this air raid when you sounded the alarm did you anticipate that enemy flying personnel might be shot down and confined on Truk?

A. I thought that such a thing might happen.

52. Q. Did you issue any instructions concerning the handling of any prisoners of war?

A. As all combatant units and noncombatant units were aware of where to

take such prisoners of war when taken and regulations had been issued by the Navy Ministry and as the commanders of these units were well aware of the provisions for the handling of prisoners of war as set forth in the Navy Regulations, I did not see any necessity for issuing any specific orders.

53. Q. How do you know that these commanders were well aware of these orders from the Navy Ministry?

A. As all the commanders at Truk were either graduates of the Naval Academy or the Engineering Academy and as they would have been instructed in international relations they must have been aware of these regulations pertaining to international law issued by the navy and they would have known that such instructions were contained in the Navy Regulations.

54. Q. But you did not issue any instructions concerning these regulations, did you?

A. I received a document from my predecessor telling me what I was to do in case I had prisoners of war and this was outside the regulations issued by the Navy Ministry. This states that all prisoners of war were to be taken to the Forty-first Naval Guard Unit. This was an order of the Fourth Fleet and was issued to all units under the Fourth Fleet, I was sure that all commanding officers knew of it.

55. Q. Did you issue any orders other than this order and the orders issued by the Navy Ministry?

A. This document by the Fourth Fleet stated that prisoners of war at Truk or those brought to Truk from the fleet were to be handled according to the three points given: 1. That the prisoners of war be sent home by the first boat or plane leaving for the mainland; 2. While waiting for transportation to the mainland that the Forty-first Naval Guard Unit take care of these prisoners; and 3. That no investigation or interrogation of prisoners of war be conducted on Truk as there were no facilities there. The Fourth Base Force and Fourth Fleet acted on these instructions.

56. Q. But there were no additional instructions than this, were there?

A. Outside of the above there were none.

57. Q. You did not issue any additional instructions, did you?

A. There was no such necessity.

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

The commission directed that the answer be stricken.

The question was repeated.

A. As I stated above as to the prisoners of war in this one instance prisoners of war were received, I received a full report of what treatment was given the prisoners of war from Captain Minematsu who received the prisoners of war from the Combined Fleet.

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

The commission directed that the answer be stricken.

The question was repeated.

A. I stated this to explain why I found no necessity. I gave no further instructions and I add that I gave no instructions because I found no need for it.

58. Q. Do you recall any conference held at the time of this air raid at your headquarters?

A. Yes, I recall a conference.

59. Q. When was this conference held?

A. It was at midnight on a day after the air raids.

60. Q. Was that at midnight of the first day of the air raids or the second day of the air raids?

A. I believe it was after the air raids on the first day.

61. Q. It was the night of the first day of the air raids?

A. I believe so.

62. Q. Who called that conference?

A. My headquarters took the initiative in convening this conference and my staff officers talked over matters with staff officers of the Fourth Fleet and arrived at the decision to have the conference at my headquarters. The reason why we took the initiative and discussed it with the Fourth Fleet Headquarters was because most of the officers who were to attend this conference were directly subordinate to the commander in chief of the Fourth Fleet.

63. Q. Who attended that conference?

A. Commanders of various units on Dublon and, in case of their not being able to attend, their representatives.

64. Q. Were there any representatives from the Fourth Fleet staff present?

A. As I recall the senior staff officer, the air staff officer, and the engineering staff officer of the Fourth Fleet were present.

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

The judge advocate replied.

The commission announced that the motion was not sustained.

65. Q. What was the name of the senior staff ^{officer} of the Fourth Fleet?

A. Captain Inoue.

66. Q. What was the name of the engineering officer of the Fourth Fleet who attended?

A. I know this engineering staff officer by face but I don't know his name.

67. Q. Do you know the name of the air staff officer?

A. Lieutenant Commander Akai.

68. Q. At this conference did the various commanding officers of the units attend?

A. They reported on the battle conditions.

69. Q. How did they report - orally or from memoranda?

A. They reported orally.

70. Q. Did they use memoranda in the course of making their oral reports?

A. Some referred to notes, some reported extemporaneously and others had memoranda with them.

71. Q. Do you recall whether the commanding officer of the Forty-first Guard Unit reported?

A. I recall the commanding officer of the Forty-first Guard Unit made a report.

72. Q. Do you recall what he reported?

A. I recall.

73. Q. What did he report?

A. He reported on battle casualties. That there was one anti-aircraft gun at Matsushima Fort on Dublon which was damaged beyond use by bombs during the air raids, some casualties to the gun crew but no deaths. Otherwise no great damages inflicted on the installations. And further that there were some slight casualties on small craft on the seas. JK

74. Q. Do you recall if he reported anything regarding prisoners of war?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There were absolutely no reports concerning prisoners of war.

75. Q. The question was not were there any, but do you remember if there were any?

A. There were no such reports.

The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Tuesday, May 25, 1948.

ELEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, May 25, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps,
United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

76. Q. Did you graduate from a naval college?

A. I graduated from the Naval Academy. 9K

77. Q. In what year did you graduate from the Naval Academy?

A. July 18, 1911.

78. Q. Did you study military law and international law at the Naval Academy?

A. Yes, I studied both these subjects.

79. Q. In the course of your service in the Imperial Japanese Navy, have you had occasion to use and perhaps further study international law and military law?

A. I did not have occasion to apply these laws but I had opportunity to study them further.

80. Q. Is the Japanese conception of military law one of strong responsibility of commanding officers?

A. Yes, heavy stress is laid on that.

81. Q. And similarly, is heavy stress laid upon discipline in the Japanese forces?

A. The same applies for discipline and morale.

82. Q. In the Japanese military organization is a commanding officer responsible for the actions of his staff officers?

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. The commanding officer is responsible.

83. Q. And when the staff officers act in their official capacity as staff officers, do they act under the authority and in the name of the commanding officer?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As staff officers were considered as counterparts of the commanding officer, all such action taken by staff officers, the commanding officer would be held responsible for these actions.

84. Q. Are you familiar with the responsibilities and duties under international law with regard to prisoners of war?

A. I am aware.

85. Q. What does international law require with regard to the protection and treatment of prisoners of war?

A. I would like the question in a more concrete form.

86. Q. In your studies during your career as a member of the Japanese navy, did you learn whether international law requires that prisoners of war be protected and treated humanely?

A. Yes, I learned that.

87. Q. Under the doctrines of international law, as taught in the Japanese navy, who has the duty to protect prisoners of war?

A. The commanding officer in charge of the unit which has custody of the prisoners of war is directly responsible for their treatment.

88. Q. Is someone else indirectly responsible for the protection and treatment of these prisoners of war?

This question was objected to by the accused on the ground that (A) was irrelevant and immaterial. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There are certain persons indirectly responsible. They are the superiors of commanders of the units which hold these prisoners of war in JK.

custody, and they are responsible insofar as violations in the treatment of these prisoners of war are concerned, and their responsibility is that of supervision. They are responsible in case of any maltreatment of these prisoners of war. What I stated now applies to the immediate superior of the commander of the unit which had the prisoners of war in custody. In case there are superior officers above him, as for example, a fleet commander, as he would be responsible for the supervision, discipline, morale, and education of his subordinates, even he would, through his subordinate commanding officers, be indirectly responsible insofar as illegal acts, if they occurred.

89. Q. Does the witness imply illegal acts with reference to prisoners of war?

A. Yes, illegal acts directed against prisoners of war.

Cross-examined by the accused:

90. Q. Who was the commander of the Forty-first Naval Guard Unit throughout November of 1943?

A. Captain Minematsu, Toshio, IJN.

91. Q. Yesterday, on seeing the chart, you pointed out certain markings that had been made on it, and these markings referred to positions. As of what date were these markings?

A. Outside of the Fourth Fleet Headquarters, all the other positions did not change throughout my tour of duty.

92. Q. How then did the Fourth Fleet Headquarters change?

A. While there was a flagship attached to the Fourth Fleet, the headquarters was on the flagship, but after it was removed headquarters was moved to that position marked on the chart.

93. Q. Can you then state during what period there was a flagship with headquarters of the Fourth Fleet on it, and during what period there was no flagship and headquarters was moved to that position ashore?

A. I can.

94. Q. Will you please elaborate on that?

A. During my tour of duty, while the Fourth Fleet still had its flagship (this was anchored at Truk), their headquarters was on this flagship; but immediately after, the Fourth Fleet underwent a change of organization. As a result the flagship was moved, the Fourth Fleet moved its headquarters ashore to the position on the chart, immediately after change of organization; meaning, immediately after the Fourth Fleet had completed its Marshall Area action. JK

95. Q. In more concrete form, between what dates was the headquarters of the Fourth Fleet stationed ashore?

A. During my tour of duty, according to my memory, the flagship never left Truk. After the change of organization headquarters was moved ashore and this took place after the fleet returned from the Marshalls area; therefore I fix the date at the beginning of December, 1943, although I do not remember the date exactly. JK

96. Q. Then you mean to say that the headquarters of the Fourth Fleet was moved ashore after the beginning of December, 1943, and remained ashore throughout your tour of duty?

A. Yes, since that date the headquarters of the commander in chief was moved ashore and his flag flew over that position marked on the chart.

97. Q. What does your signature on that chart presented yesterday mean?

A. There was no demand made by the investigation officer for any specific time to apply to these installations or positions marked on the chart.

98. Q. Please answer my question. My question was what the meaning of your signature on that chart was?

A. I was in the middle of my reply. I marked in these positions dating these markings as after December, 1943, after headquarters was moved ashore. I marked in some of the positions myself, but as the commander in chief also saw the same chart and his signature was on it approving the positions, he must have been aware of the positions also.

99. Q. Do you mean to say that Kobayashi affixed his signature in front of your eyes?

A. Yes.

100. Q. You have stated that prisoners of war were taken in custody by the Forty-first Naval Guard Unit, but were there any other units that took charge of prisoners of war?

A. There were no other units ashore which had custody of prisoners of war.

101. Q. Then, if you say that there were no other units ashore which took charge of prisoners of war, were there some other type of units which took charge?

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

The accused replied.

The commission announced that the objection was not sustained.

A. That unit was not under my command, but I believe that there were incidents when the Combined Fleet took prisoners of war inside of Truk Atoll and sent them straight to the homeland by some ship that was sailing for Japan.

102. Q. Did you actually see the place where the prisoners were kept at the Forty-first Naval Guard Unit?

A. I did not actually see the place, but I had received a report from the commander of the Forty-first Naval Guard Unit, so I was aware of its locality. But that applies only to the prisoners of war taken from the submarine. JK

103. Q. What kind of a report did you receive from your commander, namely, pertaining to the locality of the camp and treatment of the prisoners of war?

A. As I remember, it was around the 23rd or 24th of November, 1943, when Minematsu, the commander of the Forty-first Naval Guard Unit, reported to me on a veranda at my private home, in company with one of my staff officers.

104. Q. I do not require the details. Will you give a brief and compact report to the commission?

A. I received a report from the commander of the Forty-first Naval Guard Unit that he had received from the Combined Fleet forty-two prisoners of war of the American submarine Sculpin, headed by the first engineer and warrant officers. These prisoners were received from the destroyer Yamagumo, attached to the Combined Fleet. Among the prisoners of war there were a few wounded, and among these wounded were some who had been shot through their limbs (TN. bullets had passed completely through their limbs). These latter cases were immediately sent to the dispensary attached to the Forty-first

Naval Guard Unit and given immediate treatment. As there was danger of these men who were shot through the limbs contracting gangrene, they were immediately treated accordingly. At that time the Naval Guard Unit was training one thousand new troops and they were hard pressed for room but they allotted a certain section of their barracks for these prisoners of war. He also reported that as the prisoners of war were larger in physical structure than the Japanese, and as they came drenched new clothes had to be issued to them; they had great trouble in finding these clothes. As I received this report I turned to my staff officer and told him to issue the larger sized clothing in our supply depot to these men, but I received a report from the commander of the Forty-first Naval Guard Unit that he had already taken that step and the clothes had been issued. Next, the commander reported that he found difficulty in the food to be given the prisoners of war. I asked him what, specifically, was the difficulty and he said the difficulty was the Japanese soup made of soya bean curd and Japanese pickles, which they called "takana." I suggested that there may be some way of preparing these Japanese foods to conform to the American diet, but the commander had already taken steps in that direction. I asked him whether the prisoners could take Japanese rice and he answered that they had eaten the rice without difficulty. 9K

105. Q. In short, you wish to say that you did all you could as to the feeding of the prisoners of war?

A. Yes. The commander further stated that as to the feeding of these prisoners of war, he believed that they, the prisoners, would get accustomed to the Japanese diet. My next question directed at the commander concerned housing of the prisoners of war, whether difficulties would not be met in the way of latrines and washing facilities, and he said that he had taken appropriate measures. 9K

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 advocates, the accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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-examination continued.)

106. Q. Was that the complete report made by Captain Minematsu to you or is there something remaining?

A. There is a little more to his report.

107. Q. Please give the main points, briefly.

A. He further reported that he would, while he had the prisoners of war in custody, keep a firm guard over them and that he would keep outside people away from them so they would not cause any trouble to the prisoners of war. That was the general gist of Minematsu's report and I further received the impression that he was doing his utmost for these prisoners of war. I was a submarine officer myself and Minematsu was the gunnery officer of a submarine squadron and I told him that as these prisoners of war were from a submarine that he should know what their feelings and troubles would be and that I expected that he would go out of his way to see to their treatment. That completes the answer.

108. Q. Was a report as to whether the men, who had been shot through their limbs and who were operated upon, received full treatment incorporated in that report made by Minematsu to you?

A. I did not receive a report as to the operation and the result of the operation from Minematsu but I was informed by Iino who was the chief surgeon of the Forty-first Naval Guard Unit and simultaneously chief surgeon of the Fourth Base Force as to the operations and their results.

109. Q. What kind of a report was this made by Iino?

A. There was danger of the patients contacting gangrene as there were no facilities in the Forty-first Naval Guard Unit Dispensary for a safe operation I sent them to the Naval Hospital where they were operated upon and treated and that the results were excellent and the patients were in a very pleasant state of mind. 9K

110. Q. Was that all of Iino's report?

A. Yes. I would like to add a few others. The other patients who were not shot through the limbs were treated at the Forty-first Naval Guard Unit Dispensary and that they were progressing excellently.

111. Q. Then, may I understand that the forty-two prisoners of war taken from the submarine were not kept in custody at the prisoner of war camp of the Forty-first Naval Guard Unit but were allotted housing in the barracks?

This question was objected to by the judge advocate on the ground that it was an attempt on the part of the counsel to coach the witness.

The accused withdrew the question.

112. Q. Were the prisoners of war kept in a portion of the barracks?

A. According to Minematsu's report, they were housed in a section of the barracks and I understood such to be the set up.

113. Q. Do you know the dimensions of the barracks in which these prisoners were kept?

A. I do not know whether a whole building was allotted to the prisoners of war or whether only a section of the building and so I cannot state what the dimensions of the area in which they were kept were.

114. Q. Was there a clause in Minematsu's report stating that these prisoners of war had been interrogated?

A. Minematsu in his report did not state that there had been any prisoner of war interrogated. Headquarters of the Fourth Fleet was at that time not at Truk and my base force in compliance with instructions from Fourth Fleet did not conduct such interrogations, and therefore, there were no interrogations made as far as the Fourth Fleet is concerned.

115. Q. Do you know if any interrogations were conducted?

A. I do not know.

116. Q. You stated in your testimony that the Fourth Fleet was absent from Truk at that time. Do you know where the commander-in-chief of the Fourth Fleet was?

A. The Fourth Fleet was operating in the Marshalls Area. It had not yet returned to Truk.

117. Q. Were there any staff officers of the Fourth Fleet remaining on Truk?

A. I do not know. I do not believe there were any.

118. Q. When did the commander in chief of the Fourth Fleet return to Truk?

A. I do not recall the exact date but it was towards the end of November 1943.

119. Q. Were there any rear admirals in the Fourth Base Force?

A. No.

120. Q. Were there any rear admirals in the Fourth Fleet during November 1943 between the time when the prisoners of war were taken off the submarine and until they were dispatched to the Japanese homeland?

A. There was one rear admiral, the chief of staff of the Fourth Fleet.

121. Q. Then, do you know whether the chief of staff was with the fleet when it was operating in the Marshalls Area?

A. He was not at Truk.

122. Q. Was a report made to the Fourth Base Force that the submarine prisoners of war were taken into custody by the Forty-first Guard Unit?

A. I believe that an order was issued by the Combined Fleet that the Forty-first Naval Guard Unit take custody of these prisoners, but I did not see this order, although I believe my staff was aware of this order.

123. Q. Was a report submitted to the Fourth Fleet by the Fourth Base Force concerning these prisoners?

A. I did not send in any reports directly to Fourth Fleet, but I believe Combined Fleet informed the Fourth Fleet about these prisoners.

The accused moved to strike the words "but I believe Combined Fleet informed the Fourth Fleet about these prisoners" out of the answer on the ground that it was not responsive.

The commission directed that these words be stricken.

124. Q. Did Fourth Base Force make a report to the Fourth Fleet concerning the dispatching of these prisoners of war to the Japanese homeland?

A. I did not send a dispatch to Fourth Fleet concerning the sending of prisoners of war back to the Japanese homeland. I did that under direct orders of the Combined Fleet, and when the commander in chief of the Fourth Fleet returned to Truk, I made a report to him immediately upon his arrival.

125. Q. May I take it to mean that this report to the commander in chief of the Fourth Fleet was made after the prisoners had left for Japan?

A. Yes.

126. Q. Are you aware of the fact that the commander in chief, Combined Fleet, issued instructions that international law must be followed to the letter?

A. As I testified yesterday, on assuming my post I looked through all the orders from the Combined Fleet and Fourth Fleet but I did not discover anything of that nature. I would like to add some explanation to my statement I just made.

The judge advocate objected to the witness making an explanation on the ground that the question had been answered and an explanation was not necessary.

The commission announced that the objection was not sustained.

(Continued.) Although counsel stated just now that there was an order from the commander in chief of the Combined Fleet, I do not think that there was such an order. I believe the commander in chief of the Combined Fleet called in all his officers above the rank of commander in chief and gave this order verbally and therefore no written order remained, and as I assumed my post late in the war, I was not briefed on this order by my predecessor.

The judge advocate moved to strike out this latter portion of the answer on the ground that it was the opinion of the witness and hearsay since the witness was not present when the verbal order was given.

The commission directed that the latter portion of this answer be stricken out.

127. Q. Do you know of the fact that Kobayashi repeatedly issued instructions to the commandant of the Fourth Base Force, that as the Combined Fleet had issued orders that international law be carried out to the letter that the commandant abide by this order of the Combined Fleet?

This question was objected to by the judge advocate on the ground that it was (a) double; (b) vague; and (c) misleading.

The accused withdrew the question.

128. Q. Do you recall your testimony yesterday when you said that during your tour of duty you did not find it necessary to issue any orders pertaining to the treatment or protection of prisoners of war?

A. Yes, I remember that.

129. Q. What do you mean by saying you did not find it necessary to issue any such orders?

A. First - there were regulations issued by the Navy Minister and in these regulations there was a clause relative to the treatment and protection of prisoners of war. Second - I thought it unnecessary for the commander in chief of a fleet to issue such orders because it would merely be a redundant excerpt from international law where it relates to protection and treatment of prisoners of war.

The judge advocate moved to strike out the words "I thought it unnecessary for the commander in chief of a fleet to issue such orders because it would merely be redundant" on the ground that it was irrelevant and an opinion of the witness.

The commission directed that these words be stricken out.

(Continued.) As I stated before - when I saw this report submitted by the commander of the Forty-first Naval Guard Unit as to his plans and the result of the execution of these plans relative to the treatment of prisoners of war, and when I saw this handling of prisoners of war, the first that I experienced, was going very smoothly, I did not see any reason or necessity for issuing orders relative to treatment of prisoners of war.

130. Q. You testified that the regulations issued by the Navy Minister specified as to how prisoners of war were to be treated, but do you know whether these regulations were actually put into effect?

This question was objected to by the judge advocate on the ground that (a) it was ambiguous; (b) leading; (c) too general; and (d) much too broad.

The accused replied.

The commission announced that the objection was sustained. JK

131. Q. Do you know whether the regulations relative to protection and treatment of prisoners of war as set forth in the Navy Minister's regulations were actually carried out by units under your jurisdiction during your tour of duty?

A. Within my scope of knowledge there was only one incident of handling prisoners of war and inside my knowledge, I am firmly convinced that they were effected to the letter.

132. Q. You testified yesterday that when the submarine prisoners of war were taken to Truk, the Fourth Fleet was operating in the Marshalls Area, do you know what the battle conditions in that area were at that time?

A. My observation at the time was that the conditions were very adverse for our forces and that enemy invasion was imminent in that area.

133. Q. Do you know of any occasions when the commander in chief left Truk while the flagship was still anchored at Truk?

A. The commander in chief visited certain sectors of the areas under his jurisdiction, but when he did, the flag flew from his flagship and the flag still remained at the flagship although he was absent.

134. Q. You stated in your testimony that on the 16th and 17th of February 1944 there was a big air raid over Truk. What was the determination or estimation of an American invasion of Truk? Was it very great?

A. I estimated that it was still early for an American invasion, but I took every precaution for such an eventuality.

135. Q. To the question put to you by the prosecutor, you testified yesterday JK that you thought that there was a chance of prisoners of war being taken from American planes shot down during the air raid. On what grounds do you make that statement?

A. There were on Truk at that time sixty fighter planes, though still in a training stage, and the ground installations included anti-aircraft guns and anti-aircraft machine guns, and it was thought possible that American planes would be shot down and if they bailed out in parachutes they would be taken as JK prisoners. That was the grounds on which I made that statement yesterday.

The witness was duly warned.

The commission then, at 11:35 a.m., adjourned until 9 a.m., tomorrow, Wednesday, May 26, 1948.

TWELFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, May 26, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued):

136. Q. How were the forty-two submarine prisoners of war taken back to
Japan?

A. By orders of Combined Fleet they were put aboard two aircraft carriers
attached to the Combined Fleet and through the Combined Fleet sent to Japan.

137. Q. What were the names of the two carriers?

A. I do not remember the names of the carriers.

138. Q. To what organization were these carriers attached?

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

The accused withdrew the question.

139. Q. Did any officers from the Fourth Base Force attend the conference
held on the night of February 17, 1944?

A. The Commandant Staff Officers Captain Higuchi, Commander Ago, Lieutenant
Kondo, Chief Surgeon Captain Iino.

140. Q. Were those all?

A. Yes.

141. Q. You testified yesterday that the immediate superior officer would be responsible for supervision of the illegal acts of subordinates towards prisoners of war. Was this responsibility one of international law or one of national law?

A. On the premise that military law in Japan was the same as in other countries, I made my reply on the basis of domestic or national law.

142. Q. You stated just now that domestic military law was not different from that of other nations. Have you studied these military laws of other nations?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. My study of this does not go beyond the scope of what I learned in my various posts and what I learned in school. I can not state definitely that the Japanese law was exactly the same as other nations but that they were approximately so, and yesterday when the question was put to me I asked that the question be reframed in more specific terms but the reframed question was still vague and therefore I based my reply on my understanding of national law.

143. Q. You spoke of responsibility for subordinates. Is this a criminal responsibility or administrative responsibility from the standpoint of domestic law?

A. This responsibility for supervision is an administrative responsibility.

144. Q. You stated yesterday that not only the immediate superior but the superior above him is indirectly responsible. But, this responsibility that you spoke of, is it one of international law or domestic law?

A. I stated that he was administratively responsible on the basis of domestic law for control and supervision.

145. Q. This responsibility of superiors above the immediate superior - would this responsibility be criminal or administrative responsibility on the basis of domestic law?

A. This being related to the responsibility of the commander in chief as set forth in the fleet regulations, I considered it. I stated that there was administrative responsibility from the viewpoint of domestic law because this is related to the responsibility of the commander in chief as set forth in the fleet regulations.

146. Q. You have replied to these points on responsibility, but what are your legal foundations for your replies?

A. My basis are Naval Criminal Code, the Naval Disciplinary Punishment Regulations, and the Fleet Regulations.

147. Q. Were these laws in effect until the time of surrender?

A. Yes, they were in effect.

148. Q. Was your command a separate command?

A. No, it was not a separate command.

149. Q. You had authority to impose punishments upon your subordinates, didn't you?

A. I had authority to punish my immediate subordinates.

150. Q. Was your command subordinate to the Fourth Fleet for tactical purposes only?

A. That is not so. Operations, administration and everything was under the Fourth Fleet.

151. Q. Were there any units ashore that were not subordinate to the Fourth Fleet? JK

A. That differs with the period of time and unless that is stated I can not give a full reply. JK

152. Q. During the time that you were commanding officer of the Fourth Base Force?

A. When we consider the whole of Truk Atoll there was the Combined Fleet.

153. Q. Did they have units ashore that were not subordinate to you?

A. Yes.

154. Q. How many units did they have?

A. Southern Area Air Depot, the Combined Communications Corps (that Combined comes from Combined Fleet), Submarine Base Unit, and Air Groups at the various air fields at Eten, Moen, and Fefan Islands.

155. Q. None of these groups were under your control?

A. No, they were not under my control.

156. Q. And therefore not under the command of the commander in chief of the Fourth Fleet?

A. In the absence of the commander in chief, Combined Fleet, they would come under the delegated authority of the commander in chief of the Fourth Fleet.

157. Q. For tactical purposes only, though?

A. Not only tactical but administrative and other purposes.

158. Q. Were the army units on Truk under your control?

A. No, they were not.

159. Q. Were they under the control of the Combined Fleet?

A. No, they were not.

160. Q. Were there any army units on Truk?

A. Yes, there were.

161. Q. Under whose control were these army units?

A. They were under the command of the highest ranking army officers there, the division commander. JK

162. Q. Do you know whether they had prisoners of war?

A. I do not know.

163. Q. Isn't it true that you testified at the Tanaka trial that you were sick in bed at the time of the air raid, February 17, 1944?

A. That is so.

164. Q. How sick were you that day?

A. My condition was such that I could not walk and had to be carried to the air raid shelter on a stretcher.

165. Q. You testified that Captain Tanaka didn't tell you at this conference that he executed prisoners. Did Captain Tanaka tell you before he executed the prisoners that he was about to execute them that day?

A. I never heard from him.

166. Q. Since you never heard about it you never notified commander in chief, Fourth Fleet, about it. Is that so?

A. That is only natural.

167. Q. How soon after February 17 were you relieved of your command?

A. I was relieved by Rear Admiral Arima on the twenty-third of February 1944.

168. Q. Isn't it true that when these units captured prisoners of war on outlying atolls it was impossible for them to send them in to the Forty-first Guard Unit immediately?

A. As there were no communications during the air raids I think it was very probable if such took place.

169. Q. Are you familiar with the Navy Ministry rules regarding prisoners of war?

A. Are you referring to the standing orders?

170. Q. Yes.

A. I am aware of the regulations as set forth in the Navy Ministry Regulations.

171. Q. Do the regulations set forth the policy that prisoners of war should be sent to Japan?

A. The Navy Regulations concerning the treatment of prisoners of war merely said that Army Regulations concerning the same matter be adopted or followed. If there were prisoner of war camps on the Japanese mainland to accommodate all prisoners of war that would have been a simple matter but the army had prisoner of war camps inside and outside of the Japanese mainland and these regulations were written in order to fit these conditions. The Navy Ministry issued orders to the Combined Fleet and the Fourth Fleet regarding prisoners of war.

172. Q. These regulations, ^{or} orders to the Combined Fleet or Fourth Fleet were that the prisoners were to be sent to the mainland as soon as possible?

A. This was a dispatch from Naval General Headquarters and it merely stated that prisoners of war when taken should be sent to Japan as soon as possible.

173. Q. During the time that you were commander of the Fourth Base Force, did you make every effort to insure that prisoners in your custody or in custody of the Forty-first Guard Unit were sent to Japan as soon as possible?

A. The Fourth Base Force did not have the prisoners of war.

174. Q. Didn't the Forty-first Guard Unit, which was one of your subordinate commands, have prisoners of war in their custody?

A. The Fourth Base Force did not have any prisoners of war directly under its control and as the question was so put I said the Fourth Base Force did not have any prisoners.

175. Q. Then as I understand it, the Forty-first Guard Unit was responsible to see that the Navy Ministry Regulations were carried out and that all the prisoners of war were sent to Japan as soon as possible?

A. As the Forty-first Naval Guard Unit was operating under the same instructions as the Fourth Base Force, namely, those issued by Fourth Fleet, and I know that the Forty-first Naval Guard Unit was doing its best to abide by these regulations.

The commission then, at 10:15 a.m., took a recess until 10:45 a.m., at which time it reconvened.

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

Stewart R. Smith, 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-examination continued.)

176. Q. You testified that you did not find it necessary to issue any orders to the commanding officer of the Forty-first Naval Guard Unit, with regard to the handling, protection and treatment of prisoners of war. Why didn't you find it necessary to do so?

A. First, there was a clause on the treatment of prisoners of war in the Navy Regulations; second, I received a satisfactory report from a commander who actually had charge of prisoners of war.

177. Q. In answer to a question you referred to a report submitted by the Forty-first Naval Guard Unit concerning the forty-two prisoners of war from the American submarine. Did this report go to the Combined Fleet?

A. Of course, this report was submitted to the Combined Fleet.

178. Q. As I understand it, the Combined Fleet had ordered these prisoners to be confined at the guard unit. Is that right?

A. It is exactly as you say.

179. Q. And the Combined Fleet also ordered that they be evacuated to Japan?

A. That is so.

180. Q. Do you remember how long they were kept in custody at the guard unit?

A. I do not know the details, but they were kept there less than ten days.

181. Q. During these ten days the commander in chief of the Fourth Fleet was not in the vicinity of Truk, was he?

A. He was not.

182. Q. So he had nothing to do with these forty-two prisoners of war, did he?

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

The accused made no reply.

The commission announced that the objection was sustained.

183. Q. Was the commander in chief away from Truk during the entire time these prisoners were in custody at the guard unit?

A. No, he was not present.

184. Q. He was not present at Truk?

A. Yes, he was not present.

185. Q. You didn't notify him that these forty-two prisoners of war were confined at the guard unit until after he had returned to Truk, did you?

A. I did not report the despatch of these prisoners to the Japanese homeland, but I believe I made a report on receiving these prisoners.

186. Q. At the time they were received?

A. Yes.

187. Q. You are not sure of that though, are you?

A. It is not definite in my mind, but I have such a recollection.

188. Q. Were you consulted before these forty-two prisoners were turned over to the guard unit by the Combined Fleet?

A. I was not consulted.

189. Q. Did you ever receive any reports from any of these forty-two prisoners or from the commanding officer of the guard unit regarding the mistreatment of these forty-two prisoners?

A. No, I did not receive any reports.

190. Q. Who was the officer in charge of these forty-two prisoners of war while they were at the Forty-first Naval Guard Unit?

A. The commander of the Forty-first Naval Guard Unit naturally assumed the over-all responsibility, and as to the internal affairs they were controlled by the executive officer. JK

191. Q. Who was the commanding officer of the Forty-first Naval Guard Unit?

A. Minematsu, Toshio, captain, I.J.N.

192. Q. Who was the executive officer?

A. Nakase. I forget his first name. He was a lieutenant commander, I.J.N.

193. Q. Who was your predecessor as commander of the Fourth Base Force?

A. Takeda, Moriji, vice admiral, I.J.N. JK

194. Q. Did you receive from your predecessor a document pertaining to the handling of prisoners of war?

A. That was the only document I received from my predecessor -- the one that you refer to in your question.

195. Q. Do you have that document?

A. I do not.

196. Q. What happened to it?

A. It was just a sheet of paper, a memorandum, and I do not know what happened to it. It was lying on my desk and as I was removed from my post while I was still ill I do not know.

197. Q. Was it the duty of the commanding officer of the guard unit to issue detailed instructions regarding the handling and custody of prisoners of war?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. That is exactly so.

198. Q. You say that the commanding officer is responsible for the actions of his staff officers. To whom is this commanding officer responsible?

A. It is only natural that the commanding officer immediately superior to the commanding officer assumed responsibility. *JK*

199. Q. In your opinion, regarding the responsibility of a superior officer for the actions of subordinate officers, do you mean that the superior must approve of the actions of his subordinates, otherwise he will not be responsible for these actions?

This question was objected to by the judge advocate on the ground that it was improper in form.

The accused withdrew the question.

200. Q. Do you mean that a commanding officer is responsible for the actions of his subordinate officers notwithstanding the fact that he does not order his subordinate officer to so act? *JK*

A. What I am trying to say is that if the action of the subordinate turns out to have a bad result then the commanding officer is responsible in so far as his supervision is concerned.

201. Q. Do you mean he has the responsibility only if he has ordered the officer to act? *JK*

A. That is not so. Even if the commanding officer does not order his subordinate to act in a certain way, if that subordinate misconducts himself or acts illegally, the commanding officer is responsible from the point of view of supervision, otherwise a military organization can not be held together.

202. Q. Do you mean then, that you can be held responsible for the actions of Captain Tanaka in case Captain Tanaka acted on his own volition and acted illegally?

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

The accused made no reply.

The commission announced that the objection was sustained.

203. Q. Did the commanding officer of the guard unit ever tell you that he had confined thirteen of these forty-two prisoners in a small cell, six feet by eight feet?

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

The accused replied.

The commission announced that the objection was not sustained.

A. I did not receive such a report. It was reported to me that they were confined in a portion of a barracks.

204. Q. You testified that you had studied both international law and military law at the naval academy. What did you study in international and military law?

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

The accused made no reply.

The commission announced that the objection was sustained.

205. Q. Who was your instructor in military law and your instructor in international law?

A. These things having taken place more than thirty years ago, I do not remember.

206. Q. According to the Japanese concept of military law, were you, as the commanding officer of the Fourth Base Force, responsible for neglect of duty to the Japanese civil government?

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

The accused withdrew the question.

207. Q. As the commanding officer of the Fourth Base Force, were you responsible to anyone else except your immediate superior for your manner of performance of duty as the commanding officer of the Fourth Base Force?

A. It naturally follows that, going up the ladder, I would be responsible to the commander in chief of the Combined Fleet.

208. Q. Is the responsibility of a commanding officer in the Japanese navy fixed or determined by navy regulations?

A. There is no clear line of demarkation of responsibility of a commanding officer. May I add a few words in explanation? To the present time the Navy Minister was the person who fixed the scope of responsibility, or who determined or confined the responsibility as each incident came up.

The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Thursday, May 27, 1948.

THIRTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, May 27, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army, JK
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate made the following statement:

Prior to reexamination of this witness the judge advocate would like
to announce for the information of the commission, that the office of the
Director of War Crimes has received the depositions of two of the interro-
gations that have previously been submitted by defense counsel. One of these
is the deposition from Yoshida, Kenichiro, the Central Liaison Officer and
the Central Liaison and Coordination Officer of the Japanese Government.
This one is in regard to Exhibit 2 and also with regard to Exhibit 5. In
addition, we have received the deposition of Oishi, Chisato, presently con-
fined in Sugamo Prison, Tokyo, Japan. I am turning these over to defense
counsel at this time for their examination and use.

Wakabyashi, Seisaku, 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.

Reexamined by the judge advocate:

209. Q. During what period of time was the Commander in Chief of the Com-
bined Fleet in the vicinity of Truk with his fleet headquarters?

A. When I assumed my post the headquarters of the Combined Fleet was at
Truk. The date on which the Combined Fleet left Truk was February 10, 1944.
During that period I am convinced that Combined Fleet was at Truk.

210. Q. Did the Combined Fleet ever have its headquarters ashore at Truk during your tour of duty there?

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

The judge advocate replied.

The commission announced that the objection was not sustained. 8K

A. No.

211. Q. Was the Commander in Chief of the Fourth Fleet the senior officer present ashore on Truk during the entire time you were the commanding officer of the Fourth Base Force?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. That is so. After the headquarters of Fourth Fleet was moved ashore on Truk, the Commander in Chief of the Fourth Fleet was the senior officer present ashore on Truk.

212. Q. Prior to the time that the Fourth Fleet Headquarters moved ashore who was the senior officer present ashore?

A. I was then.

213. Q. During the time that the Commander in Chief of the Fourth Fleet was at Kwajalein who was the senior naval officer present ashore at Truk?

A. I was at that time.

214. Q. You testified on cross-examination that one of the reasons you did not consider it necessary to issue instructions with regard to the treatment of prisoners of war was the existence of a fleet regulation. What was this fleet regulation?

A. I do not remember saying there was a fleet regulation to that effect. What I stated was that there was a clause in the naval regulations concerning treatment of prisoners of war.

215. Q. What was this regulation?

A. This was to the effect that the army regulations would be adopted for the treatment of prisoners of war.

216. Q. Did you implement this regulation with any specific instructions?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Outside of the regulations I did not issue any specific orders.

217. Q. Did you receive any specific instructions from the Commander in Chief of the Fourth Fleet in this regard?

A. I did not receive any direct instructions from the Commander in Chief of the Fourth Fleet. However, I was briefed on the Fourth Fleet policy towards this question when I assumed my post, but I do not know which Commander in Chief of the Fourth Fleet formed this policy.

218. Q. What was this policy that you referred to?

A. First, POWs would be sent back to the Japanese homeland as soon as possible. That until such time as transportation, maritime or air, was available, the POWs would be temporarily held at the Naval Guard Unit. Second, that these POWs be not subjected to interrogations other than those necessary for the purposes of their custody. That is all.

219. Q. Another reason that you gave for not issuing regulations was that in the one instance you claimed you specifically knew of POWs in the Naval Guard Unit because you saw the "plans and execution of plans" with regard to these POWs. Were these plans in writing?

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

The judge advocate replied.

The Commission announced that the objection was not sustained.

A. I do not think I saw "plans."

220. Q. Were there any written plans that Minematsu showed you concerning the treatment of POWs?

A. No.

221. Q. Where were the barracks in which you testified the POWs were confined?

A. Minematsu did not tell me specifically what the location of this barracks was, but since then I have surmised it was the barracks next to the Naval Guard Unit Dispensary.

222. Q. Within the area of what unit was this barracks located?

A. It was one of the barracks inside the area of the headquarters of the Naval Guard Unit, which included the administration building and the barracks.

223. Q. What guard unit are you referring to in that answer?

A. I am referring to the Naval Guard Unit on Dublon located on the portion of the chart.

224. Q. Did you personally inspect the quarters where the POWs were confined?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As the period during which these POWs were confined was very short, I missed the opportunity of visiting the barracks.

225. Q. Did you ever visit any of these submarine POWs at the barracks or any other place?

A. I never saw the POWs from the submarine.

226. Q. You previously testified you were present at the headquarters of the Forty-first Naval Guard Unit about eight days each month. During any of these visits did you ever inspect the brig where the POWs were kept?

This question was objected to by the accused on the ground that the judge advocate was misquoting testimony.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I did not.

227. Q. Did you speak with any American prisoners of war at the guard unit?

A. Whenever I visited the Naval Guard Unit there were no prisoners confined there. I asked every time I went there, but the answer was always in the negative.

228. Q. Did you ever ask to be personally informed when POWs arrived at the guard unit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not so order, but it was the duty of the responsible commanding officer to make that report to me.

229. Q. You testified that with regard to the submarine POWs who had been injured in the limbs, that because of the danger of contracting gangrene they were given immediate treatment. What did this treatment consist of?

A. According to the report of the chief surgeon, there were some who had to be amputated and I definitely received a report to that effect.

230. Q. You testified concerning questioning of the submarine POWs. Did you ask Minematsu whether these POWs had been questioned?

A. I did not at that time. May I add a few words in explanation?

(The witness was directed to continue.)

(Continued) Afterwards on a visit paid me by a staff officer of the Sixth Fleet, in private, I was informed that headquarters of the Sixth Fleet had questioned the POWs.

231. Q. By "afterwards," what period of time do you refer to?

A. Past the middle of December -- around the 20th of December, 1943.

232. Q. Did you issue any instructions to Minematsu concerning questioning of these POWs?

A. As Fourth Fleet has issued this policy and as Minematsu was aware of it the same as I, I thought that he would not conduct any questioning.

233. Q. Did you issue any instructions?

A. After Minematsu had reported I gave him instructions and in that I touched upon the subject briefly. Of course, this was all done orally. gk

234. Q. What were these brief instructions?

A. Not to let anybody get near the POWs who were not connected with guarding them. I explained that these steps were taken so as not to cause trouble to the POWs.

235. Q. When you instructed that no personnel other than the actual guards should be permitted to go near the prisoners, did this include officers from any other unit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I meant it to be such, but I also meant it to be understood that this did not include officers moving under orders from higher echelon.

236. Q. If officers moving under orders of higher echelon came to interrogate these prisoners of war, was it the duty of the commanding officer of the Forty-first Guard Unit to advise him?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. In the first place, if such an interrogation was desired by higher officers, the usual procedure would have been for him to inform me that he desired to conduct such interrogations; and if some officer were to come direct to the camp to interrogate the prisoners, then it would have been only natural that the Commander of the Forty-first Naval Guard Unit report this to me.

237. Q. You testified that you personally knew of only one instance of POWs on Truk. Did you know whether it was probable whether other POWs would arrive or be captured on Truk?

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

The judge advocate replied.

The commission announced that the objection was sustained.

238. Q. Did you anticipate the arrival of additional POWs on Truk?

A. I thought that there was a probability of some POWs being sent in from the front.

239. Q. You testified that you were sick during the course of the air raid. Were you still the commandant of the Fourth Base Force during the course of that air raid?

A. I was commandant of the Fourth Base Force through the raid.

240. Q. Did you carry on your duties as commandant of the Fourth Base Force?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I carried out my duties with grim resolution.

241. Q. You testified that responsibility for supervision is an administrative responsibility under domestic law. Is there a criminal responsibility under Japanese Naval Law for neglect of duty? *JK*

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There are times when neglect of duty is considered an administrative responsibility and at other times when it is considered a criminal responsibility.

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

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

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

No witnesses not otherwise connected with the trial were present.

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. *JK*

Recross-examined by the accused: *JK*

242. Q. Was the commander in chief, Fourth Fleet, under the orders of the commander in chief of the Combined Fleet even when he was ashore?

A. Yes, he receives orders.

243. Q. You stated that the prisoner of war policy was (1) that prisoners of war be sent home as soon as possible; (2) that they be kept in custody at the Forty-first Naval Guard Unit; and (3) to avoid interrogations as much as possible. Was this policy followed by you? Did you have this policy carried out?

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

The accused replied.

The commission announced that the objection was not sustained.

A. As far as I know, I followed this policy and so was this policy carried out by the Forty-first Guard Unit. I am convinced of this.

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

The accused replied.

The commission announced that the motion was not sustained.

244. Q. You spoke of the Sixth Fleet. What sort of a fleet was the Sixth Fleet?

A. It was a submarine fleet.

245. Q. Under whose command was this Sixth Fleet?

A. It was under the command of the Commander in Chief, Combined Fleet.

246. Q. Then it was not a fleet under the command of the Commander in Chief, Fourth Fleet. Is that correct?

A. No, it was not under the command of Commander in Chief, Fourth Fleet.

247. Q. Was there a man of the rank of rear admiral in that organization?

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

The accused replied.

The commission announced that the objection was not sustained.

A. There was such a man. The chief of staff was a rear admiral.

248. Q. You testified that a staff officer of the Sixth Fleet came to you and told you that they had interrogated some prisoners of war. Were these prisoners of war you referred to the forty-two prisoners of war who were taken in November, 1943, and that are in question at this trial?

A. Yes, they were those prisoners.

249. Q. You said that the Combined Fleet was at Truk when you assumed your post. When did you assume your post?

A. 24 July, 1943.

250. Q. You said that the Combined Fleet left Truk on February 10, 1944. How do you know that the fleet left Truk at that time?

A. I know this fact because on February 9 the senior adjutant of the Combined Fleet visited me in my sick bed, and brought a letter and a commentarial document, and told me that the Combined Fleet was sailing on the next day. Therefore, that is how I know.

251. Q. But since you were sick you don't know for certain whether the ^ffleet JK did sail the next day or not?

A. I think I heard from my staff officer that the fleet had sailed on the next day.

252. Q. Did the Sixth Fleet also sail on February 10, 1944?

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

The accused replied.

The commission announced that the objection was not sustained.

A. The Combined Fleet left with the exception of the Sixth Fleet. The Sixth Fleet remained at Truk.

253. Q. Did the Commander in Chief, Fourth Fleet, leave Truk for Kwajalein in his flagship, the Kashima, around October, 1943?

A. I do not recall the exact date but I believe it was in the early part of October.

254. Q. Do you recall when the Commander in Chief, Fourth Fleet, returned from that trip to Kwajalein?

A. I do not remember whether it was at the end of November, 1943, or the beginning of December, 1943, but it was about that time.

255. Q. Now, you testified as to seniority ashore. Wasn't the army officer of the same corresponding grade and rank as you and Admiral Kobayashi during the time you were on Truk?

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

The accused replied.

The commission announced that the objection was not sustained.

A. There was an army officer of the corresponding rank, but it was clear who was senior from the date of his rank. JK

256. Q. You testified that the Navy policy regarding handling of prisoners of war was that the Navy followed the same rules and regulations as the Army. Wasn't it also the policy that prisoners of war were to be handled by the Army?

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

The accused withdrew the question.

257. Q. Didn't the policy of the Fourth Fleet regarding prisoners of war include the regulations set up by the Japanese Army for the handling of prisoners of war?

A. As the army regulations relative to the treatment of prisoners of war was incorporated by the regulations issued by the Navy Ministry, I know that the Fourth Fleet policy conformed to this.

258. Q. This army policy was to treat prisoners of war according to international law, wasn't it?

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

The accused replied.

The commission announced that the objection was sustained.

259. Q. During the time of your duty, who was the responsible commanding officer of the Guard Unit whose duty it was to report to you the presence of prisoners of war at the Guard Unit?

A. During my tour of duty there were three men. First, Captain Naito, Sunao, second, Captain Minematsu, Toshio, and third, Captain Tanaka, Masaharu. These commanding officers were responsible to report to me the presence of prisoners of war if there were any.

260. Q. How often did these men report to you and when did they report the presence of prisoners of war at the Guard Unit?

A. The only one of the three who reported to me on prisoners of war was Captain Minematsu, Toshio, and he reported only once.

261. Q. During your inspections of the Forty-first Guard Unit you never discovered any prisoners of war at the Guard Unit, did you?

A. No, I did not discover any.

262. Q. Had these submarine prisoners already been sent to Japan when the Sixth Fleet staff officer told you in private that these prisoners had been questioned by Sixth Fleet officers?

A. It was about a fortnight after the submarine prisoners of war had been sent to Japan.

263. Q. Are you sure that this was told you by a staff officer of the Sixth Fleet and not a staff officer of the Fourth Fleet?

A. He was not a staff officer of the Fourth Fleet.

Examined by the commission:

264. Q. For purposes of clarification, the commission would like the witness to inform the commission if the Sixth Fleet was present at Truk during the time of the interrogation you refer to?

A. Yes, the Sixth Fleet was at Truk. I do not mean that the whole of the Sixth Fleet was at Truk.

265. Q. Will you please tell the commission whether or not this interrogation you referred to by the Sixth Fleet took place before or after they were turned over to the Forty-first Guard Unit?

A. As the prisoners of war were conducted from the destroyer Yamagumo immediately after they were taken to the Forty-first Naval Guard Unit, I was informed that the interrogation took place after they were taken to the Forty-first Naval Guard Unit. This interrogation conducted by Sixth Fleet was under orders of Commander in Chief, Combined Fleet.

266. Q. You spoke of an officer being on shore of the corresponding rank and grade as yourself and Vice Admiral Kobayashi. You also stated it was clear who was senior from his date of rank, but you didn't say who was senior. Will you tell the commission who was senior?

A. The senior army officer on Truk was promoted to the rank of lieutenant general on the same day, same month, and same year as Admiral Kobayashi was promoted to vice admiral.

267. Q. Does the witness know who was considered senior?

A. Despite an understanding between the Japanese army and navy that officers of equal rank be appointed, but that army officers be junior, the army deliberately broke this understanding and brought this man as commander of the army forces. So a pact had to be formed by the army and navy at Truk in order to alleviate this situation.

268. Q. Will the witness tell the commission what this pact was?

A. This pact was formed between the Commander in Chief, Fourth Fleet, and the senior officer of the army forces and it determined who was to command in case the fighting was on land and when the fighting took place at sea, and also to determine who should be in command of the separate islands of Truk if the fighting spread to these islands.

269. Q. Then the exact seniority was not definitely determined, was it?

A. That is exactly so. It was not determined.

Reexamined by the judge advocate:

270. Q. Did land invasion or land fighting actually occur on Truk or the Truk Islands during your tour of duty?

A. There were absolutely no instances.

271. Q. You stated that interrogation by the Sixth Fleet of the prisoners of war was under orders of the Combined Fleet. On what does the witness base this statement that the Combined Fleet ordered the Sixth Fleet to interrogate these prisoners?

A. Although no orders in document form came to my headquarters, I later heard after the interrogation that orders came by telephone informing my base force that Combined Fleet would conduct such interrogation.

Re-cross-examined by the accused:

272. Q. On what island of Truk Atoll was the commander of the army forces located?

A. He was on Dublon.

273. Q. How was it decided by this army-navy pact who should have command of the forces on Dublon in the event of land operations on Dublon? Was it the Commander in Chief, Fourth Fleet, or the senior army officer?

A. As I did not make it very clear when stating the general principles of the pact, I would like to make it clear here. The general principles of the pact of land fighting was that the army would take charge, and in the event of fighting at sea the navy would be in control, and on the separate islands the senior officer on that island would be in control, therefore in fighting on Dublon the army officer would be in charge.

274. Q. How do you know these forty-two submarine prisoners of war were conducted directly from the destroyer Yamagumo to the Forty-first Guard Unit?

A. In his report, Captain Minematsu said that the prisoners were taken off the Yamagumo and taken to my guard unit, and therefore I assume that they were taken direct.

275. Q. When was this pact regarding seniority at Truk made?

A. I do not recall the exact date, but I believe it took place before the army moved into Truk. A plan of this pact was shown me by Commander in Chief of the Fourth Fleet and I believe that the commander in chief could tell you about it.

276. Q. You state that there was no land fighting on Truk during your tour of duty. Wasn't there a terrific American air raid for about three days around the seventeenth and eighteenth of February, 1944? JK

The commission announced that the question was repetitious.

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

The witness made the following statement: I was four days on the witness stand and during my testimony there were some discrepancies. I would like to be given an opportunity to clarify it. I was questioned by two defense counsels yesterday and in answer to them the first answer was not exactly the same as the second, and I wish to correct this. I refer to the portion where I stated in answer to the questions by defense counsel that whether I had reported to Commander in Chief, Fourth Fleet, on receipt and dispatch of prisoners of war to Japan by the Naval Guard Unit. To the first counsel I replied that I did not make any reports on both occasions when the Naval Guard Unit received the prisoners, or when they were sent to the homeland. In the second one I replied that I did report the receipt of prisoners of war by the Guard Unit, but did not report their dispatch to the homeland. I would like to state now that my answer to the first counsel was correct, that I did not make a report for both occasions, that is, when the Naval Guard Unit received the prisoners and when they sent them to the homeland. The Commander in Chief, Combined Fleet, reported to the Navy General Staff and the Navy Ministry of the capture of the forty-two American prisoners of war on the Yamagumo and he naturally had certain information addressees on his dispatch. And there was a dispatch addressed to Commander in Chief, Combined Fleet, and Commander in Chief, Fourth Fleet, with my headquarters as information, stating that these prisoners be sent to the Japanese homeland at the earliest possible moment. In conformance to this despatch the Combined Fleet prepared two aircraft carriers for the transport of these forty-two prisoners to the Japanese home-

land and Commander in Chief, Combined Fleet, reported by dispatch to Navy General Staff and Navy Ministry that two aircraft carriers were assigned to take these prisoners to the homeland with the necessary information addressees. And drawing the conclusion that it was not a very urgent matter from what had transpired previously, I did not report to the commanding officer of the Fourth Fleet until he returned from Kwajalein. For these reasons I did not report immediately to Commander in Chief, Fourth Fleet, and so when Commander in Chief, Fourth Fleet, returned to Truk I reported this along with other matters that had transpired in his absence.

The witness was duly warned and withdrew.

The commission then, at 11:50 a. m., took a recess until 2 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, announced that the accused desired to submit interrogatories to be propounded to George Estabrook Brown, junior, residing at 1172 Park Avenue, New York City, New York, over the objection of the judge advocate who does not agree to their submission, in view of the fact that The Commander Marianas Area, did, on May 15, 1948, under Serial 10226, authorize and direct the judge advocates to change the charge and specifications preferred on 30 March 1948 against the accused Kobayashi, Masashi, former vice admiral, IJN. This request is made in accordance with Section 213, Naval Courts and Boards.

The judge advocate replied, pointing out that he did not feel that the change in the charge and specifications, authorized by the convening authority, warranted the submission of these additional interrogatories, since the change did not materially change the interrogatories submitted by the accused on May 7, 1948, to be propounded to George Estabrook Brown, junior.

The commission announced that it would follow the procedure outlined in Naval Courts and Boards, and directed that the accused submit the interrogatories in question to the commission for examination.

The interrogatories produced by the accused were submitted to the commission.

The judge advocate requested permission to submit to the commission a copy of the interrogatories as previously forwarded by him at the request of the accused, to be propounded to George Estabrook Brown, junior.

The commission announced that permission was granted.

The interrogatories produced by the judge advocate were submitted to the commission.

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

The commission announced the following ruling:

The commission assents to the submission of these interrogatories submitted by the accused, and at the same time offers the judge advocate an opportunity to submit cross-interrogatories if he so desires.

The judge advocate requested permission to examine the interrogatories submitted by the accused.

The commission announced that permission was granted.

The judge advocate announced that he did not desire to submit cross-interrogatories.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Higuchi, Nobuo, former commander, IJN.
2. Q. If you recognize the accused, state as whom?
A. Kobayashi, Masashi.
3. Q. During what period were you attached to the Fourth Base Force at Truk?
A. From February, 1943, to the end of April, 1944.
4. Q. In what capacity?
A. At first I was second ranking staff officer and later I became the senior staff officer.
5. Q. When did you become the senior staff officer of the Fourth Base Force?
A. I think it was around October, 1943.
6. Q. During the period you were attached to the staff of the Fourth Base Force, who was your commanding officer?
A. At first it was Vice Admiral Takeda, and later Vice Admiral Wakabayashi.
7. Q. When did Admiral Wakabayashi take command?
A. I think it was around July, 1943.
8. Q. After being detached from the Fourth Base Force, what was your next duty?
A. Fourth Fleet Headquarters.
9. Q. Were you also on the staff of the Fourth Fleet?
A. Yes.
10. Q. As the senior staff officer at the Fourth Base Force, were you next in command to Admiral Wakabayashi?
A. Yes.
11. Q. What were your duties on the staff of the Fourth Base Force?
A. I was assistant to the commanding officer in general affairs.
12. Q. What was your rank at the time you were on the staff of the Fourth Base Force?
A. Commander, IJN.

13. Q. During the period that you were attached to the staff of the Fourth Base Force, and later when you were attached to the staff of the Fourth Fleet, did you have occasion to examine all the standing orders of these two organizations? JK

A. I did.

14. Q. In your examination of these orders, did you at any time see any order or regulation pertaining to the handling, safeguarding or protection of prisoners of war?

A. No, I did not.

15. Q. During the time you were attached to the staff of the Fourth Base Force and the Fourth Fleet, did you ever see issued any orders pertaining to the handling, safeguarding or treatment of these prisoners of war?

A. I do not have any such recollection.

16. Q. To your knowledge were any such orders issued by the Fourth Base Force or the Fourth Fleet?

A. I do not recall any such orders being issued.

17. Q. During the course of your duty on the staff of the Fourth Base Force, was the Fourth Base Force notified at different times of the arrival of prisoners of war on the island?

A. Yes.

18. Q. What was the procedure followed after the Fourth Base Force received a notice of the arrival of prisoners of war?

A. When we received notice of the arrival of prisoners of war we notified the headquarters of a higher echelon.

19. Q. What do you mean by "headquarters of a higher echelon"?

A. The Fourth Fleet Headquarters.

20. Q. During your tour of duty on the staff of the Fourth Base Force, who was the commanding officer of the Fourth Fleet?

A. First it was Vice Admiral Samejima; later it was Vice Admiral Kobayashi.

21. Q. In what form did you receive the notice of the arrival of prisoners of war?

A. It was usually by dispatch form.

22. Q. In what form did you send the notice to the Fourth Fleet?

A. Actually, I recall that I never notified the Fourth Fleet Headquarters myself, but if I had had occasion to, it would have been the proper thing to do, to have notified it.

The accused moved to strike the words "but if I had had occasion to, it would have been the proper thing to do, to have notified it," from the answer on the ground that it was the opinion of the witness.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

23. Q. Whose duty was it on the staff to send such notification to the Fourth Fleet?

A. The duty was not fixed to one staff officer, but in event such a report came to the Fourth Base Force the duty staff officer reported it, I think.

24. Q. You were in a position of being the chief of staff after October, 1943, were you not?

A. I was the senior staff officer.

25. Q. Weren't all dispatches that were received and sent out routed throughout the entire staff?

A. Yes.

26. Q. These dispatches that came in to the Fourth Base Force notifying of the arrival of prisoners of war, were these dispatches themselves routed to any information addressees?

A. Yes, I believe the dispatch was also sent to related information addressees.

27. Q. In the case of dispatches pertaining to the arrival of prisoners of war, who would these information addressees be?

A. I believe it would be different in different cases.

28. Q. What do you mean by different cases, referring to the arrival of prisoners of war?

A. Is it all right to explain by giving an example?

29. Q. Yes.

A. I think it was around October, 1943, when there was a dispatch received that ~~there were~~ two prisoners of war received from Rabaul, and this dispatch, I believe, was sent by the Eighth Base Force at Rabaul. I do not recall whether it was the Fourth Fleet or the Fourth Base Force Headquarters which was the action addressee, but in either event one of them was the information addressee. Another incident, when we received prisoners of war from a submarine, and when these prisoners of war from a submarine arrived, we received a dispatch from the destroyer YAMAKAZE, which captured them. The action addressee of this dispatch was the direct superior headquarters to which the YAMAKAZE belonged, and information addressee was for Fourth Base Force Headquarters and Fourth Fleet Headquarters. JK

30. Q. To your knowledge, was the Fourth Fleet usually an information or action addressee on these dispatches?

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

The judge advocate withdrew the question.

31. Q. During the period then that you were attached to the staff of the Fourth Base Force, was the Fourth Fleet usually one of the addressees on all dispatches referring to the arrival of prisoners of war?

A. The two incidents I testified to before are all the incidents I know of.

32. Q. What was the procedure that was followed when prisoners of war were removed from Truk?

A. I think there was no fixed procedure.

33. Q. With reference to the incidents that you know of, when prisoners of war were removed from Truk, how were they handled?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was not the staff officer directly in charge of these matters of sending prisoners back to Japan and I do not know very well.

34. Q. Were dispatches used when requests for transportation of prisoners of war back to the mainland occurred?

A. No dispatches were used.

35. Q. Where were prisoners of war kept on Truk?

A. At the Forty-first Naval Guard Unit.

The commission then, at 4 p. m., took a recess until 4:15 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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.)

36. Q. When these two prisoners that you spoke of as arriving from Rabaul reached Truk, where were they confined?

A. Forty-first Naval Guard Unit.

37. Q. At whose direction were these people 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. According to the will of the Commanding Officer of the Fourth Base Force, I ordered it.

38. Q. As the senior staff officer at the Fourth Base Force, were you familiar with the procedure that was followed at the Forty-first Naval Guard Unit with regard to prisoners when they wished to transport them back to the mainland?

A. I was not staff officer in charge and I did not know exactly what procedure was taken, but I can say as to the general outline of the procedure taken.

39. Q. Was the transportation of prisoners of war to the mainland handled the same way as transportation of Japanese personnel?

A. As a general rule there was no special regulations in regard to transportation of a prisoner of war, so I think the same procedure was followed as would have been for Japanese personnel.

40. Q. Did you have an Engineering Staff Officer on the staff of the Fourth Base Force?

A. Yes, there was.

41. Q. Did he have any duties in connection with transportation of prisoners of war to the mainland?

A. It was not specifically specified as to prisoners of war but he directed all transportation related to personnel and cargo.

42. Q. While you were on the staff of the Fourth Base Force, were any prisoners of war returned to Japan?

A. Yes.

43. Q. How were they handled?

A. I think the actual transportation of the prisoners was as follows: When the prisoner arrived at Truk, I believe first they would be interrogated concerning operational matters and after this the person who interrogated the prisoner would notify the Guard Unit that the prisoner was now ready for transportation to Japan. Then the Guard Unit would request transportation from the Transportation Department. Transportation then made up a plan for their transportation. Then they would obtain an "O.K." from the Fourth Fleet Headquarters and sent them out. JK

44. Q. To which unit was this Transportation Department that planned it attached?

A. To the Fourth Fleet Headquarters.

45. Q. You say that the procedure was to first interrogate prisoners of war when they arrived on Truk. Who did this interrogation?

A. I did not see the circumstances of these interrogations, but as most of the prisoners of war were air force personnel, I think perhaps the Air Staff Officer of the Fourth Fleet Headquarters interrogated them.

The accused moved to strike out the words, "but as most of the prisoners of war were air force personnel, I think perhaps the Air Staff Officer of the Fourth Fleet Headquarters interrogated them" on the ground that they stated an opinion of the witness.

The judge advocate made no reply.

The commission directed that the words be stricken.

The witness was duly warned.

The commission then, at 4:35 p. m., adjourned until 9 a. m., tomorrow, Friday, May 28, 1948.