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## **Without a Hangman, Without a Rope: Navy War Crimes Trials After World War II**

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### **Abstract**

Little has been written about the trials of accused Japanese war criminals that were conducted by the U. S. Navy after World War II. Trials were held on Guam and Kwajalein by the War Crimes Branch of the Pacific Fleet from 1945 through 1949. These trials were part of over 2,000 war crimes trials held under the aegis of SCAP--the Supreme Commander for the Allied Powers. Major war criminals (political and military leaders) were tried by the International Military Tribunal for the Far East in Tokyo in Tokyo. Other war crimes trials were held throughout the areas invaded and occupied by the Japanese. Trials were held for the mistreatment of prisoners of war and for the executions of captured Allied airmen (including beheading and cannibalism.). The Navy also investigated alleged war crimes committed at sea and interrogated "holdouts" (stragglers)—Japanese military personnel who had gone into hiding and did not surrender until long after Japan's official surrender. There were over 100 convictions in trials of Imperial Japanese Navy personnel and other Japanese military personnel (including members of the Imperial Japanese Army). Defendants were provided with defense counsel, a provision made for all accused war criminals tried by Allied war crimes tribunals and commissions. The Navy conducted executions or sent convicted war criminals sentenced to incarceration to Sugamo Prison in Tokyo to serve their sentences. Some accused and convicted war criminals chose suicide rather than face trial, imprisonment, or execution. This paper discusses the organization of Navy trials, several Navy trials conducted on Kwajalein and Guam, evaluations of the Navy's conduct of war crimes trials (including the philosophical questions of practicing "victor's justice" and the legal questions of the status of such trials in international law), and the availability of official records on these trials compiled by the Office of the Judge Advocate General (Navy).

### **Introduction**

One of the lesser-known responsibilities of the U. S. Navy in the immediate postwar era was the conducting of war crimes trials in the Asia-Pacific region. The Allies justified conducting the Asia-Pacific war crimes trials because Japan accepted the Potsdam Declaration when it surrendered. The Potsdam Declaration specifically stated that military and government officials were subject to trial as war criminals. These trials were held under the auspices of the Supreme Commander for the Allied Powers (SCAP) which

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oversaw war crimes trials in Japan and throughout the Asia-Pacific region until 1951. SCAP oversaw over 2,000 trials for over 5,000 accused war criminals. Investigations into alleged war crimes were held under the auspices of the United Nations War Crimes Commission, headquartered in London with a subcommission in China. These trials were similar to the Nuremberg trials of accused German war criminals. Major accused war criminals (class "A"--political and military leaders) were tried by the International Military Tribunal for the Far East, also known as the Tokyo Trial. Other war crimes trials for alleged class "B" war criminals were held in the countries and territories invaded and occupied by the Japanese. The U.S. Navy had jurisdiction over such trials in the Marianas Islands, the Marshall and Gilbert Islands, Palau Islands, Bonin Islands, and the Caroline Islands after Japan surrendered. Although almost forgotten today, from 1945 through 1949 the U. S. Navy conducted dozens of trials of over 100 accused Japanese war criminals on the islands of Guam and Kwajalein. Accused collaborators were also tried.<sup>[1]</sup>

Prior to this time the U. S. Navy had never held war crimes trials. Admiral John D. Murphy, a lawyer who had risen through the ranks from enlisted man, served as War Crimes Director. Naval trials were conducted by the Office of the Judge Advocate General (Navy) under the Navy Division of the War Crimes Office. The War Crimes Office was a central agency in the War Department to junction for the Departments of State, War, and the Navy. According to an official Navy press and radio release, the War Crimes Office was responsible for investigation of alleged war crimes, organization of evidence and preparation of files, draft charges and trial briefs, assisting in trials, and organizing the carrying out of sentences.<sup>[2]</sup>

Investigations into alleged war crimes were conducted by U. S. Navy personnel, and decisions to prosecute were based on SCAP directives, international law (e.g., the Hague and Geneva Conventions), and military law and procedures as stated in the 1937 edition of U. S. Courts and Boards. The courts were known as military commissions; the military commissions consisted of five to seven U. S. military officers (either active duty or reserve). The accused were tried for class "B" war crimes such as murder, ill-treatment of prisoners, etc. The Navy tried personnel of both the Imperial Japanese Navy and the Imperial Japanese Army. The accused were afforded defense counsel (both Allied and Japanese counsel). Rules of evidence were relaxed in these war crimes trials. Summaries of trials were regularly submitted to the Japanese government via SCAP memoranda. These reports included the names of the accused, their ranks, and sentences.

The war crimes trials involved some of the most heinous charges imaginable, including mass murder of prisoners of war and cannibalism. Japanese convicted and sentenced to prison were transferred to Sugamo Prison in Tokyo for incarceration after the sentences had been reviewed and approved by the Convening Authority Commander of the Marshalls-Gilberts Area. Those sentenced to death were either executed by a firing squad or by hanging; death by hanging was considered by the Japanese to be a

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particularly dishonorable way to die. The condemned has access to a Buddhist priest or Christian minister or priest before execution. Several accused Japanese committed suicide rather than face trial or sentencing. [N.B. At the beginning of these trials Admiral Murphy did not consider the Navy to be adequately prepared to conduct executions by hanging. The U. S. Army's official hangman, a master sergeant, was assigned to train Naval personnel to serve as hangmen. At the beginning of the trials, the Navy also lacked the proper type of rope to fashion the nooses used in executions.]

## The Jaluit Atoll Case

Many war crimes trials were conducted for the mistreatment of downed Allied flight crews. Allied flight crews were especially hated by the Japanese. When captured they were often separated from other prisoners of war and subjected to summary trials and executions. One of the most famous cases concerning the treatment of Allied airmen was the Jaluit Atoll Case.<sup>[3]</sup> This case includes several of the elements common to Asia-Pacific war crimes trials. Rear Admiral Nisuke Masuda and four other members of the Imperial Japanese Navy were tried for murder by a U. S. Military Commission on Kwajalein in the Marshall Islands from 7 December - 13 December 1945. In February, 1944, a crew of U. S. airmen was forced to land near Jaluit Atoll in the Marshall Islands; three crewmen were captured and held on Emidj Island, site of the Japanese Naval Garrison Force Headquarters (commanded by Rear Admiral Masuda). In March, 1944, without a trial the airmen were executed by shooting and stabbing with a sword, most likely the kitana--the samurai sword carried by Japanese officers who prided themselves on skill in its use. They were executed in a cemetery on Aineman Island near Jaluit Atoll; their bodies were cremated. Rear Admiral Masuda was accused of ordering the executions of the airmen. He committed suicide before the trial began. In his suicide note he confessed that he had ordered the executions. The other defendants were a lieutenant, two ensigns, and a warrant officer who were charged with either participating in the executions or delivering the airmen for execution. They were accused of murdering the three U. S. airmen in violation of "the dignity of the United States of America, the International rules of warfare and the moral standards of civilized society." The defendants pleaded not guilty.

The prosecution's case stated that the executions were in violation of the 1907 Hague and 1929 Geneva Conventions on treatment of prisoners of war. The defense built its case on two principles: the Military Commission held no jurisdiction and that the accused wished to be tried by a civil tribunal and the defense of superior orders (i.e., an order from a superior officer was an order from the Emperor himself). [At the time of the trial Emperor Hirohito had not yet disclaimed his divinity.] The prosecution countered that: the Military Commission had the power to conduct such trials based on the executive power of the U. S. President, statute laws dating back to 1929 and "laws of humanity ... set back as far as civilisation," the Commission following SCAP rules, and the trial being held close to the scene of the alleged crimes. On the defense of superior orders the

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prosecution contended that U. S. military law had the precedent that a soldier is "bound to obey only the lawful orders of his superiors. If he receives an order to do an unlawful act, he is bound neither by his duty nor by his oath to do it." So far from such an order being a justification, it makes the party giving the order an accomplice in the crime. SCAP rules reiterated this rejection of the defense of superior orders.

The evidence presented consisted of witnesses who were the legal officer who investigated the allegations, an islander who witnessed the airmen's capture, and Japanese personnel who had interrogated the prisoners, transported them for execution, conducted the cremations, or authenticated or translated documents. The three Imperial Japanese Navy personnel who conducted the executions testified; the warrant officer who turned the airmen over for execution supplied a written statement. All defendants were found guilty. The three officers who conducted the executions were sentenced to death by hanging. The warrant officer was sentenced to ten years in prison.

## The Wake Island POWs

An example of a war crimes trial for mass murder was the trial for the mass execution of 98 Allied POWs on Wake Island in October, 1943.<sup>[4]</sup> The story of the siege of Wake Island is well known as U. S. military personnel held out against overwhelming odds. When Wake Island finally fell 1,603 Americans (both military and civilian) were captured. Most were sent by ship to a prison camp in Shanghai, China. 98 prisoners of war remained on Wake Island, kept alive to run heavy equipment to build fortifications. In October, 1943, Wake Island was under siege by an Allied carrier force. On October 7, 1943, Rear Admiral Shigematsu Sakaibara, then a captain and commander of Japanese forces on Wake Island, ordered the execution of the 98 prisoners of war without trial. The POWs were marched to a northern beach, blindfolded, and shot. [One POW managed to elude execution, was hunted down, and was executed with a sword by Sakaibara himself.] In 1947 Rear Admiral Sakaibara and a subordinate, Lieutenant Commander Tachibana, were tried, found guilty, and sentenced to death. [Tachibana's sentence was later reduced to life in prison.] Rear Admiral Sakaibara was executed on 18 June 1947 on Guam. At the end he maintained: "I think my trial was entirely unfair and the proceeding unfair, and the sentence too harsh, but I obey with pleasure."

## Cannibalism

In some instances precedent in military or international law failed to cover alleged crimes. One such instance is accusations of cannibalism. Lieutenant General Joshio Tachibana, Imperial Japanese Army, and 11 other Japanese military personnel were tried for the beheadings of two American airmen in August, 1944, on Chichi Jima in the Bonin Islands.<sup>[5]</sup> They were beheaded on Tachibana's orders. One of the executed airmen, a U. S. Navy radioman third class, was dissected and his "flesh and viscera" eaten by Japanese military personnel. The U. S. also tried Vice Admiral Mori and a Major Matoba for

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murder in the deaths of five U. S. airmen, in February, 1945. Major Matoba confessed to cannibalism. However, military and international law had no provisions for punishment for cannibalism per se. They were accused of murder and "prevention of honorable burial."

## **Dr. Chisano Ueno and Admiral Shimpei Asano**

Dr. Chisano Ueno was a military doctor who was tried and found guilty of war crimes committed on the island of Truk in Micronesia. In June, 1944, five U. S. airmen were shot down over Truk. Two airmen were captured and taken to the Japanese first aid unit that was under Dr. Ueno's command where he was ordered to "dispose of the two persons" by Admiral Asano. He performed surgical procedures on one of the prisoners. In 1947 Dr. Ueno was arrested and tried on Guam. Dr. Ueno's defense was that: he had been demobilized and therefore was not under the military commission's jurisdiction, the charges were vague, contradictory, and illegal, he was obeying superior orders, and the operations were medically justified. Both men were found guilty and executed by hanging on March 31, 1947.<sup>[6]</sup>

## **The Peleliu Case**

The Peleliu Case demonstrates the zeal that defense counsel brought to U. S. war crimes trials.<sup>7</sup> In 1949 Lieutenant General Sadae Inoue, commander of the Palau Islands group, and his chief of staff, Colonel Tokuchi Tada, were tried for the execution of three U. S. POWs on the island of Peleliu. General Inoue admitted ordering the executions. Colonel Tada's defense was that he had argued against these executions and had treated American POWs humanely in the past. His defense counsel, U. S. Navy Reserve Commander Martin Carlson, managed to find an American journalist, Gwen Dew Buchanan, who had been a POW of the Japanese in Hong Kong when Colonel Tada was stationed there. She wrote of Colonel Tada's humane acts toward POWs in Hong Kong; Colonel Tada was released.<sup>[7]</sup>

## **Conclusion**

According to summaries of these trials, the Navy conducted 47 trials for 123 defendants. 113 convictions and 10 were attained. There were 30 death sentences and 10 executions, all for murder convictions.<sup>[8]</sup> At the beginning of the trials, Rear Admiral Thomas L. Gatch, Judge Advocate General (Navy), stated this purpose:

Bringing to justice international gangsters and their underlings has always been a special concern of the United States Navy. ... The Navy has always been a principal instrument in maintaining international law and order. We believe in justice. We shall do everything within our power to see that the evidence collected is true evidence and that

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the trials will be just.<sup>[9]</sup>

When the trials were concluded, Admiral Murphy provided this view of the Navy war crimes trials:

In conclusion, I believe the Navy military commissions convened in the Pacific have demonstrably acted in harmony with the highest traditions of judicial dignity and impartiality. I also believe the Navy's proof has measured up to the magnitude of its accusations, and that the spirit of its concept has been matched by the industry of its research and that its opportunity to make international law a guardian of individuals deserving of protection has not failed by default.<sup>[10]</sup>

However, historians have not been kind to the Asia-Pacific war crimes trials. The trials themselves were largely forgotten by the 1950s, overshadowed by the Nuremberg trials and the escalating Cold War. The Tokyo Trial lasted for over two years, and interest in its outcome waned, even on the part of the Japanese. But events such as the Vietnam War and the international war crimes tribunal held at The Hague for atrocities committed in the former Yugoslavia and in Rwanda have revived interest in these trials. The accusations of victor's justice—trials motivated by revenge or racism—and accusations of the lack of punishment for U. S. wartime actions (e.g., the dropping of the atomic bomb) were raised again and are debated to this day.

Records of Navy war crimes trials are housed with the Modern Military Records at the National Archives Depository Branch in College Park, Maryland. These records include the "Final Report of Navy War Crimes Program" and Judge Advocate General (Navy) reports that are part of Record Group 125. Summaries of Navy trials were also sent to SCAP in the form of memoranda and are part of SCAP records which are found in Record Groups 238 and 331. The "Final Report"<sup>[11]</sup> is the most important primary source and includes maps of locations investigated for alleged war crimes and photographs of accused war criminals and the site where they were incarcerated during investigations and trials.<sup>[12]</sup>

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<sup>[1]</sup> For summaries of these trials, see Erickson, George E. "United States Navy War Crimes Trials (1945-1949)," Washburn Law Journal 5 (1965): 89-111, and Piccigallo, Philip Rocco. "United States Naval Trials: The Pacific Islands." In The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951 (Austin, Tex.: University of Texas Press, 1979): 74-83.

<sup>[2]</sup> "Navy Department Participation in the Prosecution of War Crimes," Journal of Criminal Law and Criminology 36 (May 1945): 40.

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[3] United Nations War Crimes Commission. "The Jaluit Atoll Case." In Law Reports of Trials of War Criminals. (London: Published for the United Nations War Crimes Commission by His Majesty's Stationery Office, 1947): vol. 1, 71-80.

[4] See Junghans, Earl A. "Wake's POWs," U. S. Naval Institute Proceedings 109 (2) (1983): 43-50, and Maga, Timothy P. "Justice on Guam: Justice under the Palms." In Judgment at Tokyo: The Japanese War Crimes Trials (Lexington, Ken.: University Press of Kentucky): 104-106.

[5] See Erickson, op. cit., 106-108, and Maga, op. cit., 97-104.

[6] Addison, Paul. "Forgotten War-Crimes Trials," World Press Review 41 (7) (July 1994): 45.

[7] Say, Harold B. "'Satisfactory' Not Enough," U. S. Naval Institute Proceedings 90 (7) (1964): 82-87.

[8] Piccagallo, op. cit., 82.

[9] "Navy Department Participation in the Prosecution of War Crimes," op. cit., 39.

[10] Erickson, op. cit., 110.

[11] National Archives Depository Branch, College Park, Md. Records of the Judge Advocate General (Navy) (RG 125). "Final Report of Navy War Crimes Program: Submitted by the Director, War Crimes, U.S. Pacific Fleet, to the Secretary of the Navy, 1 December 1949."

[12] National Archives Depository Branch, College Park, Md.. Records of the Judge Advocate General (Navy) (RG 125). "War Crimes Branch Case Files of Pacific Area War Crimes Trials, 1944-1948."