

THE  
MILITARY  
COLONY

Part III

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## JAPANESE TRAITORS

Drawing from its pool of accused war criminals, the tribunal interrogated and tried numerous Japanese men for committing crimes against U.S. citizens and nationals. As with its feminization of Rotanese and Saipanese men as noncombatants without politics, the commission similarly racialized suspected Japanese war criminals. Knowing that they represented an enemy and rival nation, however, the court recognized the Japanese as citizens in domestic and international laws. In this way, the tribunal held a related but decidedly different position when addressing the matter of Japanese war criminality in the military colony of Guam. One crucial distinction between natives and nonnatives resided in the tribunal's acknowledgment of Japanese political life, bios. Japanese citizenship, Japanese martial and combatant traditions, and Japanese territorial claims over Guam—all legible markers of imperial governance—mattered to the commission and its legal interpretations of sovereignty.

In this chapter, I analyze the treason trial of Samuel Takekuna Shinohara, a Japanese national and resident of Guam, in an effort to demonstrate how the tribunal viewed him as a sacred man integral to the eradication of Japanese sovereignty in the island. Central to this discussion was how the U.S. Navy portrayed Shinohara, an enemy Issei, as violating whiteness as American property and sovereignty. For this reason, the treason charges and other specifications accused him as an assailant, thief, and organizer of military brothels. But the commission simultaneously represented Shinohara as a “residential alien” who owed allegiance to the United States, an act that signaled the then-emerging shifts in American perceptions of Japanese and Japanese American subjectivities from external threats and subversive elements to budding Cold War partners with the United States.<sup>1</sup> How and

why the commission constructed him as a sacred man whose criminality signified alien and traitor, enemy and conspirator, is thus the subject of this chapter. I then conclude with Shinohara's responses to these allegations.

### *Spy, Traitor, and Other Allegations*

Samuel Takekuna Shinohara migrated from Japan to Guam in 1905 and married into a prominent Chamorro family, the Torreses of Hagåtña. His wife was Carmen, and together they had two children, Cecilia and Gil. He later became a successful entrepreneur, owning the Hagåtña Gas Kitchen, the Rooster Bar, and a small taxi operation. These businesses catered to the residents of Hagåtña and the personnel of the U.S. Naval Government.<sup>2</sup> Shinohara was also the president of the Japanese Society of Guam, as well as a fluent speaker of the Chamorro, English, and Japanese languages. When the Japanese military attacked the island on December 8, 1941, Shinohara then became involved in a war of profit and privilege because of his business background and fluency in several languages. These characteristics, however, proved troubling for the naval governor of Guam, George J. McMillin, who ordered the immediate arrest of Shinohara and other influential Japanese citizens.<sup>3</sup> The Japanese bombing of Pearl Harbor (Pu'uloa) and Guam on the same day led McMillin to racialize the Japanese business community as potentially suspicious and threatening and, in his view, deserving of incarceration. Two days later, though, McMillin surrendered to the Japanese invading forces, at which time Shinohara and the other Japanese civilians were released from the jail. In a moment of role reversals, the Japanese military then incarcerated McMillin and other American military personnel in the same prison that had housed Shinohara. A month later, on January 10, 1942, the Japanese military transported McMillin and other white American prisoners of war to Japan.

As for Shinohara, he remained in Guam, where he extended his services to the Japanese military and the Minseibu. Along these lines, the Guam historian Robert F. Rogers describes Shinohara as a "Japanese loyalist," whereas the American historian Tim Maga depicts him as an "advisor and part-time 'justice investigator' for the new government."<sup>4</sup> One of his peers, a teacher named Kyomon Miwa, portrayed Shinohara in comparable terms. Recalled Miwa, "I arrived in Guam in September, 1942, as a school teacher. We were told that, as the island of Guam was one of the first places to be conquered by Japan, Japanese policies and installations were to be tried out here, and the experience gained was to be applied in the occupation of

other areas. When I first came to Agana I found that Mr. Shinohara was a prominent and influential person and it seemed that he was looking after the welfare of many Japanese families.”<sup>5</sup> Another acquaintance, Hirose Hisashi of the 54th Naval Guard Unit, commended Shinohara for having a “brilliant mind and personal magnetism.”<sup>6</sup>

Whereas members of the Japanese government and military often portrayed Shinohara in favorable terms, several prominent individuals in Guam felt otherwise. After the war, they specifically accused him of spying for Japan before its occupation of the island. For example, Ignacia Bordallo Butler, a Guamanian entrepreneur, had a conversation with Shinohara in 1942 in which he supposedly remarked, “I was a spy for the Japanese Government during the American time.”<sup>7</sup> Providing more details to these allegations, the Guamanian educator Agueda Iglesias Johnston explained, “All of us suspicioned Shinohara. Every time the Japanese schooner came into port, the captain of it, a Jap named Okno, would come to visit Shinohara at this home. This schooner always seemed to time its visits to coincide with the times when the Pan American clippers were in.”<sup>8</sup> When the Japanese military invaded the island, she said, a captain by the name of “Owata” visited Shinohara’s house and assisted in releasing him from the jail.

Gonzalo R. Eclevea, another Guamanian, discussed how Shinohara once spied on American naval facilities at the harbor in the village of Sumay. Sometime before the war, Eclevea witnessed Shinohara drive his car, an Essex sedan, near the work site. Seated in his vehicle for three to four minutes, Shinohara saw “all of our installations.”<sup>9</sup> These buildings included “gasoline storage tanks, pipe lines, and fuel lines which were to refuel the submarines and destroyers as they came along side.”<sup>10</sup> Adding to these suspicions, the Japanese resident Shintaro Okada alleged that Shinohara engaged the Japanese military on several occasions. As he stated, “I went on a trip to Japan on the Gold Star about 1932. Shinohara also went on this trip. While we were in Tokyo, Shinohara told me he had an appointment with the Taigunsho (Japanese Naval Dept.). He went there two or three times. I could not understand why he would be going there.”<sup>11</sup>

While neither these individuals nor the tribunal furnished any documentary evidence of Samuel T. Shinohara’s role as an alleged spy for Japan, the recollections featured here demonstrate the kind of gossip and racism directed against him (figure 5.1). With Shinohara construed as a disloyal and traitorous subject, his personhood represented a militarized brand of the “yellow peril” that the United States criminalized in its courts. As with the treason cases of Iva Toguri d’Aquino, the so-called Tokyo Rose, and



5.1. Carmen Shinohara and Samuel Shinohara, Guam. Reproduced with permission from the Shinohara family. Photo by Dr. Austin Shelton, University of Guam.

Tomoya Kawakita, among others, Shinohara's wartime activities similarly came under suspicion. As the historian Naoko Shibusawa explains, "The Cold-War-era treason trials, as well as the Red scare espionage trials of the period, allowed the federal government to pillory disloyal individuals."<sup>12</sup> In addressing these cases, the United States sought to "prove, by the testimony of two witnesses to the same act, (1) that there was an overt act of aid and comfort to the enemy, (2) performed with the intention of betraying the United States, (3) which has the actual effect of providing aid and comfort to the enemy."<sup>13</sup> If a civil court shows that two individuals witnessed a person or group conduct the same "overt act" that provided aid and comfort to the enemy, then said individual(s) could be found guilty of treason and potentially sentenced to death. As per U.S. constitutional and statute law, only U.S. citizens and nationals could be put on trial and only in the context of a civil court.

In its consideration of the treason charge in Guam in 1945, the U.S. Navy's War Crimes Tribunals program selectively interpreted the meaning of this crime. That is, the court disregarded the principle that only American citizens and nationals could be tried for treason. Initially, moreover, the tribu-

nal accused four traitors to the U.S. government: one American national; one Japanese national; one colonial subject of Japan; and one person whose political identity remained ambiguous. These four men were, respectively, Pedro Mantanoña, Samuel T. Shinohara, Jose P. Villagomez, and Juan S. Onedera. Take, for instance, the Saipanese Villagomez, who was convicted of murder in February 1945. In a memo to the judge advocate general of the navy in April 1945, the commission considered trying him for treason.<sup>14</sup>

The court likewise accused Juan S. Onedera, a Chamorro-Japanese man, in June 1945, even providing Guamanian testimonies that he “put on a Japanese soldier’s uniform.”<sup>15</sup> One witness, Geronimo Mendiola, said that Onedera “was completely equipped with Japanese field equipment including a cartridge belt and rifle. . . . He told us how big the American soldiers were, showed us some American cigarettes he had and told us how he had killed some Americans with his rifle.”<sup>16</sup> Another witness, Jose T. Gutierrez, claimed that Onedera “had already killed three American soldiers. He said he was going back to fight some more [in the coastal and village area of Asan].”<sup>17</sup> The Guamanian Pedro Mantanoña, the only U.S. national identified by the court, faced similar accusations, but unlike Onedera and Villagomez, who never received any charges, the tribunal had drafted three specifications of treason for Mantanoña on January 23, 1945. The specifications alleged that he disarmed three Guamanian men and prevented them from joining “a group of armed natives who intended to help the armed forces of the Government of the United States in battle against the enemy” in July 1944.<sup>18</sup> Because it did not find evidence to support its claim, however, the commission dropped the charge against Pedro Mantanoña and upheld its portrayal of Guamanians as loyal wards.

Ultimately, the tribunal tried Samuel T. Shinohara only for treason. The original charges, dated May 12, 1945, began with treason and read in part, “In that Samuel T. Shinohara, an inhabitant and resident of Guam . . . did . . . on or about December 16, 1941, willfully, knowingly and treasonably adhere to Japan, an enemy of the United States, and give aid and comfort to Japan.” The commission categorized Shinohara’s “overt act” in terms of theft, an act wherein he assisted the Japanese military in procuring “the property of the Naval Government of Guam.”<sup>19</sup> As per the court’s definition, the property amounted to \$8,300 in U.S. currency and \$1,000 in U.S. checks. With Shinohara classified as an American subject who failed to adhere to his allegiance to the United States, the commission outlined the other charges and specifications.<sup>20</sup> They included charge II, theft; charge III, assault and battery; and charge IV, taking a female for the purpose of prostitution, with

two specifications on coercion. Yet these charges painted Shinohara as an enemy Issei who had the ability to steal one American vehicle, assault one American citizen, and prostitute two American nationals. Further, on July 20, 1945, the commission released additional charges and specifications on treason, assault and battery, and the desecration of the flag.<sup>21</sup> The additional treason charge contained three specifications, which focused on three overt acts—two in December 1941 and one in April 1942—believed to have aided the Japanese military. The first specification alleged that Shinohara removed an electric generator from Ignacia Bordallo Butler, an inhabitant of Guam; the second alleged that he organized the making of a Japanese labor organization, *Dai Nisei*. The third and final specification alleged that Shinohara offered provisions for the Japanese military and naval forces in Guam.

On July 28, 1945, the military commission assembled over these allegations, as did Shinohara's defense counsel, which was led by Lieutenant Emory L. Morris, U.S. Naval Reserve. Vicente C. Reyes, a Chamorro attorney, acted as the interpreter and assistant for Morris. Initially, Lieutenant Morris dismissed the jurisdiction of the commission. He argued that Shinohara was a "citizen and national of Japan" who "owes no allegiance to the Naval Government of Guam and the United States of America, or either of them, during the time Guam was occupied by the military forces of Japan."<sup>22</sup> On July 31, 1945, for example, the defense counsel called on its first witness, Francisco T. Flores, an employee of the naval government's Department of Records and Accounts. Referring to Shinohara's *cedula* record of 1920, Flores explained, "On page 36, under column 640, the name Takekuma Shinohara, native—Japan; district, state or country—Tagoshima; sex—Male; age—29; civil status—single; occupation—salesman; actual residence—Lot No. 57, San Ignacio Street. Tagoshima as I understand it is somewhere in Japan, and San Ignacio Street was a street in Agana, Guam."<sup>23</sup> By bringing Flores to the stand, the defense counsel hoped to confirm Shinohara's allegiance to Japan, thereby challenging the military commission's jurisdiction. In response, the tribunal asserted that Shinohara was a subject of the U.S. Naval Government because his *cedula* record was registered in Guam and not in Japan. As a result, Shinohara pleaded "not guilty" in spite of the allegations that he was in breach of his allegiance to the naval government and the United States. How, then, did the commission create this seemingly extralegal position? If civil courts are the venues for discussing the constitutional clauses on treason, how does one analyze their uneven application in a military tribunal, their racialized usage in a military colony, and their

exceptional treatment of a Japanese citizen? What do we make, as well, of the additional charges, the ones that focused on U.S. “property” claims to bodies and objects in Guam?

### *Properties of the Colonial State*

In its judgment of Samuel T. Shinohara, the military commission did not begin with the original and additional treason charges directed against him. Convened by Lieutenant Colonel and Judge Advocate Teller Ammons, the tribunal commenced by engaging the lesser charges and specifications on theft, assault and battery, desecration of the U.S. flag, and prostitution. The prosecution—also led by Ammons—aimed to accomplish four goals: first, to reestablish the property claims of the U.S. Naval Government as per the laws of possession; second, to find Shinohara guilty of violating these property claims; third, to fault Shinohara for treason; and, fourth, to accord him the death sentence.

In its understanding of “property,” the navy drew from the U.S. law on property rights, a law historically premised on the enslavement of blacks and the dispossession of Native Americans in North America. The legal scholar Cheryl I. Harris theorizes this racially entangled but lawful process as the white investment in property. As she asserts, “The origins of property rights in the United States are rooted in racial domination. Even in the early years of the country, it was not the concept of race alone that operated to oppress Blacks and Indians; rather, it was the interaction between conceptions of race and property that played a critical role in establishing and maintaining racial and economic subordination.”<sup>24</sup> For Harris, the institutional slavery of blacks as property to be assigned or inherited, and the erasure of first possession rights among Native Americans led to the legal conflation of whiteness, privilege, and property. As she explains, “This racist formulation embedded the fact of white privilege into the very definition of property, marking another stage in the evolution of the property interest in whiteness. Possession—the act necessary to lay the basis for rights in property—was defined to include only the cultural practices of whites. This definition laid the foundation for the idea that whiteness—as that which whites alone possess—is valuable and is property.”<sup>25</sup>

With its white-oriented ideology, the tribunal claimed that the United States owned, as its possessions, the bodies and lands of Guam. Shinohara’s wartime abuse of an American military officer, two American nationals, an American flag, and an American car—properties said to belong to

the United States—thus violated the sanctity of whiteness as property and sovereignty, for which he had to be punished. In this section, I discuss how the tribunal treated Shinohara as the manifestation of the Japanese empire in Guam. I begin with an examination of the theft and assault and battery charges, detailing how naval officials like Lieutenant James E. Davis and Captain George J. McMillin informed the carceral imagination of the court and its Guamanian witnesses. I then close this section with an analysis of Shinohara’s brothels and demonstrate how the Guamanian “prostitutes” Alfonsina Flores and Nicholasa P. Mendiola negotiated the Japanese *ianjo* system and the American military commission.

Original charge II regarding theft, for example, alleged that Shinohara stole James E. Davis’s Chevrolet automobile, valued at \$1,200, “in and about the month of February 1942, in the City of Agana, Guam.”<sup>26</sup> If convicted of grand theft, an act resulting in the seizure of items worth more than \$100, Shinohara faced, as per *The Penal Code of Guam*, section 489, “imprisonment for not less than one nor more than five years.”<sup>27</sup> During the third day of the trial, the commission inquired as to the owner of the Chevrolet vehicle, seeking the testimony of the defense witness Francisco T. Flores. Under oath, he said, “According to the records of application for automobile registration I have here, it shows that Lieutenant James Edward Davis registered in the year 1940 in the Department of Records and Accounts.”<sup>28</sup> When the judge advocate asked what kind of vehicle Davis owned, Flores replied, “Plymouth, practically brand new, with a light green color.”<sup>29</sup> The court then established the responsibilities Davis held as an American naval officer, a navy chaplain, and the head of the Department of Education in Guam. Flores and other Guamanian witnesses also claimed that, subsequent to the Japanese invasion of the island on December 8, 1941, the Japanese military had detained Davis and, a month later, had transported him to an unidentified prisoner of war camp in Japan.

The crucial question was whether Shinohara indeed stole the vehicle, an allegation neither confirmed nor denied by Flores. He argued that although Shinohara rode in the automobile during the war period, he never knew if Shinohara claimed ownership over the vehicle. He was simply a passenger.<sup>30</sup> On the other hand, the prosecution enlisted five Guamanian witnesses who, collectively, presented three points: first, Davis never sold the car to anybody after December 8, 1941, as the government offices were closed; second, Shinohara or his son, Gil, drove the car on various occasions; and, third, several individuals chauffeured Shinohara or his family in public view. These witnesses also implied that Davis’s American automobile

signified whiteness. The vehicle symbolized slogans like “Plymouth’s Got It!—more value, beauty, luxury than any other low-priced car in history,” works contained in a 1939 advertisement that sought to attract white American consumers in the post-Depression era of the late 1930s.<sup>31</sup> As a vehicle for working- and middle-class white families, the Plymouth was created for urban lifestyles. Knowing that the Plymouth symbolized America’s industrial resilience, the prosecution’s witnesses thus conveyed what may have been appalling to the commission: that is, that Shinohara transformed Davis’s American-made automobile into a vehicle of imperial Japan.

Vicente P. Herrero, the second witness for the prosecution, hinted at these scenarios, saying that Shinohara might have attached a Japanese license plate to the Plymouth. As he surmised, “There must be a license plate by the Japanese but what number and flower, I could not recall. . . . I could not make out who is who from any of the plates, the cherry blossom, or the anchor.”<sup>32</sup> Yet Herrero did not disclose whether Davis’s vehicle was registered for Japanese civilian use, as per the symbol of the “cherry blossom,” or for Japanese naval use, as per the symbol of the “anchor.” The witness Jose P. Crisostomo was more forthcoming, stating that the Plymouth had a cherry blossom license plate, marked “number ‘2.’”<sup>33</sup>

On August 2, 1945, the fifth day of the trial, the commission opened the floor to the third original charge and the second additional charge on “assault and battery.” The former charge asserted that Samuel T. Shinohara struck Captain George J. McMillin, then governor of the U.S. Naval Government, on or about January 20, 1942, in Hagåtña, Guam.<sup>34</sup> The latter charge, differing only with respect to the time of the assaults, alleged that Shinohara slapped McMillin in the face. Whereas the original charge indicated a period around January 20, 1942, the additional charge stipulated that other assaults occurred around December 10, 1941, and January 1, 1942. In each case, the prosecution turned to *The Penal Code of Guam* and to five Guamanian witnesses in arguing that Shinohara attacked the “official” embodiment of U.S. property in Guam, Captain and Naval Governor George J. McMillin. Section 240 of *The Penal Code of Guam* clarified assault as “an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another.”<sup>35</sup> Section 242 also defined “battery” as “any willful and unlawful use of force or violence upon the person of another.”<sup>36</sup>

The first witness, Felix Q. Nauta, was a seaman second class of the Insular Force, U.S. Navy. He recalled the incident as occurring before 7:00 AM on December 10, 1941, the time of McMillin’s surrender to the Japanese military. Nauta stated that “while we were already captured by the Japanese,

we were sitting in the plaza with other native enlisted personnel facing towards the east. Then I turned to my right . . . and I saw Shinohara slap the Governor of Guam.” When the judge advocate asked Nauta to explain where the assault happened, Nauta responded, “Right in front of the Governor’s palace.”<sup>37</sup> As per Hagåtña’s topography, the naval governor resided at the Plaza de España, the site of sovereignty first established by Spain in the 1700s and later appropriated by the United States in 1898 and the Menseibu of Japan in 1941.<sup>38</sup>

Two other witnesses, Francisco Santos Aguon and Eugenio B. Borja, then recalled another assault on McMillin, which was said to occur between 9:45 and 10:00 AM on a day in late December 1941. As for the location, they identified a golf course in Agaña Heights where, among a gathering of Japanese military personnel and Chamorro laborers, Aguon “saw Shinohara slap the Governor.”<sup>39</sup> But unlike the previous testimony, Aguon and Borja embellished the past with a patriotic lamentation for the United States. Aguon had this to say about the scene in Agaña Heights, a hill overlooking the city of Hagåtña and its adjacent shoreline: “There was a national flag, stars and stripes, planted on a buoy [in the bay] which made a target for a kind of heavy artillery, most likely 3-inch guns. I do not know definitely but it was a heavy gun.”<sup>40</sup> Borja similarly noted that “we were standing up there facing the ocean and the [U.S.] flag was on the ocean. The Governor and Shinohara passed in front of us and the Governor told Shinohara, he said, ‘Will you tell the Japanese to be nice to the Chamorros because they will be nice to them?’ and after Shinohara heard this he slapped the Governor and said, ‘You are no Governor.’”<sup>41</sup>

Based on these testimonies alone, the prosecution’s Guamanian witnesses portrayed McMillin as a vulnerable and defeated white figure of colonial authority. In keeping with this theme of a violated “America,” the prosecution then entered additional charge III, desecration of the flag, into the court record on August 4, 1945, the seventh day of the trial. The charge alleged that Shinohara “did, in or about the month of February or March 1942, in or near Agana, Guam, publicly defile and cast contempt upon the flag of the United States of America by using a flag of the United States of America for the purpose of wiping off a bar.”<sup>42</sup> Section 310a of *The Penal Code of Guam* defined the desecration of flags and the terms for punishment as follows: “Whoever, in any manner for exhibition or display . . . publicly mutilates, defaces, defiles, tramples upon or casts contempt by word or act upon any such flag, is guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars or by imprisonment not exceeding thirty days.”<sup>43</sup>

Herbert Johnston, a civilian administrative assistant employed by the Military Government Labor Department, opened the floor by indicating the location of the said charge. He described how the Elks Club, an exclusive joint for American military officers, transformed into Omiya Kaikan, a social space for Japanese military officers, during the war. The desecration of the U.S. flag, Johnston asserted, occurred on this property, then managed by Shinohara. As he remembered, “On one occasion there was a party . . . [where] they had dinner and when I got to the place, they were clearing the hall for dancing. A lot of liquid was spilled on the floor. When the dancing was about to start, I saw [Shinohara] wipe the floor with an American flag. . . . I turned away and coughed and I did not see what happened after that.” Johnston then described the flag as “navy standard size 9, about four feet long,” so as not to conflate bunting, or cloth decorated with patriotic colors, with the U.S. flag.<sup>44</sup> Two former “waitresses” of Omiya Kaikan, Beatrice Santos Rios and Olita T. Santos, confirmed these allegations, as did the former bartender, Jesus L. Fernandez.<sup>45</sup>

With Shinohara represented as both devious and violent, the tribunal turned to its claim that Chamorro women in Guam belonged, as property, to the United States. The eighth day of the trial, August 6, 1945, illustrated these sensibilities in the fourth original charge, “taking a female for the purpose of prostitution.” The two specifications noted, respectively, that Shinohara “in and about the month of February 1942” unlawfully took Alfonsina Flores and Nicholasa P. Mendiola “for the purpose of prostitution.” The specifications accused him of procuring the consent of Flores “by misrepresentation” and soliciting the consent of Mendiola “against her will,” key distinctions that informed how the women and others understood prostitution.<sup>46</sup> In *The Penal Code of Guam*, the chapter titled “Rape, Abduction, Carnal Abuse of Children, and Seduction” outlined several definitions of prostitution and prostitution-related crimes. Section 265, “Abduction of Women,” and section 267, “Abduction,” provide a useful context for understanding how *The Penal Code of Guam* codified prostitution as a crime and the role of coercion therein. As section 265 emphasized, “Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment not less than two nor more than fourteen years.”<sup>47</sup> Similarly, section 267 read, “Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without her consent, for the purpose of prostitution or for lewd purposes, is punishable by

imprisonment not exceeding five years, and a fine not exceeding one thousand dollars.”<sup>48</sup>

As these sections demonstrate, the phrases “against her will” and “without her consent” provided some degree of protection for girls and women. The phrases offered the prosecution some relief in its efforts to address the charge of prostitution and to seek justice for Alfonsina Flores and Nicholasa P. Mendiola. At the same time, sections 265 and 267 assumed that women belonged to their husbands, their parents, or their guardians; such heteronormative language portrayed women as properties bestowed with meaning vis-à-vis heterosexual marriage or heterosexual genealogy, or both. Read in these terms, *The Penal Code of Guam* interpreted the abduction of women and abduction generally as criminal processes that violated the property claims of husbands, parents, or guardians. This terminology likewise resonated with international laws on rape and sexual assault, where such crimes have been “categorized as an outrage upon personal dignity, or as crimes against honor” rather than as violence against any person.<sup>49</sup>

Thus, the testimonies provided by Flores and Mendiola mattered insofar as they upheld the prosecution’s notion that they were properties of the American government. Rape and sexual assault were secondary to the primary charge that Shinohara abused American properties for the purpose of establishing at least two prostitution rings. The first alleged brothel catered to two Japanese military officers, Governor Hiroshi Hayashi and the governor aide-de-camp Sakai, both of whom resided in the “Kerners’ house” of San Antonio, Hagåtña.<sup>50</sup> Owned by Albert and Mercedes T. Kerner, the Kerners’ house resembled what the anthropologist C. Sarah Soh calls a “concessionary” ianjo, or comfort facility.<sup>51</sup> As she notes, the concessionary ianjo is “divided into two subtypes: the ‘house of entertainment,’ which served primarily officers, and the ‘house of prostitution,’ which catered to the rank and file.” Because the Kerners’ house served military officers, and because Shinohara, a civilian, leased and managed the place, the site can be described as a concessionary ianjo with one exception. Unlike other ianjo that housed many military officers, the Kerners’ home remained a brothel for only two officers in 1942. According to the prosecution, Alfonsina Flores was misled as to her exact role at the home, hence the specification of “misrepresentation.” Such misrepresentation began with an unexpected visit to the Flores ranch in the village of Malojloj. In February 1942, Juan C. Mesa, a chauffeur, Shinohara, and Sakai arrived at the Flores home, where they greeted Jose Dueñas Flores, the father of Alfonsina. As a witness for the prosecution, Jose Dueñas Flores recounted, “The accused came to my ranch

with the Japanese officer and a driver and the accused said, “We come here to ask for your 17 year old daughter to be a service girl.” To this request, Flores responded, “My daughter is not capable to do that kind of work.”<sup>52</sup>

The mother of Alfonsina, Rafaela San Nicholas Flores, then confronted Shinohara. She inquired, “I asked him how did he know [Alfonsina] was 17 years old. I said to him, ‘Who told you about it?’ I further said to the accused, ‘You came from [Hagåtña] up to this place. You passed many other girls, why did you come directly to this ranch? You did that on purpose.’” Her husband, Jose, then argued that he was “ready to fight and kill because [prostitution] is not the custom out here,” to which Rafaela Flores countered, “there is nothing we can say or else we will get killed.”<sup>53</sup> With Alfonsina crying in the background, her parents complied with Shinohara’s forceful demands. But Rafaela Flores persisted in her critique of patriarchy and prostitution, requesting that she accompany her daughter to Hagåtña and pressing Shinohara in other ways. Upon arriving in the city, she referred to Cecilia, Shinohara’s daughter, asking him, “Now what are you going to do about it? How would you like to have this done to your daughter?”<sup>54</sup> Berating the Japanese empire, she said, “Even if you turned the Kingdom of Japan over to me, it will never satisfy me. I would rather have my daughter back.” Refusing to implicate his daughter, Shinohara assured Rafaela Flores that Alfonsina would be cleaning a house, with her family receiving help in the future. As her final appeal, Rafaela Flores then requested that the governor aide-de-camp Sakai marry Alfonsina.

Although Alfonsina was already engaged to a Chamorro man, Vicente Flores Blanco, her mother insisted that she marry Sakai. If a wedding was pursued, Alfonsina and Sakai would have participated in *mamaisan saina*, otherwise known as “requesting the permission of elders.”<sup>55</sup> In the 1940s, this process required the groom’s parents to meet at the bride’s home, where they, along with elders, requested the consent of the bride’s family. Families would then exchange items of cultural significance, such as *pugua* (betel nut), so as to link their children and clans.<sup>56</sup> For Shinohara, though, marriage was not an option. Already crying, Alfonsina Flores recalled, “Then Shinohara said that I must listen and obey or else I will be beheaded.” She then recounted moving to the Kerners’ house, where she “was made to sleep with Sakai.”<sup>57</sup>

According to Alfonsina Flores, for six months she was “forced to stay” in the Kerners’ home, where Shinohara, as the “boss,” promised her 20 yen per month for her labor.<sup>58</sup> In the end, she collected 50 yen of the 120 yen promised. Her value, as property, also amounted to five pounds of tobacco,

the only compensation Shinohara provided to the Flores family. During this period, however, Rafaela Flores visited her daughter several times a week, demonstrating the accessible nature of the residence. Further, Alfonsina Flores frequently left the Kerners' house at her own volition, often traveling to her family's ranch and the homes of other relatives. Neither the Japanese soldiers in the area nor Shinohara tortured her for these actions, perhaps because of her newfound political relationship with governor aide-de-camp Sakai. At most, Shinohara could only say "cuss words" against Alfonsina Flores, an indication of her rise in status as an indigenous woman and colonial subject of the Japanese military.<sup>59</sup> She then quit when Sakai left Guam for an undisclosed location in the summer of 1942, at which time she returned to her family.

Another undeveloped account in this narrative concerned her older sister, Alice, who was already living in the Kerners' home upon Alfonsina's arrival. Based on the testimonies of Alfonsina and her parents, Alice Flores may have performed "domestic" services for the other Japanese officer of the house, Governor Hiroshi Hayashi. Interestingly, neither the defense counsel nor the prosecution addressed the role of Alice Flores other than to describe her duties as a house cleaner and to identify her as Alfonsina's sibling. Was Alice Flores a prostitute, already assisting Shinohara during the war? Why, as well, did the Flores family reveal little about her presence in the Kerners' house? And what led Alfonsina Flores to becoming the source of contestation in this narrative of wartime prostitution and indigenous survival? Or was she a prostitute who accused Shinohara for failing to keep his promises and payments?

Despite the fact that these questions remained unanswered by the court, Alfonsina Flores and her family recounted several points that stressed Shinohara's ties to prostitution: first, Shinohara seized Alfonsina Flores as property of the Japanese military; second, Shinohara threatened to kill the Flores family; third, Alfonsina Flores resided in the Kerners' home against her will; and, fourth, Sakai may have raped her. On the latter point, Alfonsina Flores never mentioned the term "rape." As such, she may have had a sexual or nonsexual relationship with Sakai, something akin to what the sociologist Seungsook Moon describes as "cohabitating prostitution," where intimate liaisons can lead to long-term partnerships.<sup>60</sup> Indeed, several kinds of prostitution may describe Alfonsina Flores's relationship with Sakai and Shinohara. At the same time, she knew better, saying, "They were not going to make a good girl out of me."<sup>61</sup>

The specification regarding Nicholasa P. Mendiola conveyed a comparable pattern of abduction and coercion, but with some fundamental differences. Whereas the prosecution portrayed Shinohara as transforming Alfonsina Flores into a prostitute, the prosecution characterized Nicholasa Mendiola as a prostitute manipulated to work in the second prostitution ring operated by Shinohara. Unlike the Kerners' house that accommodated only two Japanese military officers, the other concessionary ianjo, located in the village of Piti, favored military officers and enlisted personnel in greater numbers. It is quite probable that Shinohara may have been linked to these and other brothels, but the prosecution did not pursue this inquiry. It instead focused on proving that Shinohara forced Mendiola, against her will, into one prostitution ring from February or March 1942 to June or July 1942. In doing so, the prosecution may not have represented Mendiola as a "good girl," but it certainly acknowledged her indigenous agency as a "modern girl."<sup>62</sup> As the historian Sarah Kovner argues, the "modern girl" in Japan and its colonies was an ideal of femininity variously embraced and resisted by women across the empire in bars, cafes, dance halls, and restaurants.<sup>63</sup> This ideal blurred the eroticized roles between nonsexual labor, rape, and sexual labor in these sites. Waitresses, for example, could have assisted bar customers, as much as they could have labored as prostitutes. A Guamanian police officer and witness for the prosecution, Adolfo C. Sgambelluri, confirmed the flexible identity and negotiating power Mendiola yielded as a modern, single girl in Guam.

In early 1942, a chauffeur, Samuel T. Shinohara, Jesusa Taitano, two Japanese navy personnel, and a female prostitute sought the assistance of Sgambelluri, who was then working for the Japanese police department. As a group, they drove to the district of Anigua, an area adjacent to Hagåtña, where Nicholasa Mendiola resided. As Sgambelluri stated, "Upon arrival there, [Shinohara] sent me in to call Nicolasa [sic] to the car as he would like to talk to her. Nicholasa was rather reluctant to come out. She made excuses. Finally she came out and while at the car, Shinohara asked her to come down with him to Piti and work at a whore house where Japanese enlisted personnel were being entertained. She answered that she would later on if she can get clothes to wear as she had on only rags."<sup>64</sup> According to Sgambelluri, Shinohara offered to provide Mendiola with clothes and "anything else she wanted."<sup>65</sup> When the prosecution called her to the stand, she reiterated these details but emphasized the importance of her two children. As she recalled, "Then [Shinohara] asked me if I wanted to

work at the whore house. I told the accused that I could not do it on account of my children. He insisted and said, 'Come and try it at least for three days and see how you like it,' and I said, 'No.'<sup>66</sup> Failing to persuade Nicholasa Mendiola, Shinohara threatened to punish her. At that point, she relented and accompanied everybody to the ianjo in Piti. But because the manager was not there, they dropped off Mendiola at her home in Anigua.

Two weeks later, she met Shinohara, who offered her a new position at a "saloon" where she, as a "bar maid," would serve drinks. As Nicholasa Mendiola recalled, "I was willing to do that." After agreeing to pursue this job, she remembered being taken "to the hospital to have my physical examination and after I had passed physically, I was given my paper."<sup>67</sup> Having undergone tests that may have assessed venereal diseases, both under the U.S. Naval Government and then under the Japanese military, she described the most recent examination as if it was routine. When the defense asked her to define the purpose of these exams, she observed, "I do not want to answer that question. It lowers my reputation, but if I must answer it then I will."<sup>68</sup> Before the defense could reply, the military commission instructed Mendiola to not answer the question. But she did respond to Shinohara, who, two days after her physical examination, returned to her home. Without any explanation as to how their negotiations unfolded, Shinohara then took her to the ianjo in Piti. During the trial, Mendiola only shared what she experienced upon entering the brothel. As she noted, "I found rooms in that building. There was a boy. I stayed there and it was either the first or second night when the accused came and brought an officer. . . . [Shinohara] brought in two Japanese officers and then the accused said, 'Take care of these men,' and I said, 'What for?' and he said, 'Well, your line of work.'" She refused, with Shinohara threatening to punish her. Mendiola recounted that she soon complied, saying that she and an officer "went into the room and slept together because that was what we were supposed to do."<sup>69</sup> Clarifying what she meant by "sleeping," she said, "We had sexual intercourse."<sup>70</sup>

For the prosecution and the court, Nicholasa P. Mendiola demonstrated that Samuel T. Shinohara coerced her into working as a prostitute for the Japanese military. While she did not discuss the role of the "boy" in the Piti brothel, she illustrated her intimate familiarity with the various "whore houses" in Guam and indicated that she had the same level of autonomy as that afforded to Alfonsina Flores. Once charged with "vagrancy" under the naval government, then becoming a "reformed" person before the war broke out, Mendiola assumed the position of a "modern girl" for four to five months.<sup>71</sup> She also had sexual relations with at least one Japanese military

officer, providing evidence of an existing prostitution ring in Piti where she, like Flores, became the sexual property of Shinohara and Japan. As Judge Advocate Teller Ammons declared, “The accused not only forced these women to cohabit with the enemy Japanese, but he went further; by fear of death and punishment, he forced these two women to subject themselves to the bestial desires of men of the accused’s own selection, who were members of the enemy invasion forces. They were Japanese. No lower trait of character can be found in any man.”<sup>72</sup>

As implied in Ammon’s racist and sexist comments, however, we should not read too much into the legal rhetoric of coercion, abduction, and consent as providing relief to Flores and Mendiola. In the last instance, *The Penal Code of Guam*, like the commission and prosecution, did not attempt to remedy the violence of prostitution inflicted upon these women. Several reasons explain this rationale where the women were paradoxically cast as unwanted “aliens” but valuable properties of the U.S. state. First, section 175 of *The Penal Code of Guam*, “Importation and Deportation of Undesirable Aliens,” identified prostitutes as one of several “classes of aliens” that are not allowed entry into Guam. The so-called aliens included “anarchists,” “feeble-minded persons,” “idiots,” “imbeciles,” the “mentally or physically defective,” “paupers,” “polygamists,” and “professional beggars,” among others.<sup>73</sup> Should such an individual arrive on the island, section 175 stated that he should be “deported to the country whence he came at any time within three years after the date of his entry into the island.”<sup>74</sup> In other words, *The Penal Code of Guam* defined prostitutes as an undesirable class of people. Confounding this position was the reality that American brothels existed in Guam before the war. In official terms, the U.S. military rarely suppressed prostitution here or elsewhere; if laws were passed to this effect, they mainly addressed control of venereal disease.<sup>75</sup> Second, the tribunal never accused Shinohara of providing the conditions that led to the possibility of Flores and Mendiola being raped, a subtext occurring throughout the trial but never made clear by the prosecution or defense. If rape was entered as a war crime in the trial, then the terms of punishment would have set a precedent in naval law and thereby offer a fuller sense of justice for the women. Third, and finally, the prosecution punished Shinohara for possessing Alfonsina Flores and Nicholasa P. Mendiola as U.S. nationals and properties of the naval government.

By arguing that Shinohara transformed an American car into a Japanese military vehicle, assaulted an American military officer and governor, desecrated the American flag, and prostituted two American nationals, the

prosecution therefore asserted that Shinohara had violated the sanctity of whiteness as property and sovereignty in Guam. In these ways, the commission represented him as bearing the martial and material markers of the Japanese empire. But how did the lesser charges—allegations that placed Shinohara outside the zone of Japanese sovereignty—render him as a “residential alien” who owed allegiance to the United States?

### *The Residential Alien as Homo Sacer*

In this section, I discuss how the tribunal construed Shinohara’s inclusive exclusion with the American nation as per his four “overt acts” of treason. These acts included organizing a youth group called Dai Nisei, seizing an electric generator, stealing American monies from a bank, and supplying provisions for the Japanese military. These activities presumably aided the Japanese enemy. I then show how the court and other naval officials began to shift Shinohara’s national identity from an enemy and foreigner of Japan to an ethnic minority and resident of an American military colony.<sup>76</sup> For instance, the four treason charges afforded him the political rights of a residential alien, a legal category whose loyalty was bound to the United States. Specifically, he was an Issei who betrayed his allegiance to America, even though the United States had considered the Issei as “enemy aliens” during the war.<sup>77</sup> Drawing on section 37 of *The Penal Code of Guam*, “Treason, Who Only Can Commit,” the court stated that “every person, resident in the island of Guam” owes allegiance to the Naval Government of Guam or the United States.<sup>78</sup> *The Penal Code of Guam* likewise required the constitutional rule of an “overt act,” verified by two witnesses, only differing in its understanding of punishment and attainders. In this respect, the death sentence applied, as did the option of imprisonment “at hard labor for not less than five years.”<sup>79</sup>

On the other hand, neither *The Penal Code of Guam* nor the military commission invoked anything resembling attainders, meaning that the court could extend, as it did, punitive measures against the “properties” of Shinohara. Without the protection of the Constitution’s second clause on attainders, the commission held the authority to seize related assets that belonged to Shinohara and his family, assuming, of course, that he perished as a result of receiving a death sentence. Indeed, Shinohara was still a sacred man in Agamben’s sense of the term, and not only because he was deprived of what the court construed as his Japanese personhood. Shinohara remained a homo sacer because of his crossing into the zone of indistinct-

tion that comprised both American and Japanese sovereignties in Guam. To be clear, this “crossing” entailed a process that constituted an inclusive exclusion not with one “city” as per Agamben’s theories on bare life and political existence but with two “cities”—Japan and the United States—claiming power over Guam. Crossing over into the United States thus required that Shinohara become a residential alien, but one condemned, as Judge Advocate Teller Ammons put it, as a “traitor.”<sup>80</sup>

On the tenth day of the trial, August 8, 1945, the commission opened with additional treason charge I, specification 2, regarding the making of Dai Nisei, what the prosecution described as a Japanese labor organization in Guam.<sup>81</sup> A total of seven men for the prosecution testified, six of whom came from Chamorro-Japanese families: Jose Caesarius Blas, Jesus Cruz Hara, Juan Santos Okada, Jesus Carbullido Okiyama, Felix Flores Sakai, and Jesus Baza Sayama. The lone police officer and perhaps the only non-Japanese person was Juan R. Rivera. In his testimony, Rivera recalled how this group emerged as a labor organization for the Japanese military in February 1942. He said, “I was inside the office of the Menseibu when Mr. Shinohara came in talking to Juan Castro, the native in charge of the native policemen. Suddenly Castro called me over and directed me to inform the bunch of persons listed in a paper to appear at Shinohara’s residence.”<sup>82</sup> Castro then instructed Rivera to track the individuals, instructing them to meet at Shinohara’s restaurant at 8 o’clock in the morning.

Jesus Carbullido Okiyama, one of the witnesses, filled in the details. At the first meeting with twenty to thirty Nisei present, he said, Shinohara “told us that the United States of America and the Imperial Government of Japan were in a state of war, and that the Americans had been pushing the Japs around for a considerable length of time and the Japanese could not stand it any longer and finally came to a show-down.”<sup>83</sup> Okiyama then relayed how Shinohara categorized American racism as the grounds for localizing Japanese anticolonialism in Guam, saying that “the Nisei, the half-caste of Guam, had been pushed around by the Americans and the time has come when we shall do everything possible to help the Japs win the war.”<sup>84</sup> The “act,” as Okiyama remembered it, concerned Dai Nisei’s role in providing “services to any of the established Japanese military units here.”<sup>85</sup> With Shinohara identified as the founder and leader of Dai Nisei, Okiyama recounted that members of Dai Nisei helped “to build air fields” and other military facilities.

Although nobody agreed on the exact date of its formation, they confirmed Dai Nisei’s existence from early 1942 to the summer of 1944 when

the U.S. military invaded the island. Therefore, military conscription appropriately characterizes the kind of labor Dai Nisei performed for Samuel T. Shinohara. Member Jesus Baza Sayama, for example, worked at an “air base” and “dug tunnels for air raid shelters.”<sup>86</sup> Others made “tunnels” at the district of San Ramon, built “air base transmission lines from Agana to the Agana Air Base,” and performed biweekly “drills” at the San Antonio Plaza, among other tasks.<sup>87</sup>

On the thirteenth day of the trial, August 11, 1945, the prosecution entertained additional charge I, specification 1, wherein Shinohara allegedly assisted the Japanese military in taking Ignacia Bordallo Butler’s electric generator. This “act” occurred in or about December 1941, an event not clearly verified by three witnesses employed by the prosecution. The owner of the generator, Butler, testified first and provided the most details. She asserted that Shinohara, an unidentified Saipanese interpreter, and three unnamed Japanese military personnel arrived at her residence in Hagåtña in early December 1941. One of the Japanese men was an officer who wanted her generator, kept in her basement, for unknown reasons. Fearing for the safety of her family and her husband, Chester Butler, who was an American prisoner of war in Japan, Ignacia Bordallo Butler did not resist the men’s seizure of her generator. When the prosecution asked her to identify the U.S. manufacturer of the generator, she simply replied, “The Onan brand.”<sup>88</sup> But the matter of theft was not established, as she recalled receiving “a slip of paper written in Japanese” from the group, which could have been a promissory note.<sup>89</sup> Yet Butler could not furnish the document for the court, as it was lost.

The ambivalence continued with the two last witnesses for the prosecution. Carlos Bordallo, the younger brother of Ignacia Bordallo Butler, mentioned having been present at her home during Shinohara’s visit. At the request of his sister, he led Shinohara and the other men to the basement, opening its lock and witnessing the men load the generator onto a truck and leave the residence for an unidentified location. In support of the prosecution, Carlos Bordallo identified the three Japanese men as belonging to the “military,” but he failed to make explicit the generator’s role in advancing Japan’s war efforts. As he noted, “I do not know where they were going to use [the generator] but it was going to be used.”<sup>90</sup> Jose S. Okada, the final witness, clarified the generator’s usage. As a former electrician for the Japanese navy, he claimed that the military transported the generator to a naval ship, where it powered film equipment to “show drama, news reels, and comics.”<sup>91</sup> Yet Okada’s argument was equally flawed. As the defense

demonstrated, he never witnessed the “act” wherein Shinohara allegedly stole the generator in Hagåtña. Nor did Okada identify Butler as the owner of the generator, Onan as its manufacturer, or an unknown Japanese military officer as its heir apparent.

Undeterred by these contradictions and inconsistencies, the prosecution solicited the testimony of Galo Lujan Salas, a Chamorro cashier for the U.S. Military Government of Guam, to address the third case of treason on August 13, 1945. On the fourteenth day of the trial, Salas affirmed Shinohara’s “act,” original charge I, as the theft of “about” \$9,300 on or about December 16, 1941, said monies being the property of the naval government of Guam. As one of two witnesses, he recalled the event occurring at the naval government’s Records and Accounts Office, in Hagåtña, in the early afternoon of December 19, 1941. As the former cashier for the naval government, he confirmed that monies and records were stored separately in two vaults at this office. At that time, Salas alleged that Shinohara, two Japanese military officers, and four Japanese armed guards escorted him to the office, then housed in the R. E. Coontz building. As Salas recalled, “Shinohara stated that it is better for me to open the safe than to refuse or else I will be killed and then the accused told me he is one of the officials of the Japanese Imperial Government. Then I put my right hand up to my head still thinking what was I to do whether to open the combination or refuse.”<sup>92</sup> While Salas was pondering his next course of action, Shinohara conversed with the Japanese soldiers, but Salas did not know what they were saying. Soon thereafter and without any warning, Salas said at the trial, “one of the Japanese soldiers tore my shirt under my right hand by his bayonet. I stated to Shinohara I did not expect those things to be done to me, but Shinohara insisted that I open the safe, so then I opened the combination for they were forcing me to do so or else I will be killed.”<sup>93</sup>

Salas then recounted how Shinohara “opened the door of the safe,” at which point “one of the Japanese officers came along and took all the money and papers in the safe that belonged to the Naval Government.”<sup>94</sup> He estimated that the Japanese officer stole \$7,639.41, a difference of \$1,660.59 when one considers the commission’s allegation that Shinohara assisted in the theft of \$9,300. Despite this gross discrepancy, Salas emphasized repeatedly that Shinohara and the Japanese military officers “forced” him to open the safe containing the monies that belonged to three groups. They included the naval government, which owned \$5,100 in cash; the Bank of Guam, which possessed \$1,300 in cash; and several residents of the island, whose combined checks totaled \$1,239.41. After opening the safe contain-

ing these monies, Salas then unlocked the combination for the vault holding the government records. The paper monies, he said, were placed in a white canvas bag, held by an officer, with Shinohara carrying the loose coins in another pack. Another Japanese officer took possession of the government records. Afterward, Salas described how he, along with Shinohara and the Japanese military personnel, left the Coontz building and walked to the former U.S. Marine Barracks. On his way, Salas recalled, he saw Vicente Zafra, the chief commissioner of Guam, standing beside the road. Although Galo Lujan Salas did not identify the person or individuals who stored the monies in the Marine Barracks, another building occupied by the Japanese military, he offered ample evidence to suggest that Shinohara participated in the theft of funds variously owned by the Bank of Guam, local residents, and the naval government. However, the second witness, Vicente Zafra, failed to describe anything resembling theft.

The prosecution then presented additional charge I, specification 3, to conclude its fourth and final case on treason. The tribunal alleged that Shinohara on or about April 1942 supplied the Japanese military and naval forces with provisions and refreshments, an “overt act” whose legitimacy rested on the testimony of five Guamanian witnesses. The first person on the stand, Vicente M. Taimanglo, a truck driver, acknowledged Shinohara’s role in opening the bar, Omiya Kaikan, on February 16, 1942. As the former bartender and cashier for the officer-only club, Taimanglo stated that Shinohara often organized several parties for Japanese naval officers. As he explained, “In case an officer came, he would go to the list [of priced food and drinks] and pick out what he wanted in the list, then that was prepared and served to him by one of the girls, then a bill will be ready for him and he pays one of the girls and then the girl turned over the money to me.”<sup>95</sup> According to Taimanglo, Shinohara coordinated an “opening party,” a “farewell party” for the governor, and “only by invitation” parties with Chamorro “girls.”<sup>96</sup>

The last and fifth witness for the prosecution, Steward First Class Jorge E. Cristobal, then translated the bar’s name, Omiya Kaikan, in an effort to define the club as a government locale. He claimed, “Omiya, the word literally translated means shrine, temple or a place of worship. Kaikan is a hall not necessarily a small building, but it is considered an assembly hall. Those two words together I would say: Omiya Kaikan is an assembly hall for either a church, court officials or nobles.”<sup>97</sup> If one believed, as Cristobal presumably did, that the offering of provisions to the Japanese military in an “assembly hall” counted as an “overt act” of treason, then Samuel T. Shinohara

clearly betrayed the United States. How did the defense counsel refute such allegations? In the next section, I address this question by further exploring the racisms and technical contradictions of the court.

### *In Defense of Shinohara*

In the remaining days of the trial, Lieutenant Emory L. Morris of the defense counsel featured eight witnesses to counter these charges alleged by the commission. In addition to his first witness, Francisco T. Flores, he employed nine witnesses in the last five days of the trial, whereas the prosecution utilized thirty-six witnesses, nearly a 300 percent difference in number, over an eighteen-day period. But rather than address each charge and specification, the defense counsel focused on only a few allegations. For reasons not explained to the commission, the defense did not compel its witnesses to appraise two treason allegations—original charge I and additional charge I, specification 1—and the prostitution allegation, original charge IV, specifications 1 and 2. This is not to say, though, that the defense counsel did not entertain these issues in the closing argument. Regarding additional charge I, specification 3, for example, the defense counsel argued that Shinohara never furnished drinks and food (e.g., beef, cake, ice cream, soda, whiskey) for the Japanese military. Jesus S. Sayama, one witness for the defense, also stated that Omiya Kaikan was not, as the prosecution argued, an “assembly hall” for strictly government or religious purposes. In fact, Sayama troubled the notion that Shinohara organized parties for the Japanese military, since the Japanese Society of Guam, with Shinohara as its president, held events for Governor George J. McMillin and the U.S. Navy before the war.

With the “overt act” of provisions placed in doubt, Sayama then testified against another treason allegation, additional charge I, specification 2, which stipulated that Shinohara created Dai Nisei for the purpose of aiding the Japanese military. He explained that several groups were formed during this period, all with various ties to the Chamorro public, the Japanese community, and the Japanese military. Confounding the prosecution’s position that Dai Nisei was the only group to assist the Japanese military, Sayama listed Kohatsu (a Japanese organization from Saipan), Nihon Jin Kai (Japanese Society of Guam), and Seinendan (Chamorro Young Men’s Association) as having comparable ties to the military. Further, Sayama argued that Dai Nisei was not a militarist organization but was rather a group where young, mixed-race Japanese learned the Japanese language, including drills

that would prepare them for fires and typhoons.<sup>98</sup> He also explained that one should not conflate the meanings of Dai Nisei as second-generation Japanese and Dai Nisei as an organization for second-generation Japanese. Addressing this vital distinction, Jesus S. Sayama mentioned having known some of the prosecution's witnesses, such as Jesus Carbullido Okiyama and Felix Flores Sakai, saying that they were, indeed, "Dai Nisei," second-generation Japanese.<sup>99</sup> Yet he hesitated to conjoin the double meaning of the term by assuming that these men participated in the Dai Nisei organizations.

After exhausting their witness testimonies on two treason charges, the defense counsel temporarily ignored the other treason allegations and proceeded to address the lesser charges. Two of their witnesses, Lourdes Anderson and Margaret Anderson, came forward with respect to additional charge III, the desecration of the U.S. flag. Their point was simple: Shinohara never placed the U.S. flag on the floor of Omiya Kaikan. Nor did Shinohara steal an American vehicle owned by Lieutenant James E. Davis. Refuting the property claims of the prosecution, the defense counsel even called on Bishop Miguel Angel Olano to testify against this charge.<sup>100</sup> On the contrary, they argued that the Japanese military had seized all vehicles in early December 1941 and not two months later, into the new year. As Bishop Olano stressed, "After two days of occupation, all cars were confiscated by the Japanese Government."<sup>101</sup>

On the charges concerning the assault and battery of Governor George J. McMillin, the defense counsel did not directly ask its witnesses if these acts occurred. These allegations emphasized that Shinohara "slapped" McMillin on three separate occasions: December 10, 1941; January 1, 1942; and January 20, 1942. The defense counsel instead drew from the testimony of Shinohara's wife, Carmen Torres Shinohara, and his daughter, Cecilia Torres Shinohara. Yet they did not fully examine the chronological and topographical contradictions previously outlined by the prosecution and its witnesses. The closest approximation to this effort came when the defense counsel stressed that the prosecution's Chamorro witnesses could not have seen the assaults that allegedly took place in Hagåtña. If they did, they offered vastly different accounts of the time and place. The court also erred in identifying January 20, 1942, as one of these dates when McMillin, along with other prisoners of war, had already departed for Japan ten days earlier.<sup>102</sup> The defense counsel maintained its skepticism with respect to the other dates, knowing that the men of the Insular Force, segregated as a group across the Plaza de España, were among a large crowd of six hundred

American and Japanese military personnel and were located far from the vicinity where Shinohara allegedly slapped McMillin.<sup>103</sup>

In his closing argument, Lieutenant Morris reiterated these fictions. He likewise insisted on the innocence of Samuel T. Shinohara, whose actions, following the 1907 Hague Regulations, adhered to the international laws on occupation and property. Take, for instance, the commonly cited English version of article 43, wherein the occupant is obligated to “take all measures in his power to restore and ensure, as far as possible, public order and [civil life].”<sup>104</sup> When the law was originally debated at the Brussels Declaration of 1874, the authors of the article sought ways to protect local inhabitants, thereby compelling the occupant to restore their daily life as quickly as possible. But by the mid-twentieth century, occupants often read this duty as the “authority to prescribe and create changes in a wide spectrum of affairs.”<sup>105</sup> In either case, the occupant, like Japan, had the right to conduct itself as per international law. The expansive meaning attributed to “public order” and “civil life” in article 43 was no less ambiguous than article 53 and its clause on “property.” In countering the prosecution’s charges on theft and treason, the defense counsel specifically invoked the second section of article 53, which read, “All appliances, whether on land, at sea, or in the air, adapted for the transport of persons or things, exclusive of cases governed by naval law may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.”<sup>106</sup> As Lieutenant Morris expressed, “The evidence is clear and complete to the effect that the Japanese authorities, as the occupant power, had the right to seize all automobiles in Guam; and did seize them on 10 December 1941, and within the next few days following that date.”<sup>107</sup> As with article 43, there exists wide latitude in the meaning attached to article 53, whose first section stipulates that “an army of occupation” can take possession of properties belonging to the enemy state.<sup>108</sup> Yet, as evidenced in its second clause, the occupant can take the properties of “private individuals” as well, provided that such properties are either restored or compensated upon the declaration of peace. With this broad sense of ownership, the defense counsel asserted that the Japanese authorities possessed the “right of requisition” (1) to confiscate all automobiles; (2) to take the money and checks belonging to the U.S. and the naval government; and (3) to remove Ignacia Bordallo Butler’s electric generator.<sup>109</sup>

But when it came to the prostitution charges, the defense counsel floundered in its attempts to absolve Shinohara. With respect to Alfonsina Flores, for example, the defense counsel revoked the specification of

“misrepresentation,” stating that her case was one of “duress” in light of her fear of being killed or punished by the Japanese military. Lieutenant Morris then blamed the Flores family and not Shinohara. As he put it, “This girl’s older sister, Alice, had been at the Kerner home one or two weeks. She apparently liked it there and arranged for her younger sister to come and join her. Gentlemen, the proper people to be charged of this crime are the father, the mother and the other people involved, and not [Shinohara].”<sup>110</sup> Although the defense counsel hinted at a complex web of prostitution among the Flores family and others, Morris did not pursue this angle any further. He instead discussed the specification concerning Nicholasa P. Mendiola as having no grounds for duress. Because of Mendiola’s statuses as a “vagrant” and an unmarried woman, the defense counsel argued that she entered into prostitution “voluntarily.”<sup>111</sup> Further, Shinohara should not have been charged with treason as the “two witness” rule was not uniformly applied in the specifications. With regard to the charges concerning the Dai Nisei organization, the defense counsel simply asserted that Dai Nisei never functioned as a group of laborers for the Japanese military.

In lieu of these arguments posed by the defense counsel, the military commission and judge advocate convened and determined their findings. With no precedent in U.S. law on the matter of charging a residential alien with treason, they turned to the English case of *De Jager v. Attorney General of Natal* (1907) as an international authority on treason. Specifically, the commission cited the Crown’s successful prosecution of De Jager, a citizen of the South African Republic who lived in a British territory. During the Boer War, De Jager accepted an official position in the South African Republic forces.<sup>112</sup> After the war, the Crown read his act as high treason, eventually convicting De Jager of this charge for failing to maintain his allegiance to the Crown. For the tribunal, this English case provided an international precedent to justify the court’s proceedings. Along these lines, the commission issued its statement on the twenty-third and last day of the trial, August 27, 1945. It found Shinohara guilty of every treason charge and the lesser specifications, except original charge II regarding the theft of an American vehicle and additional charge II concerning the desecration of the U.S. flag. As Judge Advocate Teller Ammons said, “The Commission, therefore, sentences him, Samuel T. Shinohara, a civilian, to death, to be executed by hanging the said Samuel T. Shinohara by the neck until he is dead, two-thirds (2/3) of the members of the Commission concurring.”<sup>113</sup>

As homo sacer, the military commission included Shinohara within the fold of the U.S. nation, only to be cast out and sentenced to death as

a nonsacrifice. As per naval law, the U.S. secretary of the navy, the Office of the Judge Advocate General, and other legal experts then determined if Shinohara's death sentence was fully justified. As he awaited the review of his death sentence, Shinohara dwelt in solitary confinement at the War Criminals Stockade in Guam. In the next section, I discuss how he reflected upon his future despite having remained silent during the entire trial. As a person charged with the highest crime against the state, Shinohara saved a few words for its highest figure of naval authority, its secretary.

#### *To the Honorable Secretary of the Navy*

Almost a year later, on July 4, 1946, Colonel James Snedeker of the Military Law Division evaluated the legal merits and flaws of Samuel Shinohara's trial. In a memo addressed to the navy's Office of the Judge Advocate General, he found no fault in the lesser charges. But Colonel Snedeker disputed the commission's findings on treason. For instance, he observed that "nothing in the laws of the United States warrants the conclusion reached, and international law, as such, is equally devoid of justification for this holding."<sup>114</sup> Given the potential implications of this case, Colonel Snedeker reasoned that the judge advocate general "may be in order to re-examine the pre-trial opinion and to reconsider whether or not Shinohara is properly chargeable with treason."<sup>115</sup> His concern partly hinged on the U.S. failure to protect Shinohara, as a resident alien in Guam, from the Japanese occupation; without such protection, the United States had no basis to try Shinohara.<sup>116</sup> Additionally, Shinohara's status as a Japanese citizen "was compellable to perform acts for his sovereign state when that state completely occupied and controlled Guam."<sup>117</sup> As a subject "duty bound" to Japan, he should not have been charged with treason in the first place. Based on his internal assessment of the trial, Colonel Snedeker recommended that the original and additional charges on treason "be set aside."<sup>118</sup> But should these charges on treason remain, he recommended that Shinohara "be afforded the opportunity of having the Supreme Court pass upon the principle involved."<sup>119</sup>

Unbeknownst to Shinohara, though, the Office of the Judge Advocate General would not address Colonel Snedeker's memo until spring 1948, almost three years after he received the death sentence. In the meantime, Shinohara solicited the legal assistance of Fredrick T. Suss, a lieutenant in the U.S. Naval Reserves. Their first course of action concerned the preparation of affidavits in an effort to appeal the court's judgment. On October 18

and 19, 1946, for example, Lieutenant Suss compiled affidavits from four individuals, two of whom had previously assisted the prosecution.<sup>120</sup> One of these, Kyomon Miwa, took responsibility for forming the Dai Nisei Young Men's Association, whereas another man, Juan Santos Okada, disavowed his affiliation with the same organization. Shinohara then submitted a five-page affidavit on November 3, 1946, which raised several issues.<sup>121</sup> One concerned his imprisonment by the U.S. Navy: first, from December 8 to 10, 1941, and, second, from August 23, 1944, to the time of his trial and postsentence confinement. In the former case, the navy never informed Shinohara as to why he was incarcerated; in the latter, the navy offered no explanation until July 20, 1945, eight days before his court case began. At that time, Shinohara received only two thirty-minute consultation periods from a defense counsel not of his choosing.

Moreover, the defense counsel refused to call on eight of his recommended witnesses, a group of Chamorro and Japanese men. Likewise, Shinohara encouraged Lieutenant Morris and Vicente Reyes to contact former naval governor George J. McMillin, knowing that he survived the war and could be available for the trial. Yet the defense counsel rejected this request as well, as much as it refused to entertain Shinohara's disagreements with the translation of Chamorro and Japanese terms during the trial. And when he pleaded with the defense counsel to speak as a witness, Lieutenant Morris and Reyes ignored him. Speaking in the third person, Shinohara wrote, "That he desired to take the stand in his own defense and requested this of his counsel who told him that his word had no weight before the court and though he urgently desired to deny the charges brought against him and to testify in great detail, he was thwarted in this regard."<sup>122</sup> Once the findings were issued, however, Lieutenant Morris asked Shinohara if he would like to testify in mitigation. But before Shinohara could respond, Reyes, a Guamanian, silenced him. As Shinohara recalled, "Reyes stated in words to the effect that Japan had lost the war and there was nothing to say."<sup>123</sup> But there was much to say in his petition to "The Honorable Secretary of the Navy," James Forrestal, on January 2, 1947.

With the guidance of Lieutenant Fredrick T. Suss, Shinohara authored a forty-four-page petition that highlighted the critiques expressed in his personal affidavit, a military lawyer's review of his trial, and the defense counsel's closing argument. These issues included the commission's lack of due process, its disavowal of international laws on property, and its selective interpretation of the "two witness" rule. At the same time, some topics appeared in his petition that were not addressed by his defense counsel. These

included the ambiguity in the wording of the charges and in the everyday cross-examinations among the witnesses, as in the conflating of Shinohara with unidentified officers (e.g., “they”) rather than isolating Shinohara as the accused person (e.g., “he”).<sup>124</sup> Comparably, Shinohara noted how the periodization of “in and about” in the charges enabled the prosecution to broadly determine the timing of said charges.<sup>125</sup>

He also opposed biases of the commission, as demonstrated in the court’s overruling of the defense counsel’s attempt to strike any testimonies on the Japanese shooting of the U.S. flag across the Hagåtña harbor. As Shinohara observed, he had nothing to do with these events. But with the war still raging between Japan and the United States, he correctly surmised as to how the image of a damaged U.S. flag replaced “considerate judgment with unreasonable passion for it kindled the flame of outraged patriotism which was already aglow in the heart of each American officer on the Commission. That the court had in fact abandoned cool, considerate judgment in favor of passion and prejudice is shown by the fact that it failed to strike out such improper evidence on the motion of the accused.”<sup>126</sup> Although he revealed nothing about the passion and prejudice of the Japanese empire, Shinohara astutely unpacked the American and Chamorro racisms and technical and legal contradictions of the court.

With respect to the Chamorro-Japanese and Japanese witnesses, many of whom had families incarcerated by the Americans, he described how their fear of an unknown future dictated the content of their testimonies more than any search for justice. As Shinohara ascertained, “Many of the witnesses against the petitioner were of Japanese blood and had parents confined by the American forces in the local stockade. They were fearful of being momentarily seized by the Americans and thrown into prison because of their ancestry.”<sup>127</sup> As for the Guamanian witnesses, he argued that those who testified against him were “fearful of the troubled times and were most anxious to impress the Americans with their own loyalty by condemning him whom the Americans accused of being a traitor.”<sup>128</sup> As he rightly noted, “A fair trial under such circumstances is well nigh impossible.”<sup>129</sup> But contrary to his efforts to remain impartial, Shinohara infantilized the “Chamorro people, who, as witnesses, have proven to be as unreliable as children, telling the court what they think it wishes to hear and with no regard for the truth of their oaths.”<sup>130</sup> He gave the example of the five Guamanian men who accused him of slapping the former naval governor George J. McMillin, the same McMillin who was now “willing to testify on behalf of the petitioner” in an attempt to disprove these charges.<sup>131</sup>

In his petition to Secretary Forrester, Shinohara shared these and other views as a residential alien in Guam, his preferred status after the war. Taking this position, he accepted the sovereignty of the United States, always remaining “complete and sincere” in his allegiance to the nation.<sup>132</sup> As if to subvert the zones of indistinction, he decried what was perhaps the most fundamental legal issue of the case, a point alluded to in his affidavit but altogether suppressed in the trial. That is to say, Shinohara argued that the tribunal held no jurisdiction to prosecute him, as the protection owed to him by the United States was removed when he was incarcerated on December 8, 1941. As he noted, the “Naval Government did in fact withdraw this protection . . . by the evidence which showed that soon after war was declared, the petitioner was seized by the government and thrown into prison with other Japanese nationals. Thus the government unmistakably indicated by its action that it chose not to accept the temporary allegiance which the petitioner owed to it, but instead regarded the petitioner as an enemy from whom no allegiance was expected.”<sup>133</sup> The absence of an arrest record, the lack of witness testimony about his alleged crime, and the government’s silence on the role of the Enemy Alien Act in Guam led Shinohara to believe that the United States “had terminated whatever allegiance was owed to it by the petitioner by removing the protection upon which it was founded.”<sup>134</sup>

On April 28, 1948, the Office of the Judge Advocate General finally reviewed Shinohara’s trial, but it did not reference his petition in its report. Overall, its assessment paralleled the initial critique offered by Colonel James Snedeker, USMC, of the Military Law Division. But the opinion of the Office of the Judge Advocate General differed in its view that the United States could legally try Shinohara and in its recommendation to set aside specific charges. Whereas Snedeker urged that all treason charges be removed, the Office of the Judge Advocate General still found Shinohara guilty of treason with respect to additional charge I, specifications 1 and 2, regarding, respectively, the theft of a generator and the mobilization of Dai Nisei. The other shift in the navy’s internal purview of the case concerned former naval governor and Captain George J. McMillin. In a statement addressed to the Office of the Judge Advocate General, McMillin “unequivocally denied that the accused struck him in the face or otherwise on the dates specified or on any other date.”<sup>135</sup> As Shinohara had been trying to say all along, he never assaulted the naval officer. As a result, the Office of the Judge Advocate General dismissed all charges related to assault and battery. On July 8, 1948, John Nicholas Brown, acting secretary of the navy,

addressed these reports, to which he said: “[It] is not clear in my mind that the offenses actually constituted treason. This point of view is not taken on legal grounds, but is based purely on a lay reaction to the circumstances as I presently see them. I would appreciate an explanation which would clarify this point and establish the offenses as war crimes.”<sup>136</sup>

After having analyzed the acting secretary’s memo and the other internal reports, G. L. Russell, judge advocate general of the navy, issued the following recommendation eighteen days later: “In view of the foregoing, it is the opinion of the Judge Advocate General that a sentence of fifteen years at hard labor to be executed in Japan is commensurate with fairness and consistent with the law and existing regulations.”<sup>137</sup> On August 24, 1948, Acting Secretary Brown, replied in kind. Concurring with the judge advocate general’s conclusion, Brown proclaimed that “the sentence of death, to be executed by hanging by the neck until dead, is hereby commuted to imprisonment at hard labor for a period of fifteen (15) years. Time served in confinement by Shinohara since the thirteenth day of October 1945, shall be regarded as time served with respect to the sentence commuted.”<sup>138</sup> Shortly thereafter, the navy transported Shinohara to the Sugamo prison in Japan, where he completed his sentence, after which time he returned to Guam to live with his family.<sup>139</sup> But because the navy upheld additional charge I, specifications 1 and 2, Shinohara, as *homo sacer*, remained a traitor to the United States, guilty of high treason, and symbolically expunged from the nation. The navy likewise sustained the lesser and original charge IV, prostitution, with specifications 1 and 2, demonstrating its commitment to protect its “properties” in Guam.

### *Reforming the Japanese American in the Military Colony*

As this treason case and precedent reveal, the U.S. Navy’s War Crimes Tribunals Program incarcerated Samuel Takekuna Shinohara to demonstrate the reach and violence of its rule of law. The navy’s racialization of him as a Japanese enemy and foreigner signaled a militarized brand of the “yellow peril” that had to be expunged from the nation so as to frame the United States as a virtuous country.<sup>140</sup> The Guamanian and Chamorro-Japanese testimonies about innocence, patriotism, and victimization consequently provided the foil from which these legal determinations of Japanese war criminality drew their moral and political legitimacy. Once again, we witness here the political life of indigenous knowledge and retribution—the proverbial *ko’ko* of Guam—in codetermining the direction and force of the

court and its proceedings. But because the commission and senior naval officials commuted Shinohara's death sentence, he was remade into a model Japanese American of Guam. By way of gossip, statecraft, and theater, his trial publicly informed the Issei and Nisei that they, too, could rid themselves of any criminal tendencies, absolve their imperial pasts with Japan, and become reformed residential aliens of the military colony. Although the shifts in national and geopolitical perceptions of Japanese and Japanese Americans would take fuller shape in the 1950s, Shinohara's contentious war crimes case foreshadowed popular American convictions that Japan had transformed from an external enemy and subversive threat to a democratic partner in the Cold War era of empire.<sup>141</sup>