

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
TERRITORY OF HAWAII

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TERRITORY OF HAWAII,)	
)	
vs.)	Cr.
)	No. 11,782.
BEN AHAKUELO, HENRY CHANG,)	
JOSEPH KAHAHAWAI, JR., HORACE)	
SHIMITSU IDA and DAVID TAKAI,)	
)	
Defendants.)	

The above entitled matter came duly on for further hearing on Friday, November 20, 1931, at o o'clock a.m., all parties to the hearing being present in Court, and the following further proceedings were had and testimony taken:

(Stipulated jury and defendants all present)

MR. HEEN: At this time I feel it my duty on behalf of my client to call to the attention of the Court publications in the Bull Dog Edition of the Advertiser of the last two days--

MR. WIGHT: I object to this unless the jury is excused.

MR. HEEN: I have no objection to that.

(Jury excused from the court room.)

MR. HEEN: In the last two issues of this newspaper there appeared headlines which amounted to comments on the evidence given during the trial of this case. Under dated of November 19, 1931, which appeared on the streets the night before, we have this headline: "Woman's story of assault unshaken under bitter cross-examination", and written on this color paper (exhibiting paper to the Court); paper of a reddish

color, and in the following issue this headline appears, "Defense fails to shake damaging evidence offered in attack case." I submit that that kind of a publication during the trial of this very serious case is highly prejudicial to these defendants, if the jurors had occasion to read those headlines, and I take it these jurors are human. They are entitled to read the newspaper to see what the news of the day may be, and it couldn't have escaped their attention if they had these issues in their hands, and it leads one to believe that this is intended as a propoganda against these defendants, bound to influence any person who may read that sort of comment, and I nelieve,- I haven't looked into the law on it,- I believe it almost borders on contempt of Court.

MR. WIGHT: In the first place, I believe what the newspapers say is perfectly true, and they have the right to give their version. It is based on evidence and the public is entitled to the news. They represent their views, and on the other hand your Honor has advised the jury not to read the newspapers.

MR. HEEN: I am not going to comment on the headlines, whether true or not true. When the time for argument has arrived we will say whether that is true or not true. There is time enough for that, and also time enough for that when the case is given to the jury. I don't know what the Court can do about it or

whether it can order the newspaper to cease publishing that sort of headlines, or to admonish the jury not to read newspapers with such headlines, or, if they do, not to pay any attention to it.

MR. WIGHT: They have already been admonished on this very point. They have been advised and advised and advised, and I think sufficiently advised, even before these articles were published.

THE COURT: Do you happen to have copies of the regular Advertiser editions of yesterday and this morning?

MR. HEEN: We have the one of this morning, "Defense hit by testimony of detective".

THE COURT: What are your views on this matter, Mr. Hewitt?

MR. HEWITT: My views, may it please the Court, might be construed to differ a bit from those of my colleague, Mr. Wight, because fairly and frankly I must confess I feel that the headline to which Judge Heen just referred in drawing a conclusion as to the effect of the testimony that had been taken is improper. I feel that if the Court is of that opinion the situation could be handled by the Court suggesting that possibility to the papers and asking them to desist from drawing conclusions, which are the province of the jury to draw from the testimony that has been brought out.

THE COURT: What would you feel as to the advisability

of not calling this matter to the attention of the jury, and thereby accentuating it, but a further admonition at the close of the case this morning that if possible they refrain from examining the newspaper accounts, particularly if the newspapers do fall under this inspection, and that they be particularly careful to disregard any inferential matter there stated by way of conclusion.

MR. HEWITT: I think that would be a wise course also. I can't feel it is due to any prejudice or malice. It is something we have had in this jurisdiction as long as I am familiar with the judicial proceedings, and I think it is merely a custom which has grown up here which I have from time to time felt was unjustified in a great many instances.

THE COURT: I feel that the best way to handle the matter, rather than bringing it up at this time, is before recess time to again speak of it to the jury. It is a very difficult situation for the Court to handle, as counsel knows, and in the view of the Court it is regrettable.

MR. HEEN: I realize that it is very unfortunate and I commend the attitude of the Attorney-General in this matter by his fairness in regard to it, but I believe, however, we can handle this situation in a matter of fairness both to the Territory and to the defendants by having the jury admonished, without calling their attention to these papers at

the present time,- without calling attention to the headlines,- I suggest that they be admonished as soon as we open this morning to disregard whatever they may have seen in the newspapers, and let us have the benefit of that to whatever extent that may go, because you Honor knows that the human mind cannot disregard certain things that are impressed upon it.

THE COURT: I will so admonish them before we close for recess this morning. Recall the jury, please.

(Jury recalled to court-room and jury-box.)

HELEN K. ROSARIO

was duly called and sworn as a witness for the Territory, and testified as follows:

DIRECT EXAMINATION

By Griffith Wight, Esq.

q What is your name?

a Helen K. Rosario.

q What is your occupation?

a Clerk, police department.

a Is part of your occupation that of a stenographer?

a Yes.

q Did you on or about the 13th day of September, 1931, take down in shorthand a statement of one David Takai, made in the presence of Mr. McIntosh, myself and Mr. Silva of the County Attorney's office?

a I did.

q Have you the shorthand notes of that statement

here?

a Yes, I have

q Will you read the statement?

MR. HEEN: May I inquire of the prosecuting attorney whether that statement was transcribed.

MR. WIGHT: It was, but that particular statement was not signed.

MR. HEEN: Not all statements made by a person accused of crime are admissible in evidence. If it amounts to a confession, very well, and we can inquire as to the voluntary character of that confession, but if it is a statement that does not amount to a confession, certainly it is not admissible. If you have what purports to be a transcription of this testimony we would like to have that.

MR. WIGHT: This is not signed

MR. HEEN: We don't care whether it is signed or not

MR. PITTMAN: "e want to see the statement to see whether we want to object to it.

THE COURT: I think it might be desirable if you could, from this witness, bring out the surrounding circumstances under which the statement was taken.

q Do you remember who was present when the statement was made?

a Yes.

q Who?

a Mr. McIntosh, myself,--

MR. HEEN: I notice she is reading from something. I

don't know whether she is testifying from her recollection or testifying from something else. We have a right to find out whether reading from her memorandum or from memory.

MR. WIGHT: She has already made this statement in answer to my question.

MR. HEEN: We object to the question then as already asked and answered.

q Were there any threats against this man of any kind whatsoever?

a No.

q Any promises whatsoever.

MR. HEEN: Objected to as leading.

THE COURT: Objection overruled.

a No.

q Would you read the statement?

MR. HEEN: We object to that unless counsel assures us this is a confession.

MR. WIGHT: It is a statement, as I said at the beginning of the trial.

MR. HEEN: We object to any statement going into this case that has nothing to do with the case.

THE COURT: If it has not, it will be stricken.

MR. HEEN: But it might go to the jury and prejudice the minds of the jury against the defendant. If counsel has that statement here should he not allow us to look at it so we might object to what should be kept from the jury.

MR. WIGHT: May we have a recess. I will let Mr. Heen read this.

THE COURT: Let him read it now.

(Paper handed to counsel to read.)

MR. HEEN: I think if the witness cannot testify from her own recollection, then they ought to lay the foundation as to whether or not these notes were taken down correctly.

THE COURT: I understand the witness to say,- You are a shorthand reporter?

a No, sir.

THE COURT: You take shorthand?

a Yes, I do.

THE COURT: And the notes which you are about to read is a shorthand record that you took at the time of questions and answers?

a Yes.

THE COURT: And this is a statement of whom?

a Of David Takai.

MR. MURAKAMI: I object to the statement being read in evidence of this witness for the reason that I understand that this is a statement made by David Takai, one of the defendants here, whose identity has never been proved, or any connection with the case whatsoever as to the presence of this man near or at the scene of the crime, and the prosecuting witness herself has not identified him and any statement or admission made by him which is not a

confession or which is about to be read in evidence is immaterial and highly prejudicial.

(Argument)

THE COURT: Objection overruled.

MR. MURAKAMI: May I also state it is not part of the res gestae and hearsay evidence.

THE COURT: Objection overruled.

MR. MURAKAMI: Exception.

MR. HEEN: On behalf of the defendant Ben Ahakuelo and Henry Chang I object to the admission of this testimony upon the ground that any admissions that may have been made by David Takai could have no bearing upon the issues of this case so far as they involve the two defendants whom I represent, and cannot be binding upon them at all.

MR. PITTMAN: Same objection on behalf of my clients. I think that was the understanding.

THE COURT: It was. The jury will be instructed on that matter at the close of the case. Necessarily it is impossible to present all evidence at once and the jury will be instructed as to the proper method to pursue in the matter of evidence which is admissible. Objection overruled.

MR. HEEN: Exception.

THE WITNESS: (Reading) "What is your full name?"

"David Takai."

"What is your nickname?"

"Mack".

"Where do you live?"

"King and Liliha".

"Where do you work?"

"I am not working now".

"Where did you work last?"

"C.P.C."

"You were with these fellows last night?"

"Yes."

"What time did you meet up with the first of these
fellows?"

"About 6:30 to 7 I met one boy."

"Who?"

"Buster."

"Who is Buster?"

"That Japanese boy."

"Where?"

"Kukui street near the undertaking parlors."

"In the booze joint?"

"Yes."

"Who else was with you?"

"Just he and I and we had some drinks."

"What were you drinking? Beer?"

MR. HEEN: What is the word just before "drinks"?

a I have "some".

q You haven't the word "a few"?

a No. (Reading) "What were you drinking, beer?"

"Yes."

q What time did you leave there?"

--

"A little after eight."

"How many of you boys left there?"

"Four of us."

"How many of you drank?"

"Ben drank and the other boys."

"Who was the four?"

"Ben, Buster---"

MR. WIGHT: Wasn't there an expression "Was Henry Chang there?"

a I have that crossed out. "Who was the four?"

"Ben, Buster, Ida and myself.

"When you left that booze joint where did you go?"

"School street."

"Whose place on School street?"

"They said it is Correas's place."

"There was a luau there?"

"Yes."

"What time did you get there?"

"I don't know exactly what time but we left Kukui street a little after eight."

"Did you walk up to Correas's place?"

"No, We went in Ida's car."

"When you got there what did you do?"

"We got off and had some drinks."

"Did you get off the car and go in the house?"

"No, we went in the yard."

"All four of you?"

"Yes."

"What did you have to drink?"

"Beer. I don't know what his name is, but we call him 'Doctor'. I think it is S. P. Correas's son."

"How long did you stay there?"

"Fifteen or twenty minutes."

"And where did you go to after you left Correas'?"

"We went to Waikiki Park."

"How did you get there?"

"Ida's car."

"When you left the house you left on a car?"

"When we went up the park they dropped Ben and I and we went in the dance."

"What happened to Buster and Ida?"

"They went there and we stayed at the dance until it got through, about 12 o'clock. Later on, about 11, Ida, Joe and Henry Chang they came over and got us and we went home with them."

"When you left the dance at Waikiki Park there was Joe, Ben, Henry, Chang and you and Ida?"

"Yes."

"Who sat in front?"

"Ben, and Shorty drove."

"How did you two get to the park?"

"Ida's car."

"He took you out there?"

"Yes."

"When you left the park which way did you go?"

"We came towards in town. We took Kalakaua Avenue

to King and up the new road and turned down Beretania street. We turned up Fort street and went up School."

"Two boys said you went on King street?"

"I don't know."

"If these boys say you went down King street they are lying?"

"I know we went up Beretania Street, turned up Fo&t and turned School and dropped Benjamin home."

"Where did you leave Ben?"

"Around School street."

"Did you boys get off?"

"I stayed outside. Joe and Shorty went in the yard, Henry and I stayed on the car, then they took me down where I stay. I got off."

MR. WIGHT: Di you say anything about any distance in there?

a No.

MR. WIGHT: "I stayed outside and Henry and I stayed in the car." Go on from there.

a "Then they took me down where I stayed and I got off."

MR. WIGHT: Is it "town" or "home"?

a Took me down and I got off.

"Did you see the trouble between the Hudson car?"

MR. WIGHT: Anything in there about "argument"? Go ahead.

"I was about 25 yards away. Then they took me home and they had an argument."

"Did you run up where the trouble was?"

"No, I got off the car and stayed there only for awhile and they had an argument with a woman."

"Who was arguing with the woman?"

"This fellow Joe."

"When you got off the car didn't you jump back on the car again?"

"No."

"After the trouble where did they go?"

"Towards town."

MR. WIGHT: Stop there and skip down.

"What does your father do for a living?"

"He owns a barber shop and my sister is working there."

"You don't work at all?"

"I am not working now. I just got through working. I was going to get my passport tomorrow. I am going up the States."

"From the time you left Waikiki Park after the dance until you left Correa's and Ben got off were the boys with you all the time?"

"Yes."

"They didn't get out of your sight any time?"

"No."

CROSS EXAMINATION

By William H. Heen, Esq.

q Will you go back to the beginning of your notes.

Have you a statement at the beginning of your notes?

a Beginning of this statement?

a Yes.

a "Statement of David Takai."

q Will you read that?

a "Statement of David Takai to Mr. McIntosh in the presence of G. Wight and E. Silva on September 13, 1931."

q Have you "At the detective bureau"?

a I haven't that here.

q Did you make a transcript of your notes?

a Yes, I did.

q Did you give your notes to anyone at all to make

a transcript?

a No, sir.

q Would you recognize this transcript here as being the one you made?

a Yes.

q When did you take these notes?

a On September 13th.

q Is the date there?

a Yes.

q What time?

a I know it was in the evening sometime; I don't remember the time.

q Where, at the detective bureau?

a Yes.

q Were you on regular duty at that time or were you

called specially for this work?

a I was called specially for this work.

q Who asked the questions?

a Mr. Wight.

q Did Mr. Wight ask all the questions?

a If I remember right he did.

q Is it not a fact that one would ask questions and another would come in and ask a question?

a I think Mr. Wight did most of the questioning. If anyone came in, probably Mr. Silva did once or twice.

q But your notes would not show?

a No, my notes would not show.

q Who asked the various questions?

a No.

q Was the statement of Takai the first statement or, rather, the only statement you took that night?

a No, sir.

q You took some other statements?

a Yes, I did.

q As they asked the witness,- Rather, this defendant Takai questions, did they stop at any time and talk among themselves and make some comments, those who were present there?

a I don't remember, Mr. Heen.

q Do you remember whether or not you took every question and every answer down?

a I think I did, those they told me to put down I put down.

q Those they told you to put down?

a Those are the only ones I heard them ask.

q Did they tell you that you put down whatever they told you to put down? - You have just said those they told you to put down you put down. Were there some questions they told you not to put down?" For instance, they would ask a question and tell you to wait a minute?

a No, the only time I waited was probably when he was talking to Mr. Silva. I didn't hear what they were talking about.

q At one point you said you scratched out something.

MR. WIGHT: Just as a matter of helping Mr. Heen out I let Mr. Heen read this. Now I don't think he should take advantage of this statement.

MR. HEEN: It came out on direct.

THE COURT: I think she did say she had struck something out.

MR. WIGHT: I will withdraw the objection.

THE COURT: Do you understand the question?

a Yes.

(Question read by the reporter.)

a Yes, there was on part.

q May I look at your notes of that? When did you scratch that out?

a When I was taking my notes.

a At the time you took your notes?

a Yes.

*Does this
look like
left anything
out of Taha's
statement?*

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q And if you put that in your transcript you made a mistake?

a Probably I did. I don't remember.

q Have you any other notes there which you have scratched out?

a In this statement?

q In that statement?

a No, just a word or two probably that I scratched out is all.

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MR. WIGHT: At this time we should like to call your Honor's attention to a copy of the Hawaii Ho'chi?

THE COURT: This will be taken up in connection with the other matter.

(Recess)

WILLIAM HOOPAI

was duly called and sworn as a witness for the Territory, and testified as follows:

DIRECT EXAMINATION

By Griffith Wight, Esq.

q What is your name?

a William Hoopai.

q What is your occupation?

a Deputy Sheriff, City and County of Honolulu.

q On the morning of September 13, 1931, did you proceed down to the Ala Moana?

a Sergeant Cypher and I.

q Where on the Ala Moana did you proceed to?

a Down to the old animal quarantine station. It is just Ewa of the old dumping grounds.

q What did you do after you got there?

a We drove into this loop, and from the information I got from officer Benton we drove in and stopped at the place where there was a concrete slab, and I thought probably that was the site, so I got off the car.

q What did you do?

a We looked around the place. We found small beads and a hair clasp.

q I show you that, (Handing witness small envelope, Exhibit "G" for identification) Will you look inside of that. Did you find--

a These were the beads. At least I believe these were the beads I found down there. I know because there was a large one, and the rest were smaller ones.

q You found them by this concrete slab?

a Yes.

q What did you do with these beads?

a I turned them over to Mr. McIntosh.

q Did you find anything else at that spot?

a Hair clamp.

q I show you this exhibit for identification "D"?-
Is that it?

q Is that the clamp you found there?

a Yes.

q What did you do with that?

a I turned that over to Mr. McIntosh.

MR. PITTMAN: Where did you find that?

MR. WIGHT: At the same spot he found the beads, he says.

q Point out on the sketch about where you found that?

a (Referring to sketch on the blackboard) This is the Ala Moana, I believe?

q Yes.

a About in here somewhere. There is a little road that cuts across.

q You say there was a concrete slab. Will you draw in that concrete slab and show where you found it?

a If this indicates the concrete slab it is between the concrete slab and the road.

MR. WIGHT: Indicating the same spot indicated by officer Benton.

THE WITNESS: Of course they were not found in the one place.

q In how big an area?

a Two and one-half or three feet in diameter. The slab is back farther. This is not according to scale. The slab, I should say, is about four feet from the edge of the road.

q About what time did you go there, do you know?

a Just dawn. Maybe five or six o'clock in the morning, very early in the morning.

THE COURT: Do you intend to offer those in evidence?

MR. WIGHT: I haven't identified this as being her comb. We will offer the barret and beads in evidence.

(Barret received and marked Exhibit "E" for the Territory, and beads received in evidence and marked Exhibit "G" for the Territory.)

CROSS EXAMINATION

By William H. Heen, Esq.

q How many beads did you find?

a I believe it was five.

q And you kept those together, did you?

a Yes.

q Where did you keep them, at the office?

a I took them right over and gave them to Mr. McIntosh.

q Did you know about the string of beads that this lady was supposed to have before you went down there?

a No, sir; I didn't know a thing.

q What time of the morning was it you went down there?

a As I say, around six o'clock, maybe.

q In the morning?

a In the morning. I know it was before the midnight shift went off their regular shift. They go off at 6:40. It was sometime before 6:40.

q And you said these beads were scattered around there?

a Yes, I used a little stick and dug here and there a little bit. First I found one and we started

to look up some more and then we found this comb.

q This barret?

a Yes.

q Did you look along the road to see whether there were any beads along the road?

a No.

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ARTHUR STAGBAR

was duly called and sworn as a witness for the Territory, and testified as follows:

DIRECT EXAMINATION

By Griffith Wight, Esq.

q What is your name?

a Arthur Stagbar.

q You are detective in the City and County of Honolulu police force attached to the City and County Attorney's office?

a Yes.

q And you were such on the 12th and 13th of September this year?

a I was.

q On Sunday, September 13, 1931, did you see any of these five men? (Indicating the five defendants)

a I saw the five of them.

a Not referring to Mr. McIntosh's office,- did you see them anywhere else besides there?

a Yes, I was with Finnegan when the four were taken to Mrs. Massie's.

q I refer to the police station?

a In the assembly room.

q What do you mean by the assembly room?

a The detectives' assembly room adjoining the office of Mr. McIntosh.

q Was Mr. McIntosh using thar room at that time?

a No, he was using the second office from the assembly room.

MR. WIGHT: Would you mind my drawing a scale on the Board.

MR. PITTMAN: Don't rub out anything.

q (Drawing on blackboard) This is the deputy sheriff's room and this is on the makai side and this is Alahea street.

MR. HEEN: That would be the mauka side?

a Yes.

q And this is the hallway in here of the detective bureau and this is where McIntosh was, and what is this room?

a That evidently was Finnegan's office then.

q And this is the assembly room?

a Assembly room.

q Did you notice anything take place between these defendants in the assembly room on that day?

a Yes, I did.

q What did you notice?

a I noticed Ida making signals to Ahakuelo.

q Had any of these men been talking to McIntosh or

myself?

a No.

q Where were they?

a In the assembly room.

q What did you say you saw them do?

a Ida's making motions to Ahakuelo.

q He walked in the assembly room after being questioned by McIntosh or both of you and sat by the mauka wall near the window; sat down over here.

q "here were you?

a I was in the doorway. I just walked in the door when I noticed it, and Ahakuelo was sitting here near the window.

q What was the signal you saw?

a I didn't see just what Ahakuelo done, but I noticed he nodded his head this way (indicating) and Ida motioned to him by putting his hand up to his mouth this way, and I didn't hear the sound of the word "no" but by the movement of his mouth I think he said the word "no".

q You mean he opened his mouth as though to say "no"?

a Yes, and he motioned like this and like that.

q Did you see any of these defendants at the hospital on the 15th of September, two days afterwards?

a Yes, I did.

q How did they get to the hospital?

a They were taken up there by myself and others, which I believe included you and Mr. McIntosh.

q Do you know how many were taken up?

a Three.

Q Do you know who they were?

a Ahakuelo, Kahahawai and Ida.

q Did you see anything take place up there between the defendants?

a yes, I did.

q Between what defendants?

a Ahakuelo and Ida.

q Where did this take place?

a In the hospital.

q What were they doing?

a They were sitting on their haunches leaning up against the wall. I couldn't see Ahakuelo as he was around the elevator, but Ida was directly in front of me and Ida made motions to Ahakuelo.

q What motions did he make?

a Motions with the hand.

q You don't know what he meant by it?

a Later I asked him what he meant by that, and he said that some of the boys were wrong about the way they came back from town, and he was trying to get it strightened out.

q Town from where?

a From Waikiki Park to town.

q You say he said he made these signals to strighten them out?

a Yes.

CROSS EXAMINATION

By William H. Heen, Esq.

q What time was it that these boys were at the hospital?

a It was Tuesday morning. I don't remember the exact time; somewhere near the noon hour.

q Did you take the boys up there Tuesday morning?

a Yes.

q Did you take all of them?

a I accompanied Mr. Wight, McIntosh, and I believe Machado was up there.

q Did you make a memorandum in writing of the time you took those boys up?

a I didn't at that special time.

q Did you make it later?

a I made it later, but I haven't been able to find it. I made just a scratch note.

q You made that so you could refresh your recollection?

a I did, but I have never found it.

q When did you look for it?

a I have looked for it several times since the trial.

q Why did you look for it?

a To refresh my memory. There may have been other things I put on there that I don't recollect now.

q Did you kind of forget what took place at that time?

a No, not as to what I have testified to. I had other notes on there that I wished to refresh my memory on.

q How many cars went up to the hospital that Tuesday morning?

a I know there was more than one because I had my own up there.

q Were the boys separated going up there?

a I don't remember how they were on the way up, but on the way back I had Ida in the car.

q Were the boys being taken up there for identification?

a I believe it was for that purpose.

q You know it was?

a I couldn't say positively. I wasn't there all the time during the investigation.

q Did you go into the room where Mrs. Massie was?

a I didn't stay in there because I was watching the boys.

q Did you go into that room?

a I went in there on one or two occasions, but didn't stay in there.

q While you were in that room did you hear anybody ask Mrs. Massie to look at those boys to see whether or not she could identify them?

a I remember Ida was placed at the foot of the bed in the position representing the driveway of the car, with his back to Mrs. Massie, and she also took a side-view of him and then he approached the bed; that is approached here, the head of the bed, and she felt of the jacket and jerked away from it.

NR, WIGHT: He jerked away from her?

a She jerked her hand back.

q While she was lying down on the bed he was placed at the foot of the bed with his back towards Mrs. Massie?

a Yes.

q And he was told to turn his face half around?

a Yes.

q What did Mrs. Massie say at that time?

a She didn't say anything.

q And then Ida walked up to where Mrs. Massie was?

a Yes.

q And she felt of the coat?

a Yes.

q Then what did she say?

a Took hold of it and jerked back

q I said "What did she say?"

a I don't believe she said anything, then.

q This memorandum that you made of what you saw at the hospital that morning, where did you keep that memorandum?

a Right in my coat pocket. I usually put all my memorandums in there.

q You put that there about September 14th?

a No, I didn't make that until a couple of days after, probably the 16th or 17th when I made the memorandum.

q And you remember keeping that in your coat-pocket at that time?

a Yes.

q And kept it right along in that coat pocket?

a I never looked for it again until the start of the trial.

q When you wore another coat did you transfer the memorandum from this coat to the other coat?

a Yes.

q And you kept on transferring the memorandum that way?

a Yes.

q Until the trial of this case?

a Every time I changed my clothes.

q Have you memoranda there now?

a I have some.

q And after you use your memoranda do you file them away?

a After the use of them is finished I destroy them.

q You are not very careful about keeping memoranda?

a Not except memorandums where it is necessary to file them away.

q I mean before you use them you are not very careful about keeping your memoranda?

a Yes, I am quite careful.

q But you were careless about this one?

a Not particularly about this one, because it didn't mean anything to me, practically. I remember the distinct features I testified to in this case. The other memorandum were things that go along.

q Did you make a written report of what you saw at that time to your superior officer?

a I made an affidavit, - on an affidavit form.

q With these facts?

a Yes.

q When did you make that affidavit?

a I don't remember the date. I believe it is dated on the statement.

q How soon after you noticed these things was it you made this affidavit?

a I believe it was sometime after.

MR. WIGHT: Would you like to see the affidavit?

MR. HEEN: Yes, please.

(Paper handed to counsel for defendants)

q You stated that when you were in the room at the hospital where Mrs. Massie was and saw Ida there did you see any of the other boys there?

a I don't remember whether they were there together at that particular time, but they were all in there at one time or other.

q Who were these three boys?

a Kahahawai, Ida and Ahakuelo.

q Were you there when Ahakuelo was there?

a I don't believe I was. I believe I just took them in and went out.

q Were you there when Kahahawai was there?

a I don't believe I was.

q So you didn't see Mrs. Massie identify Kahahawai at that time?

a No, I didn't.

q And you didn't see her identify Ahakuelo?

a I don't believe I did.

q You didn't see her identify Ida?

a Not any farther than I have testified to.

q She just felt the coat and said nothing?

a Said nothing in my presence.

q She didn't identify him your presence?

a To my knowledge she didn't. I am almost sure of that.

q In this affidavit you say that on the morning of the 15th of September when Ida, Ahakuelo and Kahahawai were brought to the hospital and after Ida and his leather jacket had been identified I took him in the hallway. Now you say she didn't say anything about the leather-jacket and didn't say anything about it when he was at the foot of the bed?

a As I recollect, since you have read that, she said something either at that time about the leather-jacket feeling like a chamois skin. I believe that was previous to the time she had felt it.

q Do you remember anything else that took place at that time?

a Nothing unless my attention is called to it in some other way.

REDIRECT EXAMINATION

By Griffith Wight, Esq.

q Do you know whether or not we took up Kahahawai to be identified or to take him before Mrs. Massie

in the hope he would break down and tell the truth?

MR. PITTMAN: Objected to as leading.

THE COURT: Objection sustained.

q Was there any other purpose in taking him up there, do you know?

a Yes, there was another purpose, to take him up there and have her identify him in his presence and see if they would break down.

RECROSS EXAMINATION

By William H. Heen, Esq.

q Did they break down?

a Not in my presence.

q Did you hear they had broken down outside of your presence?

MR. WIGHT: Objected to as calling for hearsay.

THE COURT: Objection sustained.

THOMAS J. FINNEGAN

was duly called and sworn as a witness for the Territory, and testified as follows:

DIRECT EXAMINATION

By Griffith Wight, Esq.

q What is your name?

a Thomas J. Finnegan.

q You are a detective on the City and County of Honolulu police force?

a Yes.

q Do you recognize these men here?

(Indicating five defendats)

a Yes.

q One the 13th day of September, 1931, Sunday, did you take any of these men up to the home of Mrs. Massie?

a Yes.

q Which ones did you take?

a I took the man on the end,--No, not the man on the end; took Kahahawai and Ida and Takai.

q All but Ahakuelo?

a All but Ahakuelo.

q When you got there what did you do?

a I went in to see Mrs. Massie.

q Did you see anybody else there?

a There were a gentleman and his wife there; I don't recall the names.

q Where did you see Mrs. Massie?

a She was in her bedroom.

q What did you tell her?

a I went in and told her I had four suspects in the case and I would bring them in and I wanted her to talk to them and if she recognized any of them as her assailants not to say anything to them.

q What did you do?

a The shades were drawn so it would be a little dark, and the four men were lined up, Kahahawai, Chang, Takai and Ida.

q In that order?

a Yes, Ida was on the right.

q Who was nearest the door?

a Kahahawai.

q Kahahawai, Chang, Takai, Ida?

a Yes.

q What did Mrs. Massie do?

a Mrs. Massie came out from her bedroom and sat on a chair and she talked to each one of them.

q Which ones did she talk to?

a She talked to all of them.

q All four?

a Yes. She asked their names, what they had done the night before and where they were.

q And what did they say?

a They all said they were at the dance at Waikiki Park.

q Anything else?

a That was about the talk.

q Whom did she talk to most?

a Chang was one of the principal ones.

q Anybody else?

a Kahahawai she talked to.

q How much did she talk to Takai?

a I don't think she asked Takai anything more than where he was on the night before.

q How about Ida?

a Ida about the same.

q After that what happened?

a The four men were taken out by Stagbar and Corporal Feeley.

q The four men were taken out by Stagbar?

a Yes.

q Did Mrs. Massie make a statement to you?

a She said Ch ng and Kahahawai she was positive were two. She didn't say anything about Takai and wasn't sure of Ida.

q She wasn't sure of Ida and she said she didn't know Takai at all?

a Yes. That was the only part I had in the whole case.

CROSS EXAMINATION

By William H. Heen, Esq.

q About what time of the day was it when you took these boys up to Mrs. Massie's house?

a It would be about two p.m., Sunday afternoon.

q Were they taken up in one car or separate cars?

a Two cars.

q And you drove one of them?

a I drove one.

q Who went up with you?

a I wouldn't say exactly who was in my car.

q Who drove the other car?

a I think Stagbar drove Captain McIntosh's car and I drove the City and County car.

q Were there any marine officers along?

a There was a marine corporal, Corporal Feeley, and Commander Bates of the Naval Patrol.

q When you got up to this place you went in first?

a Yes.

q Did you make a memorandum of the time you went

up there?

a No, sir; I made no notes of the case at all.

q Did you make a memorandum of what occurred up there?

a No, sir, it was all verbal; no memorandum.

q You are just depending on your recollection of what happened?

a I was just asked to take those men up to see as to whether Mrs. Massie could identify them, and I went back and reported to Captain McIntosh as to what happened.

q And you are depending on your recollection only?

a Yes, I could easily remember that. There were only two men identified.

q You were asked to take these boys up there and have Mrs. Massie identify them?

a Yes.

q How was Kahahawai dressed at that time?

a If I am not mistaken, I think Kahahawai had a black or blue sweater on. I would not say for sure, - and dungaree trousers.

q A black or blue sweater?

a I would say yes. I am not sure, but I think that was the way he was dressed.

q Did he have a shirt under his sweater?

a I don't know.

q Did he have a cap?

a I couldn't say that, He didn't have one on when

he was identified, I know that.

q How was Takai dressed at that time?

a I don't recollect how Takai or Chang were dressed.

q How was Ida dressed?

a I think Ida had a white shirt and pants, I think.

I would not be positive as to either.

q Didn't he have a jacket on at that time?

a I wouldn't say for sure. I didn't take any notice of their dress or anything pertaining to their dress.

q Did you have any talk with Mrs. Massie at the police station before you went up there?

a No. That is the only part I had in the case, to take those men up to her to be identified and bring them back, and that ended my part of the case altogether.

q When you went into the home of Mrs. Massie you said that you found her in the bedroom?

a When I went into the home there was a gentleman and his wife there and I asked if I could see Mrs. Massie. This woman went into the room to see if Mrs. Massie could see me, and she came out and said "all right, you can come in".

q What did you say to her at that time?

a I told her I had some men to be identified as her assailants and I would like to have her talk to them and see if she could recognize any of them as her assailants, and I told her if she did recognize them not to say anything until after they

had left. Then she could tell me what she had to say.

q On your direct examination I believe you said you told Mrs. Massie these boys were four suspects in connection with the alleged assault upon her. Just what did you say in that regard?

a That is about what I said; that I had four men who were suspects as her assailants the night before, and I would like to have her talk to them and see if she could recognize any of them or not.

q You told her to talk to them to see if she could recognize their voices,- is that it?

a Yes.

q After you talked to her then the boys were brought into the living room, is that correct?

a Yes.

q And they were made to stand up in front of Mrs Massie?

a Standing up in front of Mrs. Massie.

q What was that order, again?

a Kahahawai, Chang, Takai and Ida. That is from left to right. Kahahawai was close to the door, then Chang and then Takai and then Ida.

q How far was Mrs. Massie from these boys?

a When she sat down she would be six or seven feet and she stood up and looked at them without glasses, and then she held her glasses and looked at them.

q Who pulled the shades down?

a I think the gentlemen who was there or Commander Bates or probably both pulled some down.

q Was that at your suggestion?

a No, I don't think so.

q Was anything said at that time about the pulling down the shades?

a The shades were all pulled down when Mrs. Massie came into the living room.

q They were all pulled down?

a Yes.

q Was there a table lamp that was lit at that time?

a There were no lights that I noticed.

q What kind of front door was there there at that time?

a It was a regular,-- I didn't pay any particular attention to the doors.

q Was the door closed or open?

a The door was closed and the shades on the windows were drawn.

q How about the windows in the dining room?

a I think the dining room and sitting room are all combined.

q Were the shades down in the dining room?

a Yes, the room was quite dark.

q Were the shades down in the dining room?

a I couldn't say whether they were or not, Judge Heen.

q Then what did Mrs. Massie say to the first boy she talked to?

a She asked all of them their names, and where they

were last night.

q "hom did she talke to first?

a I won't say which one she talked to first.

q And she asked all of them their names?

a I am positive she did.

q You are positive of that?

a I won't say yes or no, but I am positive she did, I am positive of the names of three of them, but I can't say as to the fourth.

q Do you remember Mrs. Massie asking Takai "What is your name?" and Takai said "My name is David Takai"?

a I don't remember that.

q Do you remember at that time Mrs. Massie asked David Takai "Are you a Hawaiian?"

a She asked some of they were Hawaiians. I don't know whether she asked him that particularly or not. She asked that question, but which one I don't know. She asked very few questions. Her questions are very few.

q I am not asking whether she asked many questions or few questions. You don't deny, do you, she asked Takai if he was Hawaiian?

a No, I won't deny or affirm it.

q Did she feel the clothes of these boys as that time?

a I don't think so. She may have. I don't think so.

q Did you ask her to feel the clothes of these boys

at that time?

a No, sir.

q When she asked each of these boys where each one was the night before?

a Yes.

q And each of these boys told her they were out at Waikiki Park?

a I won't say the four of them did, but most of them said they were at the Waikiki dance. I won't say all did, but the general answer was that they were at the Waikiki dance.

q Did any of them answer they were at some other place?

a Not to that particular question.

q After they got through talking the boys were dismissed and the boys were taken out?

a Yes.

q And you remained behind?

a I remained behind and talked to Mrs. Massie.

q What did you say to Mrs. Massie?

a I asked if any she identified and she said "yes".

q Did she tell you which ones?

a Yes.

q What did she say?

a Those two on this and were the two she was positive of, and the third she was not sure. In fact the third and fourth she was not sure of, but she was positive without a doubt of the first two, Kahahawai and Chang.

q That is the two men on the left?

a On the left.

q Did she say she recognized their voices at that time?

a That is about all she said. I didn't ask her many questions, as she was in a pretty bad physical condition, and I questioned her as little as possible.

q What did she tell you about the other two boys?

a She said she wasn't sure about the other two. She would not say at that time whether they were two or not.

q Did she say one of the boys had a leather-coat on the night before?

a No, I didn't ask her how they were dressed.

q Did she tell you the kind of clothes the boys wore the night before?

a No, sir.

a You said that this was the only part you had in connection with the investigation of this case?

a That is the only part I had officially in the case. I may have asked the boys a question in passing through, but nothing for record or anything.

q Did you take these boys to the Emergency hospital?

a No, sir. That is the only time I had anything to do with them, was taking them to Mrs. Massie's house and back.

q Isn't it a fact you took these boys down to the

Emergency Hospital and told them to take their clothes off to be examined by the physician there?

THE COURT: What time are you referring to, Judge Heen?

q After the 12th or 13th of September, a day or two afterwards?

a Yes, sir; I was up at the emergency hospital. I do believe I was up there.

q At that time do you remember having these boys take off their underwear or their B.V.D's?

a Yes.

q And do you remember giving instructions to have these boys examined there by the physician?

a Dr. Mossman examined them.

q And your instruction was that he examine their private parts?

a Well, I don't know. I didn't tell him what he should do. I think he was already asked before I was sent up there with him.

q And you made them write down their names at that time?

a No, I wrote their names. That is at the request of Dr. Mossman, on those cards they have at the hospital.

q At that time you ordered these boys to take off their underwear and leave their underwear there?

a Yes.

q Where is the underwear now?

a I couldn't tell you. I have never seen it or heard of it since.

q Isn't it a fact that your instructions to the doctor at that time was to examine the underwear of these boys to see whether or not he could find any traces of semen on them?

a That was not my instructions, but that was the object of the underclothing being taken.

q Have you any report from the doctor whether or not the semen was found on their private parts or underwear?

a Captain McIntosh may have; I don't know.

q Do you know where the underwear belonging to these boys is at the present time?

a No.

q Did you ask Dr. Mbssman at that time if he found any semen on the private parts of these boys?

a I did not ask him.

q Did you ask him at that time or later on whether they found semen on the underwear belonging to these boys?

a No, sir; that was the last I talked to him during the examination.

a Did you ask these boys whether or not the clothes and underwear they were wearing at that time were the same clothes and underwear they had on on the night of September 12th?

a I won't say I asked them, but I am sure I would

have asked them that question. It would be a possible question for me to ask.

q And if you did ask them that they told you they had the same underwear on, didn't they?

MR. WIGHT: Objected to, as he testified he doesn't know he asked the question.

THE COURT: The answer will be stricken. It is conjectural.

q Isn't it your best recollection that you did ask these boys if they had the same underwear when the object was to find out whether they had semen on the underwear or not?

a It is a possible question for me to ask, but I won't say whether I either asked it or not.

q You don't deny you asked that question?

a I don't affirm it either, Mr. Heen.

q Do you remember if you had anything else to do concerning this case?

a I don't think so. Those two parts were where I was asked by McIntosh to do, those, not officially on my part but to help him out. That is why I kept no notes or records of it.

(Recess)

(Relieved by Chillingworth)

1 (Relieving Mr. Jordan at 11 a.m. 11/20/31)

RE-DIRECT EXAMINATION

QUESTIONS BY GRIFFITH WIGHT ESQUIRE:

a Mr. Finnigan, you said in answer to a question Mr. Heen asked you that Ida was on the right of the line. As he faced or as Mrs. Masseur faced?

a To Mrs. Masseur's left.

q He was on the right as he faced but to Mrs. Masseur's left?

a Yes.

MR. WIGHT: That is all.

MR. HEEN: That's all.

L. L. PAGE, a witness called on behalf of the prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY GRIFFITH WIGHT ESQUIRE:

q What is your name please?

a L. L. Pace.

q What is your occupation?

a A Naval Officer.

a On the afternoon, Sunday afternoon, September 13, 1931, were you at the home of Lieutenant and Mrs. Masseur?

a I was.

q Somewhere around one or two o'clock, did anything happen up there?

a Yes.

q Did anybody come there?

a Mr. Finnigan came in the room with the Shore Patrol Officer.

q Who is that?

a Lieutenant Commander Bates.

q Did he have anything to say?

a He said he had four suspects out in the car which he would like to bring in and have Mrs. Masee try to identify them.

q What did he do after that, - or say, - Finnigan.

a He said "I would like to go back and talk to Mrs. Masee for a moment" and he went back to see her.

q Then what happened next?

a They came out of the bedroom.

q Who came out?

a Mrs. Masee and Mr. Finnigan. And they brought in the four people that they had out in the car.

q Now, was anything done before they were brought in?

a Mr. Bates and myself pulled down all the shades in the living room and closed the door.

q What about the dining room?

a Mr. Masee had pulled the shades down there, too.

q Was any electric lights lit at that time or any time while they were in there?

a No.

q What men were brought in; do you know? Look around the courtroom and see if you recognize any of them.

a Four men there (Pointing).

q Do you know which four?

a All except the one on my left. He wasn't there.

q Where did they stand in the room?

a They stood in line in front of the front door.

MR. WIGHT: Indicating four of the defendants with the exception of Ahakuelo back there.

q Which one stood nearest to the door?

a The man in the center.

a Which man stood next to him?

a The man on his right.

MR. WIGHT: The man in the center, indicating Kahahawai; and the man on his right, indicating Chang.

q Who stood next to Chang?

a The man on the right end,- my right.

MR. WIGHT: Indicating Takai.

q Who stood next to him?

a The one next to him on his right.

MR. WIGHT: Indicating Ida.

q Where was Mrs. Masseur?

a She was sitting on a chair.

q Which one was on her left, the way she looked.

a The man in the brown suit.

MR. WIGHT: Indicating Ida.

q What did Mrs. Masseur do or say?

a She began talking to two of them, asking them their names and various questions about where they had been last night.

q You mean two? You mean two as well as the others?

a She began by talking to the man on her right. She went to the next man and she asked those two several questions, talking to them for several moments. She asked the next man on her left one or two questions I believe and then went back to the other two and asked them several other questions.

q What about the man on her extreme left?

a I don't believe she asked him anything.

q The man holding his hands over his stomach?

a I don't recall she asked him anything.

q Do you remember anything else? Any more questions or is that all?

a That's all.

q What did they answer, do you remember?

a They told of where they had been that night. Their names and various vague answers that didn't mean much to me.

q You remember where they said they were?

a I believe one of them said they had been to a dance at Waikiki. I believe two of them said that, as I recall.

q Is that all that you recall of the conversation?

a That's all.

q Now when she finished talking to them, what happened?

a They were taken out of the room.

q You know by whom?

a By a man that I assume to be a detective.

q Then what happened after that?

a After they had gone out of the room, down off the porch, Mrs. Massee said she was sure of the first two,- meaning the first two on her right.

q What about the other two?

a She said she couldn't recall the third one from her right. The fourth she said reminded her of the man who was driving the car.

q Do you remember how that fourth man was dressed?

a He had on a short brown leather-looking jacket.

q You remember how the others were dressed?

a I don't remember.

q You remember,- Do you know whether or not any of them wore a sweater?

a I believe the man on Mrs. Massee's right had a light jersey,- tight fitting jersey.

q You remember the color?

a I don't remember.

q Do you remember whether or not it had sleeves in it?

a I don't remember.

MR. WIGHT: You may cross-examine.

CROSS EXAMINATION

QUESTIONS BY W. H. HEEN ESQUIRE:

q You said that you were in the house of Lieutenant Massee when those boys were brought there?

a Yes.

q The detective came in first, did he?

a Yes.

q And was it before or after he came in that you had all the shades pulled down?

a While he was there.

q Was it at his suggestion that the shades were pulled down?

a It was at Mr. Bates' suggestion.

q Where was Mrs. Massee when the detective came in?

a She was in her bedroom.

q Then the detective spoke?

a Yes.

q What did he say first?

a He said he had four suspects outside that he would like to bring in and have Mrs. Massee endeavour to identify.

q He was addressing who at the time?

a Me.

q And then what did you say in reply?

a I don't recall saying anything.

q What else was said at that time?

a He said that he would like to speak to Mrs. Massee before he brought them in.

q And then what was said after that?

a I told him where Mrs. Massee was and he went back.

q Into the bedroom?

a To see her.

q Did anybody accompany him into Mrs. Massee's room?

a My wife was back there. Either back there with her or was in the room and went back with him. I don't recall which

q Then after that, the boys were brought in. Were the boys brought in before Mrs. Massee came in?

a I'm not sure but I think Mrs. Massee came in and sat down and then they came in, I believe.

q Did you hear what the detective said to Mrs. Massee?

a No.

q Then Mrs. Massee spoke to the man who was on her extreme left first?

a Her right.

q Extreme right.

MR. WIGHT: I object to the "right" as ambiguous. Which right do you mean?

q Her right?

a Her right.

q Who was that person?

a That was the man (pointing), in the center.

MR. HEEN: Indicating Joe Kahahawai.

q What did she say to him?

8

a She asked him various questions; about his name and where he was last night.

q What was the first question she asked him?

a I don't recall.

q What was some of the questions she asked him?

a "What is your name".

q What is your name? Then did he give his name?

a I believe so. He gave some name.

q What other question did she ask?

a "Where were you last night". "Where did you go from there".

Q What did he say to the question "Where were you last night"?

a I don't recall his answer.

q And what was his answer to the question "Where did you go last night"?

a I don't recall his answer.

q Do you recall any other question that she asked him?

a No.

q Alright, then she asked -- Then she questioned the man right next to the first one?

a Yes.

q That would be David Chang, - Henry Chang. The one next to the first on you spoke about?

a Yes.

q And what question did she ask him?

a Very similar questions. What his name was. Where he was last night. Who he was with.

q What reply did he give?

a He gave his name. I don't recall his other answers except the general answer that they had been to a dance.

q Did any of those two boys or any other boys hesitate in their answers?

a Not noticeably.

q Then what question did she ask the next boy in line? Which would be David Takai.

a I suppose she asked him his name.

q The same question? Do you remember whether or not she asked him at that time "are you a Hawaiian"?

a I don't recall that question.

q You recall that question being asked at that time of any of those boys?

a No, I don't.

q You don't deny that having been asked? Do you?

a I don't recall it having been asked.

q You don't deny it or don't affirm it?

a I don't recall it.

q Then what question did she ask of the last boy in line?

a I don't remember of her asking him any questions.

q This is the man here - Ida - the one who was on her extreme left?

a Yes.

q You don't remember any question asked him at all?

a No.

q Now, you stated that she talked more to the first two boys than the other boys.

a She did.

q You remember what the other questions were that she asked of the first two boys?

a I don't recall her questions.

q There was no light in the room at that time? I mean table lamp or electric light lit at that time?

a No.

q Did you get any light into the room at all after the shades were pulled down?

a Yes, the shades were light in color and gave out light.

q Did she, Mrs. Masseur, stand up at any time while asking these boys questions?

a I don't remember of her standing. She may have.

q You remember Mrs. Masseur putting her glasses on her eyes and looking at these boys?

a I believe she had glasses in her hands.

q You remember her using those glasses to look at these boys?

a I think she used them, - put them up to her eyes.

q You are not certain about that?

a No.

q Then after the detective left, - rather after the boys left, Mrs. Masseur made a statement at that time that she was sure of the identity of the first two boys on her right?

a Yes.

q And she said she was not sure of the other two boys?

a She said she had no recollection of the 3rd in line but she believed that the fourth in line was the driver of the car.

q And she told you at that time, did she, that she thought so because he had this brown coat on, - leather-looking coat?

a She didn't say anything about that.

q Did she say that she thought this boy who had the coat on, leather coat on at that time, was the driver of the car because he was short?

a She didn't say why.

q Or did she say that from his facial appearance he looked like the boy that drove the car?

a She didn't say why.

MR. HEEN: That's all, if the court please.

MR. WIGHT: That's all.

MR. HEEN: If the court please, at this time I'll ask counsel to stipulate, if he will, that the report that was brought out yesterday and on which Mr. Cluney noted the time of two-fifty A.M. and three A.M., September 13th, as being the time he arrested Ida, that report said nothing at all or had nothing at all in it concerning this case.

MR. WIGHT: It had to do with the People's case. In other words, Cluney and the other officers were working on the Peoples case and not the Massee case.

MR. HEEN: That was a report solely concerning the Peoples case. That's what I wanted in the evidence.

MR. WIGHT: It was a report concerning the arrest of Ida based on a report by another officer about the Peoples accident.

MR. HEEN: Only. Will you so stipulate?

MR. WIGHT: His remarks of the Peoples case were on that report.

MR. HEEN: And that report contained nothing concerning this case.

MR. WIGHT: I'll so stipulate.

THE COURT: Very well.

MR. WIGHT: May we have a few minutes recess while I confer with Mr. Hewitt, five or ten minutes?

MR. HEEN: Are you on the point of resting?

MR. WIGHT: I don't think I'll finish this morning.

THE COURT: We will stay in session while you confer.

MR. WIGHT: It'll take quite a while. I want to go and 'phone.

THE COURT: Alright, we'll take a recess.

(RECESS)

MR. WIGHT: Your Honor, we move for an adjournment until Monday morning at nine o'clock.

THE COURT: I understand counsel agrees in that.

MR. HEEN: I was just notified about it.

THE COURT: I'm sorry. Mr. Pittman said it was agreeable.

Gentlemen of the jury, by agreement of counsel, the case will be continued until Monday morning. Counsel for both, the

prosecution and the defense, have called to the attention of the court certain articles in certain newspapers in Honolulu with reference to which request was made that a little further be said by the court on the subject. The tenor of those newspaper articles was not identical and no specific reference will be made to them and they will not be expected to be specifically called to your attention. It is a difficult job you have, gentlemen, as I have told you before more than once. You have your own affairs and when you are not in court, go hither and you free and untrammelled,- no detectives on your trial for either side so far as I know. In other words, the court has the fullest confidence in your honesty and your integrity. If I had any doubt about it, I would keep you locked up. On the contrary, we permit you to now go as we have permitted you before to go to your homes and attend to such matters that you need to of your private affairs. We do not attempt to control or keep under surveillance your actions. I stated before, and I repeat that there no duty in the community life which any private citizen discharges more important, if indeed comparable in importance, to the duty of jury service. You are not called often. Many of you have not been called before. Some of you may never be called again in the operation of the chance, as it were, by which the juries are chosen. Some of you have your own affairs which require your thought and attention.

The court has asked and I'll again ask that until this case be terminated that this matter be given you first and foremost thought and attention. I can't ask you, a group of twelve intelligent men, not to read the newspapers. The newspapers are too much a part of our daily life to make such a request as that extending over a period of a week or two. I'll ask you gentlemen kindly not to read any newspaper article relating to this trial whatever the fact may be. The one thing the court doesn't want you to be affected by is comment or opinions either adverse to these defendants or favorable to these defendants. One is as bad as the other. The theoretical idea in the trial of this and in other cases is to secure twelve absolutely honest, absolutely upright, absolutely just men who will listen to the evidence presented in the courtroom, listen to the law as given by the presiding judge and on the bases of those two things, the basis of what transpires here in the courtroom reach a verdict in accordance with the law and the evidence. That is your oath. That is your conspicuous duty. The oath you took when you were sworn in as jurors was to well and truly try and determine this case according to the law and the evidence, so help you God. I have the most complete confidence that that oath has sunk into the innermost being of each of you. You realize the character of the service you are performing and which you will perform. It is a duty not lightly to be discharged. On the contrary it is one which requires the very best that is in you. It is your duty; It is my duty, to disregard so far as it lies

within the confines of human judgment, all extraneous circumstances. It is our duty. We represent many races, many different lines of thought, many different stations in life, but our duty is constant and it is identical and it is to reach a result here which is absolutely fair to the Territory and absolutely fair to the defendants in this case, standing even-tempered and just to the result. Now, if you gentlemen have read those articles, whichever type of articles it may be, I'll ask you, although I am sure you have already done so, to disregard them. Disregard them in the future. I'll ask you during the period of recess not to discuss the case even within the sacred confines of your own home with the members of your family. This is asking a great deal but it is not asking too much. That summarizes one of the conditions of honor, so to speak, upon which we relieve you of the extreme unpleasantness of being locked up like a group of children, under the surveillance of guards, in a hotel during the period of time this case will consume.

MR. PITTMAN: May I ask the court to be sure that this blackboard be preserved. Turning it around to the wall, if need be. It is very important that it remain in status quo.

MR. WIGHT: Can it be locked up in the Clerk's office?

THE COURT: I won't disturb it. Any precautions counsel desire to take with reference to it is entirely agreeable.

MR. [REDACTED] May I ask the other s: lde to have Mr. Benton
Monday morning. I would lik^e to cross examine a little
further to identify the pictures o^f here.

THE COURT: Officer Benton will be present Monday morning
at nine o'clock.

(Adjourned.)