

Honorable E. F. Furber
Chief Justice, High Court of the
Trust Territory of the Pacific Islands
Saipan, Mariana Islands

FEB 8 1963

Dear Judge Furber:

This replies to your letter of January 8 (Serial 12), concerning the use of juries in the Trust Territory. I very much regret my delay in replying to you. It results in considerable part from the difficulties we have encountered in learning the details of the pertinent case and its present status. Earlier this week, however, I attended a meeting on the subject in the office of the Under Secretary of the Army, and I'm therefore now in a better position to reply to you.

First, let me correct a misconception. We know of no "pressure", apart from that of John Hosmer, to introduce juries into the Trust Territory. As you doubtless know, Mr. Hosmer has filed a petition in the Trusteeship Council demanding juries for "the 76,000 natives of the Trust Territory", but we have every reason to suppose that his petition will be without substantial effect. Certainly we are not taking it into account in our own consideration of this matter. We know of no other demand from any source for juries in the Trust Territory at this time.

What I had in mind when I spoke with Mr. Goding some time back is the recent District of Columbia case about which you indicate you have heard rumors. The case is Ikedu v. Kollanara, and there is no reported decision. We have, however, obtained copies of the Findings of Fact and Conclusions of Law, and one is enclosed. The document requires an explanation, relating to the brackets and deletions on the second and third pages. We are told by the Assistant United States Attorney who handled the case in the District Court that the counsel for the petitioner argued that the petitioner, a U. S. citizen, had been denied his constitutional rights in three particulars: (1) the Eykyuan court had not been established by the Congress, (2) he had not been indicted by a grand jury, and (3) he had not been tried by a petit jury. Petitioner's counsel drafted proposed findings and conclusions of law, and his draft was discussed by the judge in his chambers, in the presence of attorneys for both parties. The Assistant United States Attorney stated that the judge had not meant to rule that the court needed to be established by the Congress, and the judge agreed. The judge stated that he had intended to restrict his decision to the grand and petit jury points. Thereupon, he penciled out the language which is shown on the enclosed copy as being within the brackets.

Even with the deleted portions dropped, it seems to us at least unclear as to whether there was a ruling on the constitutionality of the court itself. We are told, however, that the judge and all other participants are perfectly clear that this issue was not the subject of the decision. We have reproduced the Findings of Fact and Conclusions of Law faithfully from a photographed copy of the document on which the judge actually drew the lines and put his signature, with the thought that his intentions become clearer when one reads the words he deleted. The result seems to us extraordinarily unfelicitous at best and ambiguous at worst, but we are glad to regard the case, as all others apparently are doing, as standing for the limited proposition that the U. S. citizen in question was denied his constitutional rights by being deprived of a grand jury indictment and trial by petty jury in the court in the Ryukyus.

The Solicitor General has, in effect, tentatively authorized an appeal. Justice seems inclined to think that the decision of the District Court is probably correct, and thus that the United States would lose an appeal. At this week's meeting, however, Justice indicated that it would take an appeal if the interested departments favor it. The Army, which is of course the most intimately involved, is currently unsure what it wants to do, but its Under Secretary is about to visit Okinawa and expects to learn more while there to enable him to make an intelligent decision. Neither State (which is interested in Okinawa from the foreign relations standpoint) nor Interior expressed any views as to the wisdom of taking an appeal, pending consultation with our own people. I propose promptly to initiate a memorandum, to be sent to both the Solicitor and the Office of Territories, copies of which will go to the Governors, the High Commissioner, Judge Morrow, and you, requesting your views on the matter. I will attempt at that time to state some of the legal and policy questions which seem to me implicit in the matter. On the basis of the reactions we receive, we shall advise Justice what we think ought to be done. Unfortunately, time will as always be of the essence, for Justice needs to act upon the appeal by about March 1.

In a second case, similar to the Ikeda case, which is also a habeas corpus proceeding in the District Court here, the United States has filed a motion for summary judgment. This is Nicholson v. McManara. We understand that the disposition of this case is not likely to occur for at least two months.

Basic to the arguments on behalf of the petitioners in these cases is Reid v. Covert, 354 U. S. 1 (1957), the principal case in the court martial series. I will not attempt to comment intelligently upon the case at this time. As you will realize upon reading it, the bases for the several opinions of members of the court are so disparate as to make it extremely difficult to discern any clear holding. There was no majority opinion. It is worth noting, however, that although they were not overruled, grave doubt was cast by Justice Black on the Insular cases.

I would like soon to have one bit of information from you, which might become material in our consideration. Has any United States citizen ever been a party to a criminal proceeding in any of the Trust Territory courts? We know of no instance, but assume that there is no procedural bar to this. As you appreciate, the Ikeda case is expressly applicable to United States citizens only.

We are of course aware of your enormous interest and professional concern in this subject, and we shall therefore advise you fully of any pertinent developments. You may expect to hear from us further very soon.

Sincerely yours,

(Sgd.) Ruth Van Cleve

Ruth Van Cleve
Assistant Solicitor
Branch of Territories

Enclosure

cc: High Commissioner, Trust Territory of the Pacific Islands
~~Judge Morrow, American Samoa~~

*Territorial
Docket*

VanCleve:fd
2-8-63