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By: NARA NARA Date: 1976

ASANO, SHIMPEI  
et al. (22 SEP 1947)

(VOL. I)

0698

CASE OF  
ASANO, ET AL.  
2nd Carbon Copy, Vol. I.

0699



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

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VS	2-23-48	CINCPACFLT 39 & 40	4767
FROM	DATE		
Director War Crimes, Pacific Fleet (Gualarmanas)	17 Feb 1948		
FILE No.	SERIAL	CINCPACFLT FILE No.	TRACER
A17-19(4)	---	A17-25/48	✓
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Orig & 1	(A)(D)	Listed below	
SUBJECT			

Review of the Record of Trial by a Military Commission of former Rear Admiral  
Shimpei ASANO, I.J.N., et al.

STAFF NUMBER	TITLE	ORD	SYM	DT REC	DT RETD	INIT
00	Admiral					
001	Deputy					
01	Chief of Staff					
7	GenInsPac					
65	Flag Secretary	01				
015	Flag Lieutenant					J
016	PubInfo					
002	Joint Secretariat					
1	Plans					
3	Operations					
4	Logistics					
5	Communications					
6	Administration					
63		4 A	2/2			DVB
60	Fleet Personnel					
70	Fleet Maint.					
75	Fleet Medical					
76	Fleet Dental					
80	Fleet Supply					
	Secret Mail					
	File Yeoman					
	Outgoing Mail					

REMARKS

Encl (A).  
Orig & 2 Vol. 1 & 2  
Orig vol. 3 - 5 of  
Record of Case.  
(B) - (D) Orig & 1

ACTION

Letter has been written  
on this by 63 action  
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Data checked 3/1  
1072-4948  
1948

DETACHED ENCLOSURE

# 203

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SUB-SECTION ROUTING

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A-ACTION I-INFORMATION C-COPY DISTRIBUTED R-RECOMMENDATION K-RETAIN

AL7-19(4)  
02-JDM-rhj

Serial:

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

17 FEB 1948

MEMORANDUM FOR: Commander in Chief Pacific and United States Pacific Fleet.  
Commander Marianas Area.

Subject: Review of the Record of Trial by a Military Commission of  
former Rear Admiral Shimpei ASANO, I.J.N., et al.

Reference: (a) CinCPac/POA Rest. dis. 170150 Dec. 1945.  
(b) CinCPac and U.S. PacFlt Staff Instructions 1947  
paragraph 2 H 3 (c).

Enclosures: (A) Record of subject case (original and three copies; one  
copy for CinCPacFlt and one copy for SecNav for delivery  
to United Nations War Crimes Commission, and one copy  
for Commander Marianas).  
(B) Proposed action to be taken by ComMarianas on subject case.  
(C) Proposed action to be taken by CinCPacFlt on subject case.  
(D) Military Commission Order No. 40, proposed for signature of  
Com Marianas.

1. In accordance with references (a), (b) and verbal instructions  
of Commander Marianas, this brief, which contains my comments and recommendations,  
is submitted.

2. TRIAL:

a. Offenses.

CHARGE I - MURDER

Specification 1.

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval  
Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head  
medical officer of the 41st Naval Guards, NAKASE, Shohichi, then a lieutenant  
commander, IJN, and acting executive officer of the 41st Naval Guards, ERIGUCHI,  
Takeshi, then a dentist ensign, IJN, attached to the 41st Naval Guards, KOBAYASHI,  
Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards  
and others to the relator unknown, all attached to the military installations of  
the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while  
so serving at said military installations, acting jointly and in the pursuance of  
a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline  
Islands, on or about 20 June 1944, at a time when a state of war existed between  
the United States of America, its allies and dependencies, and the Imperial Japan-  
ese Empire, willfully, feloniously, with premeditation and malice aforethought,  
and without justifiable cause, assault, strike, kill and cause to be killed, by  
beheading with a deadly weapon, to wit, a sword, an American prisoner of war, name  
to the relator unknown, said prisoner of war being then and there held captive by  
the armed forces of Japan, this in violation of the law and customs of war.

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Specification 2.

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the 41st Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly with NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the 41st Naval Guards, and others to the relator unknown, and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, wound, strike, kill, and cause to be killed by stabbing with a deadly weapon, to wit, a bayonet, an American prisoner of war, name to the relator unknown, said prisoner of war being then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1.

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, unlawfully, inhumanely, and without justifiable cause, assault, strike, mistreat, torture, and abuse, an American prisoner of war, name to the relator unknown, then and there held captive by the armed forces of Japan, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of the said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, this in violation of the law and customs of war.

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Subject: Review of the Record of Trial by a Military Commission of  
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Specification 2.

In that ASANO, Shimpei, then a captain, IJN, commandant of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commandant of the 41st Naval Guards, to control the operations of members of his command and persons subject to his control and supervision, permitting them to visit cruelties upon, and commit atrocities and other offenses, as hereinafter specified, against American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, in violation of the law and customs of war:

(a) The inhumane and willful mistreatment, without justifiable cause, of an American prisoner of war, on or about 20 June 1944 by cutting and wounding him with instruments, exact description to the relator unknown, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, and others to the relator unknown, all attached to, and serving at, the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(b) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by beheading with a deadly weapon, to wit, a sword, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, ERIGUCHI, Takeshi, then a dentist ensign, IJN, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, and others to the relator unknown, all attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(c) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by stabbing with a deadly weapon, to wit, a bayonet, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, TANAKA, Sueta, then a leading seaman, IJN, and others to the relator unknown, all attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

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Specification 3.

In that ASANO, Shimpei, then a captain, IJN, commandant of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commandant of the 41st Naval Guards, to take such measures as were within his power and appropriate in the circumstances to protect American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan under his command and subject to his control and supervision, as it was his duty to do, in that he permitted the visiting of cruelties upon and the commission of atrocities and other offenses, as hereinafter specified, against said American prisoners of war, by members of his command, and persons subject to his control and supervision, in violation of the law and customs of war:

(a) The inhumane and willful mistreatment, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by cutting and wounding him with instruments, exact description to the relator unknown, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll.

(b) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by beheading with a deadly weapon, to wit, a sword, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(c) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by stabbing with a deadly weapon, to wit, a bayonet, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

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Specification 4.

In that UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving with said 41st Naval Guards, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the acting head medical officer of the said 41st Naval Guards, to take such measures as were in his power and appropriate under the circumstances, to protect two American prisoners of war, names to the relator unknown, then held captive by the armed forces of Japan, and then and there in the custody of the said UENO, at Dublon Island, Truk Atoll, Caroline Islands, as it was his duty to do, in that he permitted the willful killing, without justifiable cause, on or about 20 June 1944, by personnel of the 41st Naval Guards, of one of said American prisoners of war by beheading and one of said American prisoners of war by stabbing, this in violation of the law and customs of war.

b. Pleas, to Charges and Specifications by individual  
accused:

ASANO, Shimpei:

CHARGE I	-	Not Guilty	(R.p. 6)
Specification 1	-	Not Guilty	(R.p. 6)
Specification 2	-	Not Guilty	(R.p. 6)
CHARGE II	-	Not Guilty	(R.p. 6)
Specification 1	-	Not Guilty	(R.p. 6)
Specification 2	-	Not Guilty	(R.p. 6)
Specification 3	-	Not Guilty	(R.p. 6)

NAKASE, Shohichi:

CHARGE I	-	Not Guilty	(R.p. 6)
Specification 1	-	Not Guilty	(R.p. 6)
Specification 2	-	Not Guilty	(R.p. 6)
CHARGE II	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 6)



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UENO, Chisato:

CHARGE I	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 7)
Specification 2	-	Not Guilty	(R.p. 7)
CHARGE II	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 7)
Specification 4	-	Not Guilty	(R.p. 7)

ERIGUCHI, Takeshi:

CHARGE I	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 7)

KOBAYASHI, Kazumi:

CHARGE I	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 7)
CHARGE II	-	Not Guilty	(R.p. 7)
Specification 1	-	Not Guilty	(R.p. 7)

TANAKA, Suetaka:

CHARGE I	-	Not Guilty	(R.p. 8)
Specification 2	-	Not Guilty	(R.p. 7)

c. Findings, on Charges and Specifications with reference to  
each accused:

ASANO, Shimpei:

CHARGE I	-	Guilty	(R.p. 362)
Specification 1	-	Proved	(R.p. 362)
Specification 2	-	Proved	(R.p. 362)
CHARGE II	-	Guilty	(R.p. 363)
Specification 1	-	Proved in part	(R.p. 362)

Proved except the  
words "NAKASE, Shohichi, then a lieutenant  
commander, IJN, and acting executive officer of  
the 41st Naval Guards, KOBAYASHI, Kazumi, then  
a corpsman warrant officer, IJN, attached to the  
41st Naval Guards," which words are not proved.

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Specification 2 - Proved (R.p. 363)  
Specification 3 - Proved (R.p. 363)

NAKASE, Shoichi:

CHARGE I - Guilty (R.p. 363)  
Specification 1 - Proved (R.p. 363)  
Specification 2 - Proved (R.p. 363)

CHARGE II - Not Guilty (R.p. 363)  
Specification 1 - Not Proved (R.p. 363)

UENO, Chigato:

CHARGE I - Guilty (R.p. 363)  
Specification 1 - Proved (R.p. 363)  
Specification 2 - Proved (R.p. 363)

CHARGE II - Guilty (R.p. 363)  
Specification 1 - Proved in Part (R.p. 363)  
Proved except the words "NAKASE, Shohichi, then  
a lieutenant commander, IJN, and acting executive  
officer of the 41st Naval Guards, KOBAYASHI, Kazumi,  
then a corpsman warrant officer, IJN, attached to the  
41st Naval Guards," which words are not proved.  
Specification 4 - Proved (R.p. 363)

ERIGUCHI, Takeshi:

CHARGE I - Guilty (R.p. 363)  
Specification 1 - Proved (R.p. 363)

KOBAYASHI, Kazumi:

CHARGE I - Guilty (R.p. 363)  
Specification 1 - Proved (R.p. 363)

CHARGE II - Not Guilty (R.p. 363)  
Specification 1 - Not Proved (R.p. 363)

TANAKA, Suets:

CHARGE I - Guilty (R.p. 363)  
Specification 2 - Proved (R.p. 363)



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d. Sentences:

ASANO, Shimpei	Death by hanging	(R.p. 369)
NAKASE, Shohichi	Life imprisonment	(R.p. 369)
UENO, Chisato	Death by hanging	(R.p. 369)
ERIGUCHI, Takeshi	Death by hanging	(R.p. 369)
KOBAYASHI, Kazumi	Life Imprisonment	(R.p. 369)
TANAKA, Sueta	Death by hanging	(R.p. 369)

e. Maximum Sentence:

Death

f. Convening Authority:

Rear Admiral C. A. POWNALL,  
United States Navy,  
The Commander Marianas Area.

g. Place of Trial:

The auditorium, Headquarters, Commander Marianas,  
Guam, Marianas Islands. (R.p. 1)

h. Date of Trial:

22 September 1947 to 24 October 1947.  
Arraignment: 22 September 1947 (R.p. 6, 7, 8)  
Sentenced 24 October 1947 (R.p. 369)

3. FORMAL MATTERS:

a. Authority for the Commission to act.

Commission was ordered convened 1 March 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to authority inherent in a Military Commander and as authorized by the Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, (CinCPac Conf. serial 0558 of 8 March 1946) and Military Governor of the Pacific Ocean Area and by the Judge Advocate General of the Navy (JAG Secret desp. 311730 July 1946). The trial was held under authority

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of Naval Courts and Boards, except that the Commission was permitted to relax the rules of Naval Courts to meet the necessities of the trial and use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, and modifications thereof, as necessary to obtain justice.

B. All members of the Commission were present throughout the trial.

c. All members of the Commission, judge advocates, reporters, interpreters and witnesses were sworn (R.p. 1, 4(a), 11). NOTE: Page numbers of numerous witnesses not here given.

d. The charges and specifications were shown to have been served on the accused on 21 July 1947 (R.p. 4(a)).

e. The accused were represented by counsel of their own choice (R.p. 1).

f. The accused challenged the following members of the commission:

(1) Lieutenant Commander Bradner W. Lee, Jr., USNR, on the grounds that:

(a) he was a member of the Staff of the Director of War Crimes, Commander Marianas, during the period of time when this case was being investigated and

(b) that he sat as a member of the Military Commission which tried IWANAMI, Hiroshi, et al, for crimes which occurred at the Forty-first Naval Guard Unit, a unit to which all the accused in this case were attached. It was pointed out that two of the accused in the present case, UENO and NAKASE, appeared as witnesses in the IWANAMI, et al, trial (R.p. 1,2).

(2) Lieutenant Colonel Victor J. Garbarino, USA, Lieutenant Colonel Henry K. Roscoe, USA, and Rear Admiral Arthur G. Robinson, USN, on the grounds that:

(a) they sat as members on the Military Commission which tried IWANAMI, et al, upon charges based on crimes committed at the Forty-first Naval Guard Unit during the period from January 1944 to July 1944.



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(b) during the IWANAMI, et al, trial two of the  
accused in the present case, UENO and NAKASE, appeared as witnesses,

(c) there had been testimony in the IWANAMI, et al,  
trial that the accused UENO (in the present case) had been acting head  
medical officer of the Forty-first Naval Guard Unit and the accused NAKASE  
(in the present case) had been the acting executive officer of that unit  
when the crimes alleged in that case occurred at the Forty-first Naval  
Guard Unit, and

(d) all of the accused in the present trial were  
members of the Forty-first Naval Guard Unit at the time the crimes alleged  
in the IWANAMI, et al, trial occurred (R.p. 2, 3, 4, 4(a)).

Each of the challenged members replied and acknowledged that the  
statements of defense counsel were substantially correct but that they could try  
the present case without prejudice or partiality (R.p. 2, 3, 4, 4(a)).  
Lieutenant Commander Lee further stated that although he was a member of the Staff  
of the Director of War Crimes, Pacific Fleet, he had not personally investigated  
or been interested in the pending case (R.p. 2).

The commission properly denied the challenges (Sec. 388 N.C. & B.  
1937 and JAG's desp. 101635 July 1946).

g. The accused in effect objected to the charges and  
specifications (R.p. 4(a), Prefix I, J, K) on the following grounds:

Objection 1: That the charges and specifications are vague and indefinite  
in that they allege a violation of the law and customs of war but do not state  
the specific law or customs that are violated.

Objection 2: That specifications 1 and 2 of Charge I and specification 1  
of Charge II use contradictory language in that each of these specifications  
allege that the accused were "acting jointly" and "did each and together".

Objection 3: That specifications 1 and 2 of Charge I and specification 1  
of Charge II are too indefinite in that they allege that the accused, together  
with others, performed various acts but do not set forth by whom each particular  
act was committed.

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Objection 4: That the offense set forth in specification 1 of Charge II is of a different nature than those set forth in specifications 2, 3, and 4 of this charge and therefore is improperly included under the same charge.

Objection 5: That specifications 2 and 3 of Charge II state one offense and are therefore duplicative and that specifications 2, 3, and 4 of Charge II are duplicative of specifications 1 and 2 of Charge I.

Objection 6: That the accused are being improperly tried in joinder.

Objection 7: That the prosecution had used improper pleading in joining the accused with "others to the relator unknown."

Objection 8: That the alleged offenses were committed more than two years before the charges and specifications were drawn and the trial of any person for such offenses is therefore barred by the statute of limitations.

Comment on Objection 1: Charge I and Charge II and the specifications thereunder apprise the accused of the offense charged in "simple, accurate and concise language." It is not necessary that the law and customs of war which are alleged to have been violated be set forth verbatim. The commission is empowered to take judicial notice of treaties, statutes, etc., and such matter need not be charged. "Matters of which courts may take judicial notice need neither be charged nor proved." (N.C. & B., Sec. 309).

Comment on Objection 2: Specifications 1 and 2 of Charge I and specification 1 of Charge II follow the form used in alleging similar offenses in previous war crimes cases. (See specifications 1, 2, 4, and 5 of Charge I in case of TACHIBANA, Yoshio, et als approved by SecNav 18 July 1947). The alleged contradictory language namely, "acting jointly" and "did each and together" is in my opinion not materially prejudicial to the rights of the accused and is comfortable to the broad latitude allowed a military commander in the matter of pleading. "It is not necessary that a specification be framed with the technical precision of a common law indictment, so long as it clearly shows jurisdiction in the court over the accused and over the offense with which he is charged, and the latter is sufficiently described to advise the accused of the time and place and circumstances under which it is claimed he committed the crime, to enable him to make any defense he may have." (Sec. 27 N.C. & B; Chap. I Winthrop's Mil. Law, and Precedents, 2nd Ed. Reprint 1920).

Comment on Objection 3: "An indictment charging several defendants, jointly, with murder by striking, beating and drowning, need not show which one or more of them committed the alleged assault." St. Clair v. U.S. (Cal 1894) 154 U.S. 134 S. Ct. 1002, 38 L. Ed. 936.



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Comment on Objection 4: All the specifications under Charge II allege a violation of the law and customs of war and are therefore properly included under one charge. It is true that the offenses of murder alleged in the specifications under Charge I could also have been included under this charge but this has no bearing on the propriety of the specifications under Charge II. As many charges as may be necessary may be preferred, and these specifications were properly laid under the respective charges. (N.C. & B., Sec. 19).

Comment on Objection 5: Specifications 2 and 3 of Charge II allege different offenses in that they each allege the violation of a different and distinct duty placed upon the accused ASANO by the law of war. The further objection that specifications 2, 3, and 4 of Charge II are duplicative of the specifications under Charge I was not well founded and properly overruled. The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence. (N.C. & B., Sec. 19).

Comment on Objection 6: It is true that all of the accused are not included in any one of the specifications but it should be noted that accused ASANO, HAKASE, UENO and KOBAYASHI are involved in both charges. It is the policy of the Navy to try at one trial all the offenses committed by one individual. Section 20 of Naval Courts and Boards provides: "All the charges against the accused should be consolidated into one set of charges, and one trial had upon the consolidated set instead of having two or more trials." In specifications 1 and 2 of Charge I and specification 1 of Charge II a concert of action is alleged involving certain ones of the accused. "A joint indictment may be found where the same evidence as to the act which constitutes the crime applies to all persons indicted and several persons may be indicted jointly for offenses arising wholly out of the same joint act." (U.S. v Interstate Properties, 1946, 153 F 2d 469, 80 U.S. app. D.C. 392.) Because all of the accused are not involved in any one of these specifications it is pointed out that the principle of a common trial, as distinguished from a trial in joinder, in war crimes cases has in practice been adopted by the Allied nations in the international prosecutions at Nuremberg and Tokyo, as well as by SCAP in Class B and C war crimes cases, and by the Commander Marianas Area and the Commander-in-Chief, U. S. Pacific Fleet in cases tried in this area (see case of TACHIBANA, Yoshio et als approved by SecNav 18 July 1947). To have done other than to try the six accused in a common trial would have had the effect of drawing out the prosecution beyond reasonable limits. The conduct of the trial and the findings of the commission show that none of the interests of the accused have been materially prejudiced.

Comment on Objection 7: It was not improper to join the accused with "others to the relator unknown." "When, however, the names of third persons cannot be ascertained, it is sufficient, in some cases, to state 'a certain person or persons to the jurors aforesaid unknown.'" (Bouvier's Law Dictionary, Rawles Third Edition, Vol. I, page 1543. 27 American Jurisprudence, Indictment and Informations, Sec. 82,

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states, "It is the general rule that where the names or identity of persons whom it is necessary to name or identify in the indictment or information are in fact unknown to the grand jury or the prosecuting attorney, it is proper to aver that fact and describe them as persons unknown or as persons whose names are unknown." Citing Durland v. United States, 161 U.S. 306; Coffin v. United States, 156 U.S. 432.

Comment on Objection 8: The offense need not have been committed after any particular date to render the responsible party amenable to trial, but in general should have been committed since or immediately prior to the Mukden Incident of 18 December 1931 (Regs governing the trials of war criminals dated 5 Dec. 1945, issued by SCAP file A.G. 000.5 (5 Dec. 1945); Nazi Conspiracy and Aggression, Vol. 1, P 5; and Potsdam Declaration, para 10). There is no statute of limitations for wilful murder under Federal law (18 U S C A, Sec. 581). An indictment for any offense punishable by death may be found at any time without any regard to any statute of limitations (18 U S C A, Sec. 581a).

The action of the commission in overruling all objections was, in my opinion, correct.

h. The commission found the charges and specifications in due form and technically correct (R.p. 5).

i. The accused were properly arraigned (R.p. 6, 7, 8).

4. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 5, Prefix M) in effect on the following grounds:

1. The crimes alleged were committed on Truk Atoll in July 1944 during a time when this area was controlled by Japan. Thus the commission has no jurisdiction as Truk was outside the sovereignty of the United States.

2. The commission had no jurisdiction over the following five accused: UENO, MAKASE, ERIGUCHI, KOBAYASHI, and TANAKA because they had been demobilized and never properly extradited.

3. That Commander Marianas, as the Convening Authority, had no authority to convene a Military Commission for the trial of offenses committed on Truk prior to the time when that area came under his military control.



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4. The Commission lacks jurisdiction of the offense of Murder alleged in specifications 1 and 2 of Charge I on the ground that common law murder is alleged and there are no common law offenses against the United States.

5. That Neglect of Duty (specifications 2, 3, and 4 of Charge II) is not a crime.

The plea to the jurisdiction was, in my opinion, properly denied (R.p. 5) for the reasons stated in paragraph 6(a) below.

b. The accused made a plea in bar of trial (R.p. 5, Prefix N) on the ground that the alleged offenses had taken place more than three years before the date of the charges and specifications and were therefore barred by the statute of limitations.

The plea in bar of trial was, in my opinion, properly denied (R.p. 5) for the reasons stated in comment on Objection 8 in sub-paragraph 3g above.

c. The accused all pleaded "Not Guilty" to all charges and specifications (R.p. 6, 7, 8).

d. At the close of the prosecution's case, a motion for a directed acquittal for the accused ASANO, NAKASE, and KOBAYASHI was made by defense counsel (R.p. 224, App. X, Y, Z) on the ground that the prosecution had not proved the guilt of these accused beyond a reasonable doubt.

This motion was, in my opinion, properly denied (R.p. 224). "Where there is any evidence reasonably tending to show guilt, it is not error to deny a motion to direct an acquittal." Underhill's Criminal Evidence, Fourth Edition, Sec. 483. Argument of counsel in support of the motion (App. X, Y, Z) does not indicate that a specific request was made for an acquittal on Charge II as to the accused KOBAYASHI but rather was a request for a general acquittal on both charges.

e. At the close of the prosecution's case, defense counsel made pleas in abatement on behalf of all accused on the grounds that (1) the military commission had improperly allowed into evidence, the unverified statements of the accused ERIGUCHI, UENO and TANAKA and also the unverified statement of NAGASHIMA, (R.p. 225, App. AA), (2) the prosecution witness, Lieutenant (jg) Frederick F. Tremayne, lacked authorization to take these statements (R.p. 225, App. BB), (3) the statements were unsworn (R.p. 226, App. CC).

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These pleas were, in my opinion, properly denied (R.p. 225, 226). The statements of the accused ERIGUCHI, UENO and TANAKA were admissions of guilt and therefore confessions. Being confessions it was not necessary that they be verified. "The mere administration of an oath to the accused will not render the confession involuntary...." (Wharton's Criminal Evidence, Vol. 2, Sec. 629). The Commission was within its rights in admitting the unsworn statement of NAGASHIMA, Mitsuo under the relaxed provisions of the SCAP Regulations (Para 5(d)(1)(d)), which it was authorized by the precept to use.

f. At the close of the prosecution's case, defense counsel in effect made a motion to strike from the record the statements of NAGASHIMA, ERIGUCHI, UENO and TANAKA on the ground that affidavits are not properly admissible to prove controverted facts material to the issue. (R.p. 266, App. DD).

This motion was properly denied. The statements were properly admissible on the grounds set forth in "e" above.

g. A motion (R.p. 226, App. EE) was made on behalf of all accused for a mistrial on the ground that the statement of NAGASHIMA, Mitsuo had been improperly admitted into evidence.

This motion was properly denied (R.p. 226) for the reason above stated.

h. Defense counsel requested (R.p. 226, App. FF) that the commission issue a writ of habeas corpus ad testificandum to secure the presence of NAGASHIMA, Mitsuo who at the time was confined in Matsuzawa Psychiatric Hospital, Japan.

This request was, in my opinion, properly denied (R.p. 226). The military commission had no jurisdiction to test the legal process, if any, by which NAGASHIMA was confined to a mental institution in Japan.

i. During the course of the testimony by the various accused, defense counsel made pleas in abatement in behalf of accused ASANO (R.p. 315, 339, App. MM, App. PP), accused UENO (R.p. 339, 357, App. OO, App. QQ), accused NAKASE (R.p. 357, App. RR), accused ERIGUCHI (R.p. 296, App. LL), accused KOBAYASHI (R.p. 315, App. NN) on the ground of misjoinder of parties.

These pleas were, in my opinion, all properly denied by the commission (R.p. 296, 315, 339, 357) for reasons stated in comment on Objection 6 to the charges and specifications above.



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j. Also during the course of the testimony of all the accused, defense counsel made motions many times to strike evidence from the record on the ground that an accused was testifying against one or more of his co-defendants. These motions were all properly denied by the commission. 28 U S C A Sec. 632 (Right of an accused to testify, at his own request, in trials in the United States courts, territorial courts, and courts-martial, etc.) has been interpreted by the courts as enabling one defendant to be a competent witness for or against a co-defendant. "When a defendant chooses to testify, it does not matter whether his testimony is for or against himself or for or against a co-defendant," (Notes on decisions under 28 U S C A, Sec. 632, citing Wolfain v. U.S. (La. 1900) 101F430, 41 C.C.A. 422, Certiorari denied (1901) 21 S. Ct. 919, 180 U.S. 637, 45 L. Ed. 710).

5. EVIDENCE: Briefly summarized the competent evidence is to the following effect:

a. For the prosecution.

On or about 20 June 1944, two American prisoners of war were in the custody of the 41st Naval Guards of the Imperial Japanese Navy on Dublon Island, Truk Atoll (R.p. 47, 120, 156, 187, 197, 280, 343, Exh. 6, Exh. 8). Rear Admiral ASANO was commanding officer of the 41st Naval Guards at this time (R.p. 21, 48, 293, 341, 342). Lieutenant Commander MAKASE was acting executive officer of the 41st Naval Guards at this time (R.p. 49, 90, 293, 324). Lieutenant Commander UENO was the acting head medical officer of the 41st Naval Guards at this time (R.p. 21, 46, 96, 120, 240, 270, 280, 325, 344). The two American prisoners of war had, according to Japanese witnesses, survived a bombing by American planes of their place of confinement on Dublon Island on about 17 June 1944, in which bombing three other American prisoners had died (R.p. 280, 325, 344). A day or so following this bombing the accused UENO had a conversation with the accused ASANO, in which the accused UENO requested permission to perform an operation upon the two prisoners (R.p. 282, 283, 336, 344, 345, 350). The accused ASANO authorized the accused UENO to operate on the two prisoners of war. The operation which the accused UENO intended to perform on the two prisoners, and did perform on one of them, was not for their benefit (R.p. 55, 123, 124), but was to be an educational operation for the benefit of the younger surgeon officers (R.p. 55, 336, 350). Subsequent to the conversation between accused UENO and ASANO, relative to an operation on the prisoners, the two American prisoners of war were executed (R.p. 99, 155, 169, 188, 199, 252, 265, 270), as hereafter indicated. The accused ASANO in effect directed the disposal of the two prisoners (R.p. 56, 59, 73, 81, et seq., 125, 264, 313, Exh. 2, Exh. 4(3), Exh. 6, Exh. 8). Accused UENO, assuming that the directive was from ASANO (R.p. 300), informed Surgeon Lieutenant KINOSHITA that he

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had been ordered to dispose of the two prisoners by the Executive Officer and was going to operate on the prisoners, and that the operation would be of some educational value (R.p. 47), and further he was going to perform research on them (R.p. 47). Accused UENO ordered KINOSHITA to bring the two prisoners to the battle dressing station where he, UENO, would perform the operations on them (R.p. 47). KINOSHITA, with corpsman TSUBOI, Haruo, and three others, brought the prisoners from their place of confinement to the battle dressing station (R.p. 49, 167). One of the prisoners was taken inside the air raid shelter (battle dressing station) and placed on the operating table and the other was left outside (R.p. 49, 168, 200). Accused UENO, thereupon, in the presence of the accused KOBAYASHI and other members of the medical unit, operated on the one prisoner. The right toe nail was removed (R.p. 50, 122, 140), the right thigh was incised and the femoral artery exposed (R.p. 51, 98, 122), the right testicle was incised (R.p. 52, 289, 311) and removed (R.p. 52), an incision was made in the abdomen (R.p. 53, 97, 140), and an incision made in the right breast (R.p. 54, 98, 270). This surgery was not performed for the benefit of the prisoner but for the purpose of research (R.p. 55, 124). While the operation was in progress, accused UENO went outside the battle dressing station and gave orders to NAGASHIMA to "take care of" the prisoner who was left outside the battle dressing station (Exh. 2). This prisoner, the first to be executed (the one outside), was thereupon taken to a spot near the sick bay and executed by bayonetting by TANAKA and four or five others (R.p. 14, 169, 188, 189, 199, 252, Exh. 2, Exh. 4). Accused TANAKA was told by NAGASHIMA, at the scene of the execution of this prisoner, that he, NAGASHIMA, had been ordered by the Commanding Officer and the Executive Officer to dispose of the prisoner (R.p. 259, 264). NAGASHIMA, the senior petty officer in charge of the scene of the first execution, was ordered by accused NAKASE to dispose of this prisoner (R.p. 264, Exh. 2). Accused NAKASE was present at this execution (R.p. 199, 206, Exh. 6). The prisoner who had been operated upon, the second to be executed, was on the order of UENO (R.p. 16, 294) taken to the scene of the first execution and executed by beheading with a sword by accused ERIGUCHI (R.p. 17, 59, 99, 270, 295, Exh. 6) on the order of accused UENO (R.p. 57, 59, 270, Exh. 6, R.p. 294). Accused KOBAYASHI, who was present at the scene of the second execution, showed accused ERIGUCHI how to behead the prisoner (R.p. 18, 39, 155, Exh. 6, Exh. 8). Accused ASANO was present at the beheading of the second prisoner (R.p. 58, 59, 82, et seq., Exh. 6).

The above is summarized as follows:

As to Specification 1 of Charge I. Accused ASANO, UENO, NAKASE, ERIGUCHI and KOBAYASHI acting together on or about 20 June 1944 illegally killed one American prisoner of war on Dublon Island, Truk Atoll, by beheading him with a sword.



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As to Specification 2 of Charge I. Accused ASANO, UENO, NAKASE and TANAKA acting together on or about 20 June 1944 illegally killed one American prisoner of war on Dublon Island, Truk Atoll, by bayonetting.

As to Specification 1 of Charge II. Accused UENO on or about 20 June 1944 at Dublon Island, Truk Atoll, illegally mistreated and tortured one American prisoner of war. Accused ASANO was an accessory before the fact to the alleged mistreatment of the prisoner. There was no evidence that accused NAKASE participated in this operation. Although there was evidence that the accused KOBAYASHI did participate, the evidence was negative relative to his specific knowledge of the illegal nature of the operation prior to his taking overt acts relative thereto.

As to Specification 2 of Charge II. Accused ASANO, the Commandant of the 41st Naval Guards, unlawfully failed to control members of his command, named in the specification permitting them, on or about 20 June 1944, at Dublon Island, Truk Atoll, to unlawfully kill two American prisoners of war and to unlawfully mistreat one of the prisoners.

As to Specification 3 of Charge II. Accused ASANO, the Commandant of the 41st Naval Guards, unlawfully failed, on or about 20 June 1944, at Dublon Island, Truk Atoll, to take such measures as were within his power and appropriate to protect two American prisoners of war.

As to Specification 4 of Charge II. Accused UENO, acting head medical officer of the 41st Naval Guards, unlawfully failed on or about 20 June 1944 at Dublon Island, Truk Atoll, to take such measures as were within his power and appropriate to protect two American prisoners of war.

b. For the Defense.

Accused TANAKA was coerced into stabbing prisoner by HAGASHIMA, the senior petty officer (R.p. 252). Accused TANAKA acted upon superior orders (R.p. 252, 260). Accused ASANO was on an inspection tour of defenses at Mai Jima or Kaede Jima on the day of the executions (R.p. 237). Accused ASANO was not at scene when one prisoner was executed by bayonetting by accused TANAKA (R.p. 252, 253).

Each of the accused took the stand in his own defense and gave testimony, as follows, in his own behalf and in behalf of co-defendants. TANAKA acted on superior orders (R.p. 260). When first ordered to execute the prisoner,

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accused TANAKA refused (R.p. 259). Accused ERIGUCHI acted on superior orders (R.p. 252, 260). Accused KOBAYASHI felt operation on prisoner was to be a "normal" one (R.p. 243, 240). Accused KOBAYASHI took no part in the operation on prisoner (R.p. 241) and did not show anyone how to behead the prisoner (R.p. 242). Operation on prisoner by accused UENO was for following reasons: to correct a paronychia condition of the right big toe (R.p. 287); right thigh was incised and femoral artery exposed in order to make a sulphur injection as treatment for the paronychia condition of right big toe (R.p. 288); right testicle was incised to examine and determine if other (missing) testicle was undescended (R.p. 311); abdomen was cut open to determine whether prisoner had suffered any internal effects from bombing (R.p. 290). Accused UENO did not incise the right breast of prisoner (R.p. 291). Accused NAKASE had no knowledge of the operation performed on the prisoner (R.p. 328, 330). Accused NAKASE did not relay any order from the commanding officer to the head medical officer to dispose of the prisoners (R.p. 328). Accused NAKASE did not order NAGASHIMA to dispose of the prisoners (R.p. 331). Accused NAKASE was not at scene when accused TANAKA executed a prisoner (R.p. 331). Accused ASANO did not issue an order for the disposal of the two prisoners (R.p. 346). Accused ASANO did not give accused UENO permission to perform an experimental operation and dissection on the prisoners (R.p. 351). Accused ASANO was not present at the scene of the beheading of the American prisoner of war by ERIGUCHI (R.p. 346).

6. DISCUSSION:

a. As to jurisdiction:

Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander in Chief, United States Pacific Fleet, in his confidential letter serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a Military Commander. (Appendix D, N.C. & B.; Yamashita v. Styer, 327 U.S. 1).

The accused made a plea to the jurisdiction as indicated in paragraph 4(a)(1) and 4(a)(3) above. It is well established that a military commission convened by authority of the Commander in Chief, Pacific and U. S. Pacific Fleet, and/or any military commander has jurisdiction to try war crimes and accused war criminals (Yamashita v. Styer, 327 U.S. 1; Appendix D, N.C. & B; SecNav Ltr. re War Crimes, dated 13 Jan. 1945, and CinC U.S. Pacific Fleet ltr. serial 2812, dated 6 Apr. 1945).

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The plea referred to in paragraph 4(a)(2) that the commission had no jurisdiction since certain of the accused were not properly extradited cannot be maintained for the Potsdam Declaration of 26 July 1945 provided that "stern justice shall be meted out to all war criminals." The laws of the respective nations relative to the extradition of criminals generally are not applicable in the case of war criminals. This is covered in the report of State War-Navy Coordinating Subcommittee for the Far East dated 12 September 1945 and subsequently issued instructions by the Joint Chiefs of Staff to SCAP. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provide that any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request (a) the name and address of suspected war criminals; (b) the name of command making request; (c) information which constitutes basis for request; and (d) place where suspected war criminal is to be tried. Paragraph 3 of the precept gave the commission jurisdiction of the accused.

The plea referred to in paragraph 4(a)(4) cannot be supported for the law alleged to have been violated is the law and customs of war forbidding the murder or mistreatment of prisoners of war -- not any particular statute of the United States. Article 23(c) of the Hague Convention of 18 October 1907 provides: "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or no longer having any means of defense, has surrendered at discretion."

The plea referred to in paragraph 4(a)(5) is without merit in that it maintains that Neglect of Duty (specifications 2, 3, and 4 of Charge II) is not a crime. It has been recognized that the law of war places an affirmative duty upon responsible officers to protect prisoners of war. Mr. Chief Justice Stone in delivering the opinion of the Supreme Court of the U. S. in the *Yamashita v. Styer* case stated, "The law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates." (*Yamashita v. Styer*, 327 U.S. 1).

b. As to Procedure:

(1) Selection of the Commission followed the approved practice of including Army, Navy and Marine Corps officers as members of the commission (see my memorandum dated 20 February 1946 in the case of Colonel OISHI, et al). Prosecution and defense counsel were duly authorized and appointed by the convening authority.

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(2) The proceedings of the commission, as authorized in the precept, were governed by the provisions of Naval Courts and Boards, except that the commission was permitted to relax the rules for naval courts to meet necessities. The rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (APO 500, 5 Dec 1945 A.G. 000.5), were authorized for use as necessary to obtain justice.

(3) The accused were advised of and accorded all rights prescribed.

(4) The death sentences adjudged as to the accused ASANO, UENO, ERIGUCHI and TANAKA were returned upon concurrence of two-thirds or more of the members of the commission.

(5) The sentences are legal.

c. As to Evidence:

There is sufficient competent evidence to support the commission's findings "proved" and "guilty" relative to all the accused. In connection with the conviction of accused ASANO on specification 2 of Charge I and specification 1 of Charge II, it is pointed out that the record contains little direct evidence to establish an overt act on his part relative to the offenses alleged. There is however strong circumstantial evidence to support the commission's findings.

The commission's findings of "not proved" on specification 1 of Charge II and "not guilty" on Charge II as to the accused KOBAYASHI can be supported on the theory that the members of the commission in weighing the evidence believed that the record contained no positive affirmative evidence that KOBAYASHI had knowledge of the unlawful nature of the operation performed upon the prisoner prior to, or at the time, he participated. The commission's findings of "not proved" on specification 1 of Charge II and "not guilty" on Charge II as to the accused NAKASE is supportable on the grounds of reasonable doubt as the record contains only meager evidence, which was controverted by the defense, to the effect that NAKASE knew of, or participated in, the unlawful operation performed on the prisoner by the accused UENO.

There are, as to be expected, numerous conflicts in the evidence throughout the record. Certain of the accused took the stand in their own defense and flatly denied alleged guilt on their part. It is the duty of the members of the commission, in their capacities as jurors, to weigh the evidence (Sec. 304, M.C. & B.). There is nothing contained in the record to establish that



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any member failed to apply the recognized rules governing the weighing of evidence (Secs. 304 and following, M.C. & B.), or exceeded their allowed discretion in this matter.

d. As to Sentence:

Defendants ASANO, UENO, ERIGUCHI and TANAKA were sentenced to death by hanging. Defendants NAKASE and KOBAYASHI were sentenced to life imprisonment. ASANO, NAKASE and UENO were convicted of the murder of the same two American prisoners of war. ERIGUCHI, KOBAYASHI and TANAKA were convicted of the murder of one American prisoner of war each. Considering these facts alone there appears to be a disparity in the severity of the sentences, as NAKASE, who was found guilty of two murders, was sentenced to life imprisonment, whereas, TANAKA and ERIGUCHI who were convicted of one murder each were sentenced to be hanged.

The sentences adjudged by the commission are in all instances legal. "All war crimes are subject to the death penalty although a lesser penalty may be imposed\*\*\*" (Para 357, War Department Basic Field Manual, FM 27-10). What punishment should be adjudged is, in the first instance, a matter for consideration of the members of the commission and the commission is expected to adjudge an adequate sentence in the cases of all individuals convicted.

In previous reviews of similar war crimes cases, under dates of 25 June 1946 and 27 July 1946, the undersigned pointed out that "In a war crime of this nature it is generally true that it is committed by individuals in several different echelons of command, ranks and rates. Thus an important question is posed as to what should be the quantum of punishment adjudged in the respective cases of the individuals concerned. For the answer to this question there are few precedents to which a commission can turn for guidance. In fact, the precedents are now being established in the war crimes trials being tried throughout the world. In the absence of an established policy by higher authority as to an appropriate schedule of punishments, commissions must rely upon their own judgment in determining what is a just punishment in a particular case. Commissions are in effect authorized to do this by the provisions of paragraph 345.1 of FM 27-10." The substance of this statement is applicable to this case.

There is no doubt that ASANO and UENO, because of their respective positions and parts in the disposal of the two American prisoners of war can be said to be the more culpable. However, the facts and circumstances of the case make it difficult to weigh the degree of culpability of each of the remaining accused. From consideration of all the evidence and circumstances it

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is my belief that accused ERIGUCHI, who was at the time of the offense a dentist ensign, and TANAKA, who was at that time a leading seaman, each illegally executed an American prisoner of war in obedience to superior orders. They were the ones who performed the immediate acts which brought about the deaths of the two prisoners. ERIGUCHI beheaded one prisoner with a sword and TANAKA was the first man in a bayonetting squad to bayonet the other prisoner. There is nothing to indicate that the conduct of either of them was aggravated, that is, there is no indication that either of them held any personal malice toward the prisoners executed, or that in performing their respective parts in the executions unduly tormented, abused or maltreated the prisoners. There is, however, some evidence to the effect that they may have volunteered to perform the executions.

For comparison, a tabulation of sentences adjudged by commissions in this area in similar murder cases involving inferior officers and men, together with the Secretary of the Navy's action thereon follows:

Name and Rank of Accused at time of Offense	Offense	Sentence Adjudged by Commission	Action by the Secretary of the Navy
OISHI, Chisato Col, IJA	Murder 3 POW	Death	Commutated to life
NAKAO, Otokiti Maj, IJA	Murder 1 POW	Death	Commutated to life
TAKARADA, Chojiro Maj, IJA	Murder 1 POW	Death	Commutated to life
FUETA, Kyoshi Lt, IJA	Murder 1 POW	Death	Commutated to life
ABE, Masanaki Capt, IJA	Murder 1 POW	Life	- - -
KADOTA, Yasuyoshi 1st Lt, IJA	Murder 1 POW	20 years (set aside by R.A.)	- - -
MOORI, Yashuo 1st Lt, IJA	Murder 1 POW	Death	Commutated to life
MOTOMURA, Harushi Ens, IJN	Murder 1 POW	20 years	- - -
TANAKA, Yutaka Ens, IJN	Murder 1 POW	Life	- - -
MANAKO, Tatsunichi W/O, IJA	Murder 1 POW	Death	Commutated to life
YOSHIMURA, Tsugio Lt(jg), IJN	Murder 3 POW	Death	Commutated to life
KAWACHI, Mamoru Ens, IJN	Murder 3 POW	Death	Commutated to life
TASAKI, Tadashi Ens, IJN	Murder 3 POW	10 years	- - -
TANAKA, Toshimoto W/O, IJN	Murder 3 POW	Death	Commutated to life
OBARA, Yoshio Capt, IJN	Murder 9 POW	10 years	- - -
NAIKI, Hisakichi Lt, IJN	Murder 9 POW	5 years	- - -
HORIE, Koriku W/O, IJN	Murder 9 POW	5 years	- - -
HIGASHIGI, Seiji Capt, IJA	Murder 2 POW	Life	- - -
IKAWA, Shigeo 1st Lt, IJA	Murder 2 POW	25 years	- - -
SHIMURA, Hisao IdgPvt, IJA	Murder 2 POW	10 years	- - -
KATO, Takemune Col, IJA	Murder 1 POW	Life	- - -



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Name and Rank of Accused at time of Offense	Offense	Sentence Adjudged by Commission	Action by the Secretary of the Navy
YAMASHITA, Maso 1st Lt, IJA	Murder 1 POW	Life	- - -
MORITO, Shoichi LdgPvt, IJA	Murder 1 POW	15 years	- - -
TANIYAMA, Shinosuke LdgPvt, IJA	Murder 1 POW	10 years	- - -
OSHIDA, Takekazu LdgPvt, IJA	Murder 1 POW	15 years	- - -
SATO, Kesakichi 1stLt, IJA	Murder 1 POW	Life	- - -
HAYASHI, Minoru Ens, IJN	Murder 1 POW	15 years	- - -
MASUTANI, Shinichi Ens, IJN	Murder 1 POW	15 years	- - -
NAKAMURA, Shigenobu Corp, IJA	Murder 1 POW	10 years	- - -
KIDO, Matsutaro SupPvt, IJA	Murder 2 POW	8 years	- - -
TAKANO, Masayoshi Sgt, IJA	Murder 1 POW	9 years	- - -
DANZAKI, Tomeroku Lt, IJN	Murder 7 POW	Life	- - -
YOSHINUMA, Yoshiharu Ens, IJN	Murder 7 POW	Life	- - -
SAKAGAMI, Shinji Lt(jg), IJN	Murder 2 POW	Life	- - -
KAMIKAWA, Hidehiro Lt, IJN	Murder 2 POW	20 years	- - -
OISHI, Tetsuo Lt, IJN	Murder 2 POW	20 years	- - -
ASAMURA, Shunpei Ens, IJN	Murder 2 POW	10 years	- - -
YOSHIZAWA, Kensaburo CPO, IJN	Murder 2 POW	15 years	- - -
HONMA, Hachiro CPO, IJN	Murder 2 POW	10 years	- - -
WATANABE, Mitsuo CPO, IJN	Murder 2 POW	10 years	- - -
TANABE, Mamoru CPO, IJN	Murder 2 POW	10 years	- - -
MUKAI, Yoshihisa CPO, IJN	Murder 2 POW	10 years	- - -
KAWASHIMA, Tatsusoburo PO 1/c, IJN	Murder 2 POW	10 years	- - -
SAWADA, Tsuneco PO 1/c, IJN	Murder 2 POW	10 years	- - -
TANAKA, Tokunosuke PO 1/c, IJN	Murder 2 POW	10 years	- - -
AKABORI, Teichiro PO 2/c, IJN	Murder 2 POW	10 years	- - -
KUWABARA, Hiroyuki PO 2/c, IJN	Murder 2 POW	10 years	- - -
TSUTSUI, Kisaburo PO 2/c, IJN	Murder 2 POW	10 years	- - -
NAMATAME, Kasuo PO 2/c, IJN	Murder 2 POW	10 years	- - -
TAKAISHI, Susumu PO 1/c, IJN	Murder 2 POW	10 years	- - -
MITSUHASHI, Kichigoro PO 2/c, IJN	Murder 2 POW	10 years	- - -

From the above it will be seen that no person, convicted of murder (not aggravated), who was at the time of the offense acting in obedience to superior orders or under the supervision of a superior, has been sentenced to death as finally approved.

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With a view to establishing, insofar as practicable, uniformity of punishments for similar war crimes offenses, it is my belief that the death sentences of ERIGUCHI and TANAKA should be commuted to life imprisonment.

Since the power to commute sentences of a courts-martial is not vested in any officer of the Navy but lies within the power of the Secretary of the Navy (N.C. & B., Sec. 481, Appendix D-18; A.G.N., Article 54), it is thought that the Reviewing Authority and the Convening Authority should recommend to the Secretary of the Navy the commutation of the death sentences to life imprisonment in the cases of ERIGUCHI and TANAKA.

e. Generally:

(1) Specifications 2 and 3 of Charge II concerned the accused ASANO alone, and they were all found "proved" against him. These specifications were based on the same circumstances as specifications 1 and 2 of Charge I of which ASANO was convicted and specification 1 of Charge II which was found proved as against him.

Specification 4 of Charge II concerned the accused UENO alone, and it was found "proved" against him. Specification 4 of Charge II was based on the same circumstances as specifications 1 and 2 of Charge I on which UENO was convicted.

In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et als/Al7-20 I (3-19-47) HJH:mas 154578) approved by the Secretary of the Navy, 18 July 1947 (JAG:I:RAS:fld Al7-10/OQ (6/25/47) 154578) the findings on specifications 2 and 3 of Charge II as to ASANO and specification 4 of Charge II as to UENO could be set aside. However, such action is not required as the conviction on these specifications is legal. It is my opinion that any action with a view to setting aside the findings on these specifications should be taken by the final reviewing (confirming) authority if such action is considered warranted by that authority, and not by the Commander Marianas Area or the Commander-in-Chief, U. S. Pacific Fleet.

(2) During the trial the accused and also the judge advocates made various objections to the admissibility of certain evidence. Each of these objections and the rulings of the commission has been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interest of the accused. By the precept the commission was authorized to use



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the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice. Particular attention was paid to the commission's ruling on the objection by defense counsel to the introduction into evidence of the statement of NAGASHIMA, Mitsuo, who the evidence showed was an inmate of a mental institution at the time of trial but not when the statement was made (R.p. 211). The ruling was proper and legal under the relaxed provisions of the SCAP Regulations Governing the Trials of Accused War Criminals. See my comment on the ruling of the commission with reference to the defense objections to a defendant's testifying against one of his co-defendants in 4(j) above.

7. OPINION:

It is the opinion of the undersigned that:

- a. The Military Commission was legally constituted.
- b. The commission had jurisdiction of the persons and offenses.
- c. The evidence supports the findings of "proved" and "guilty" as to all accused on all relative specifications and charges. The lack of evidence warrants the finding of "not proved" on specification 1 of Charge II and "not guilty" as to Charge II as to the accused NAKASE and KOBAYASHI.
- d. The record discloses no errors materially prejudicial to the accused.
- e. The sentences are legal.

8. RECOMMENDATIONS:

It is recommended, (1) that the proceedings and findings of guilty be approved by the Convening and Reviewing Authorities; (2) that the Convening and Reviewing Authorities in effect concur in the acquittal of the accused NAKASE and KOBAYASHI on Charge II by taking no action relative thereto (Sec. 472, N.C. & B.); (3) that the Convening and Reviewing Authorities recommend that the Secretary of the Navy commute the death sentences of ERIGUCHI, Takeshi, and TANAKA, Susta, to life imprisonment; (4) that the record, in conformity with Appendix D-14, N.C. & B., be transmitted to the Secretary of the Navy (Judge Advocate General of the Navy) for revision, record and confirmation of the death sentences as to the accused ASANO and UENO and confirmation or commutation of the death sentences as to the accused ERIGUCHI and TANAKA.

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9. ACTIONS:

Actions designed to carry the above into effect, should they meet with your approval, are submitted herewith as enclosures (B), (C) and (D).

10. The review of this case has been delayed on the request of accused counsel to permit them time to submit additional briefs and petitions in behalf of certain accused. Such briefs and petitions have been reviewed and in my opinion present no new matter affecting the legality of the case. They are being forwarded under separate cover to the Secretary of the Navy by Commander Marianas via the Commander-in-Chief, U. S. Pacific Fleet.

  
JOHN D. MURPHY,  
Rear Admiral, U. S. Navy (Ret.),  
Director War Crimes, Pacific Fleet.



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The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case was ordered convened 1 March 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet (CinCPac conf. serial 0558 of 8 March 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas; and the Judge Advocate General of the Navy (JAG despatch 311730 July 1946). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued 15 July 1947 and served on the accused on 21 July 1947. The trial was held under authority of Naval Courts and Boards, except that the commission was authorized by the precept to relax the rules for naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated 5 December 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, as necessary to obtain justice.

The evidence establishes that two American prisoners of war were illegally killed in June 1944 at Dublon Island by the six accused.

The record shows that three of the accused, namely, ASANO, UENO and NAKASE were convicted on two specifications of murder and that the three other accused, namely, ERIGUCHI, KOBAYASHI and TANAKA were each convicted on one specification of murder. One of those, NAKASE, convicted of two murders was sentenced to life imprisonment. Two of those, ERIGUCHI and TANAKA, convicted of one murder each, were sentenced to death by hanging. The latter two, one of whom was a dentist ensign and the other a leading seaman at the time, performed, in my opinion, the immediate acts which brought about the deaths of the two prisoners in obedience to superior orders. ERIGUCHI actually beheaded one of the prisoners with a sword and TANAKA was the first one in a squad of men to bayonet the other prisoner. While their acts were brutal and unwarranted and unauthorized in law it does not appear that their conduct in carrying out their orders was more severe or aggravated than the nature of their acts and orders required.

The command of a superior neither excuses nor justifies an unlawful act but may be given consideration in determining the culpability of an accused (Para. 345.1, War Department Basic Field Manual, FM 27-10). In view of all the circumstances as indicated in the record the Convening Authority does not believe the culpability of ERIGUCHI and TANAKA equal to that of their superiors who issued the orders. In this connection a review of all previous trials in this area reveals that no person has been sentenced to death, as finally approved, who was convicted of murder which he committed without aggravation while acting in obedience to superior orders.

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In view of paragraphs three and four above and because the Convening Authority believes that the punishment for similar war crimes should, insofar as practicable, be uniform, it is recommended that the Secretary of the Navy commute the death sentences of ERIGUCHI, Takeshi and TANAKA, Sueta to that of life imprisonment. (Sec. 481 N.C. & B. refers).

Subject to the above the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kazumi and TANAKA, Sueta are approved.

ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi and TANAKA, Sueta will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

NAKASE, Shohichi and KOBAYASHI, Kazumi will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

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

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

CinCPacFlt File

c/o Fleet Post Office,  
San Francisco, California

Serial:

The proceedings, findings of guilty, and sentences, and the action of the Convening Authority, in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kazumi, and TANAKA, Sueta, are approved. *and the action of the C-A is approved.*

The Reviewing Authority concurs in the recommendation contained in the Convening Authority's action to the effect that the death sentences of the accused ERIGUCHI, Takeshi and TANAKA, Sueta be commuted from death to life imprisonment.

Prior to the execution of the death sentences adjudged in the cases of ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi and TANAKA, Sueta, the record is, in conformity with Section D-14 Naval Courts and Boards and Chief of Naval Operations serial OLP22 of 28 November 1945, referred via the Judge Advocate General of the Navy to the Secretary of the Navy.

*John L. McCreary*  
DeWitt G. Ramsey,  
Vice Admiral, U. S. Navy,  
Deputy Commander in Chief Pacific  
and United States Pacific Fleet.

ENCLOSURE (C)

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UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

MILITARY COMMISSION ORDER NO. 40.

(In re ASANO, Shimpei, former Rear Admiral, IJN, et al)

1. On 22 September 1947, ASANO, Shimpei, former rear admiral, IJN, UENO, Chisato, former surgeon commander, IJN, NAKASE, Shohichi, former lieutenant commander, IJN, ERIGUCHI, Takeshi, former dentist lieutenant (jg), IJN, KOBAYASHI, Kazumi, former corpsman ensign, and TANAKA, Sueta, former petty officer first class, IJN, were tried and convicted by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGES:

CHARGE I - MURDER (two specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Killed one American POW, name unknown.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-ERIGUCHI KOBAYASHI
2	Killed one American POW, name unknown.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-TANAKA

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR (four specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Mistreatment of one American POW by unnecessary surgery.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-UENO NAKASE-KOBAYASHI
2	Failed to control members of his command permitting them to commit atrocities against two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
3	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
4	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	UENO

FINDINGS: On Charges and Specifications with reference to each accused.

"As to the accused, ASANO, Shimpei:  
The first specification of the first charge proved.  
The second specification of the first charge proved.  
And that the accused, ASANO, Shimpei, is of the first charge guilty.



"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.

The second specification of the second charge proved.

The third specification of the second charge proved.

And that the accused, ASANO, Shimpei, is of the second charge guilty.

"As to the accused, UENO, Chisato:

The first specification of the first charge proved.

The second specification of the first charge proved.

And that the accused, UENO, Chisato, is of the first charge guilty.

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.

The fourth specification of the second charge proved.

And that the accused, UENO, Chisato, is of the second charge guilty.

"As to the accused, NAKASE, Shohichi:

The first specification of the first charge proved.

The second specification of the first charge proved.

And that the accused, NAKASE, Shohichi, is of the first charge guilty.

"The first specification of the second charge not proved.

And that the accused, NAKASE, Shohichi, is of the second charge not guilty; and the commission does therefore acquit the said NAKASE, Shohichi, of the second charge.

"As to the accused, ERIGUCHI, Takeshi:

The first specification of the first charge proved.

And that the accused, ERIGUCHI, Takeshi, is of the first charge guilty.

"As to the accused, KOBAYASHI, Kazumi:

The first specification of the first charge proved.

And that the accused, KOBAYASHI, Kazumi, is of the first charge guilty.

"The first specification of the second charge not proved.

And that the accused, KOBAYASHI, Kazumi, is of the second charge not guilty; and the commission does therefore acquit the said KOBAYASHI, Kazumi, of the second charge.

"As to the accused, TANAKA, Sueta:

The second specification of the first charge proved.

And that the accused, TANAKA, Sueta, is of the first charge guilty."

SENTENCES: The commission on 24 October 1947 sentenced the accused as follows:

"The commission, therefore, sentences him, ASANO, Shimpei, to be hanged by the neck until dead, two-thirds of the members concurring."

"The commission, therefore, sentences him, UENO, Chisato, to be hanged by the neck until dead, two-thirds of the members concurring."

"The commission, therefore, sentences him, NAKASE, Shohichi, to be confined for the term of his natural life."

"The commission therefore, sentences him, ERIGUCHI, Takeshi, to be hanged by the neck until dead, two-thirds of the members concurring."

"The commission, therefore, sentences him, KOBAYASHI, Kasumi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, TANAKA, Susta, to be hanged by the neck until dead, two-thirds of the members concurring."

2. On 7 February 1948, the Convening Authority (Commander Marianas) took the following action (subject to certain remarks and recommendations not herein quoted):

\*\*\*\*the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kasumi, and TANAKA, Susta, are approved.

"ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi, and TANAKA, Susta, will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

"NAKASE, Shohichi, and KOBAYASHI, Kasumi, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

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

cc:

Commander in Chief, Pacific and U. S. Pacific Fleet (3)  
Judge Advocate General, U. S. Navy (3)  
Supreme Commander for the Allied Powers (3)  
Commanding General, U. S. 8th Army, Japan (3)  
National War Crimes Office, Washington, D. C. (3)  
Commanding Officer, Marine Barracks, Guam (3)



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UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

17 February 1948.

MILITARY COMMISSION ORDER NO. 40

(In re SASANO, Shimpei, former Rear Admiral, IJN, et al)

1. On 22 September 1947, SASANO, Shimpei, former rear admiral, IJN, UENO, Chisato, former surgeon commander, IJN, NAKASE, Shohichi, former lieutenant commander, IJN, ERIGUCHI, Takeshi, former dentist lieutenant (jg), IJN, KOBAYASHI, Kazumi, former corpsman ensign, and TANAKA, Sueta, former petty officer first class, IJN, were tried and convicted by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGES:

CHARGE I - MURDER (two specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of accused</u>
1	Killed one American POW, name unknown.	Dublon Island, Truk Atoll.	20 June 1944	SASANO-NAKASE UENO-ERIGUCHI KOBAYASHI
2	Killed one American POW, name unknown	Dublon Island, Truk Atoll.	20 June 1944	SASANO-NAKASE UENO-TANAKA

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR (4 specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of accused</u>
1	Mistreatment of one American POW by unnecessary surgery.	Dublon Island, Truk Atoll.	20 June 1944	SASANO-UENO NAKASE-KOBAYASHI
2	Failed to control members of his command permitting them to commit atrocities against two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	SASANO
3	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	SASANO
4	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	UENO

FINDINGS: On Charges and Specifications with reference to each accused.

As to the accused, SASANO, Shimpei:  
The first specification of the first charge proved.  
The second specification of the second charge proved.  
And that the accused, SASANO, Shimpei, is of the first charge guilty.



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MILITARY COMMISSION ORDER NO. 40 (Continued)

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.  
The second specification of the second charge proved.  
The third specification of the second charge proved.  
and that the accused, ASANO, Shimpei, is of the second charge guilty.

"As to the accused, UENO, Chisato:  
The first specification of the first charge proved.  
The second specification of the second charge proved.  
and that the accused, UENO, Chisato, is of the first charge guilty.

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.  
The fourth specification of the second charge proved.  
and that the accused, UENO, Chisato, is of the second charge guilty.

"As to the accused, NAKASE, Shohichi:  
The first specification of the first charge proved.  
The second specification of the first charge proved.  
and that the accused, NAKASE, Shohichi, is of the first charge guilty.

"The first specification of the second charge not proved.  
and that the accused, NAKASE, Shohichi, is of the second charge not guilty; and the commission does therefore acquit the said NAKASE, Shohichi, of the second charge.

"As to the accused, ERIGUCHI, Takoshi:  
The first specification of the first charge proved.  
and that the accused, ERIGUCHI, Takoshi, is of the first charge guilty.

"As to the accused, KOBAYASHI, Kazumi:  
The first specification of the first charge proved.  
and that the accused, KOBAYASHI, Kazumi, is of the first charge guilty.

"The first specification of the second charge not proved.  
and that the accused, KOBAYASHI, Kazumi, is of the second charge not guilty; and the commission does therefore acquit the said KOBAYASHI, Kazumi, of the second charge.

"As to the accused, TANAKA, Suota:  
The second specification of the first charge proved.  
and that the accused, TANAKA, Suota, is of the first charge guilty."

SENTENCES: The commission on 24 October 1947 sentenced the accused as follows:

"The commission, therefore, sentences him, ASANO, Shimpei, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, UENO, Chisato, to be hanged by the neck until dead, two-thirds of the members concurring.



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"The commission, therefore, sentences him, NAKASE, Shohichi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, ERIGUCHI, Takeshi, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, KOBAYASHI, Kazumi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, TANAKA, Sueta, to be hanged by the neck until dead, two-thirds of the members concurring."

2. On 17 February 1948, the Convening Authority (Commander Marianas) took the following action (subject to certain remarks and recommendations not herein quoted):

\*\*\*\*the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kazumi, and TANAKA, Sueta, are approved.

"ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi, and TANAKA, Sueta, will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

"NAKASE, Shohichi, and KOBAYASHI, Kazumi, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

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

cc:

Commander in Chief, Pacific and U. S. Pacific Fleet (3)  
Judge Advocate General, U. S. Navy (3)  
Supreme Commander for the Allied Powers (3)  
Commanding General, U. S. 8th Army, Japan (3)  
National War Crimes Officer, Washington, D. C. (3)  
Commanding Officer, Marine Barracks, Guam (3)

AUTHENTICATED:

*H. D. Vanston*

H. D. VANSTON,  
Flag Secretary.

0736

FF12/17-10  
02-JDM-fsk  
Serial: 1905

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

17 February 1948.

MILITARY COMMISSION ORDER NO. 40

(In re ASANO, Shimpei, former Rear Admiral, IJN, et al)

1. On 22 September 1947, ASANO, Shimpei, former rear admiral, IJN, UENO, Chisato, former surgeon commander, IJN, NAKASE, Shohichi, former lieutenant commander, IJN, ERIGUCHI, Takeshi, former dentist lieutenant (jg), IJN, KOBAYASHI, Kazumi, former corpsman ensign, and TANAKA, Sueta, former petty officer first class, IJN, were tried and convicted by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGES:

CHARGE I - MURDER (two specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Killed one American POW, name unknown.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-ERIGUCHI KOBAYASHI
2	Killed one American POW, name unknown	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-TANAKA

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR (4 specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Mistreatment of one American POW by unnecessary surgery.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-UENO NAKASE-KOBAYASHI
2	Failed to control members of his command permitting them to commit atrocities against two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
3	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
4	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	UENO

FINDINGS: On Charges and Specifications with reference to each accused.

As to the accused, ASANO, Shimpei:  
The first specification of the first charge proved.  
The second specification of the second charge proved.  
And that the accused, ASANO, Shimpei, is of the first charge guilty.



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02-JDM-fsk  
Serial: 1905

17 February 1948.

MILITARY COMMISSION ORDER NO. 40 (Continued)

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.

The second specification of the second charge proved.

The third specification of the second charge proved.

and that the accused, ASANO, Shimpai, is of the second charge guilty.

"As to the accused, UENO, Chisato:

The first specification of the first charge proved.

The second specification of the second charge proved.

and that the accused, UENO, Chisato, is of the first charge guilty.

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.

The fourth specification of the second charge proved.

and that the accused, UENO, Chisato, is of the second charge guilty.

"As to the accused, NAKASE, Shohichi:

The first specification of the first charge proved.

The second specification of the first charge proved.

and that the accused, NAKASE, Shohichi, is of the first charge guilty.

"The first specification of the second charge not proved.

and that the accused, NAKASE, Shohichi, is of the second charge not guilty; and the commission does therefore acquit the said NAKASE, Shohichi, of the second charge.

"As to the accused, ERIGUCHI, Takeshi:

The first specification of the first charge proved.

and that the accused, ERIGUCHI, Takeshi, is of the first charge guilty.

"As to the accused, KOBAYASHI, Kazumi:

The first specification of the first charge proved.

and that the accused, KOBAYASHI, Kazumi, is of the first charge guilty.

"The first specification of the second charge not proved.

and that the accused, KOBAYASHI, Kazumi, is of the second charge not guilty; and the commission does therefore acquit the said KOBAYASHI, Kazumi, of the second charge.

"As to the accused, TANAKA, Sueta:

The second specification of the first charge proved.

and that the accused, TANAKA, Sueta, is of the first charge guilty."

SENTENCES: The commission on 24 October 1947 sentenced the accused as follows:

"The commission, therefore, sentences him, ASANO, Shimpai, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, UENO, Chisato, to be hanged by the neck until dead, two-thirds of the members concurring.

FF12/.17-10  
02-JDM-fsk  
Serial: 1905

17 February 1948.

MILITARY COMMISSION ORDER NO. 40 (Continued)

"The commission, therefore, sentences him, NAKASE, Shohichi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, ERIGUCHI, Takeshi, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, KOBAYASHI, Kazumi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, TANAKA, Sueta, to be hanged by the neck until dead, two-thirds of the members concurring."

2. On 17 February 1948, the Convening Authority (Commander Marianas) took the following action (subject to certain remarks and recommendations not herein quoted):

\*\*\*the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kazumi, and TANAKA, Sueta, are approved.

"ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi, and TANAKA, Sueta, will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

"NAKASE, Shohichi, and KOBAYASHI, Kazumi, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

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

cc:  
Commander in Chief, Pacific and U. S. Pacific Fleet (3)  
Judge Advocate General, U. S. Navy (3)  
Supreme Commander for the Allied Powers (3)  
Commanding General, U. S. 8th Army, Japan (3)  
National War Crimes Officer, Washington, D. C. (3)  
Commanding Officer, Marine Barracks, Guam (3)

AUTHENTICATED:

*H. D. Winston*  
H. D. WINSTON,  
Flag Secretary.



FF12/A17-10  
02-JDM-fsk  
Serial: 1905

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

17 February 1948.

MILITARY COMMISSION ORDER NO. 40

(In re ASANO, Shimpei, former Rear Admiral, IJN, et al)

1. On 22 September 1947, ASANO, Shimpei, former rear admiral, IJN, UENO, Chisato, former surgeon commander, IJN, NAKASE, Shohichi, former lieutenant commander, IJN, ERIGUCHI, Takoshi, former dentist lieutenant (jg), IJN, KOBAYASHI, Kazumi, former corpsman ensign, and TANAKA, Sueta, former petty officer first class, IJN, were tried and convicted by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGES:

CHARGE I - MURDER (two specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Killed one American POW, name unknown.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-ERIGUCHI KOBAYASHI
2	Killed one American POW, name unknown	Dublon Island, Truk Atoll.	20 June 1944	ASANO-NAKASE UENO-TANAKA

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR (4 specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1	Mistreatment of one American POW by unnecessary surgery.	Dublon Island, Truk Atoll.	20 June 1944	ASANO-UENO NAKASE-KOBAYASHI
2	Failed to control members of his command permitting them to commit atrocities against two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
3	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	ASANO
4	Failed to protect two American POWs.	Dublon Island, Truk Atoll.	20 June 1944	UENO

FINDINGS: On Charges and Specifications with reference to each accused.

As to the accused, ASANO, Shimpei:  
The first specification of the first charge proved.  
The second specification of the second charge proved.  
And that the accused, ASANO, Shimpei, is of the first charge guilty.



FF12/17-10  
02-JDM-fsk  
Serial: 1905

17 February 1948.

MILITARY COMMISSION ORDER NO. 40 (Continued)

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.  
The second specification of the second charge proved.  
The third specification of the second charge proved.  
And that the accused, ASANO, Shimpei, is of the second charge guilty.

"As to the accused, UENO, Chisato:  
The first specification of the first charge proved.  
The second specification of the second charge proved.  
And that the accused, UENO, Chisato, is of the first charge guilty.

"The first specification of the second charge proved in part, proved except the words 'NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards,' which words are not proved.  
The fourth specification of the second charge proved.  
And that the accused, UENO, Chisato, is of the second charge guilty.

"As to the accused, NAKASE, Shohichi:  
The first specification of the first charge proved.  
The second specification of the first charge proved.  
And that the accused, NAKASE, Shohichi, is of the first charge guilty.

"The first specification of the second charge not proved.  
And that the accused, NAKASE, Shohichi, is of the second charge not guilty; and the commission does therefore acquit the said NAKASE, Shohichi, of the second charge.

"As to the accused, ERIGUCHI, Takeshi:  
The first specification of the first charge proved.  
And that the accused, ERIGUCHI, Takeshi, is of the first charge guilty.

"As to the accused, KOBAYASHI, Kazumi:  
The first specification of the first charge proved.  
And that the accused, KOBAYASHI, Kazumi, is of the first charge guilty.

"The first specification of the second charge not proved.  
And that the accused, KOBAYASHI, Kazumi, is of the second charge not guilty; and the commission does therefore acquit the said KOBAYASHI, Kazumi, of the second charge.

"As to the accused, TANAKA, Suota:  
The second specification of the first charge proved.  
And that the accused, TANAKA, Suota, is of the first charge guilty."

SENTENCES: The commission on 24 October 1947 sentenced the accused as follows:

"The commission, therefore, sentences him, ASANO, Shimpei, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, UENO, Chisato, to be hanged by the neck until dead, two-thirds of the members concurring.



FF12/17-10  
02-JDM-fsk  
Serial: 1905

17 February 1948.

MILITARY COMMISSION ORDER NO. 40 (Continued)

"The commission, therefore, sentences him, NAKASE, Shohichi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, ERIGUCHI, Takeshi, to be hanged by the neck until dead, two-thirds of the members concurring.

"The commission, therefore, sentences him, KOBAYASHI, Kazumi, to be confined for the term of his natural life.

"The commission, therefore, sentences him, TANAKA, Sueta, to be hanged by the neck until dead, two-thirds of the members concurring."

2. On 17 February 1948, the Convening Authority (Commander Marianas) took the following action (subject to certain remarks and recommendations not herein quoted):

\*\*\*\*the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shimpei, UENO, Chisato, NAKASE, Shohichi, ERIGUCHI, Takeshi, KOBAYASHI, Kazumi, and TANAKA, Sueta, are approved.

"ASANO, Shimpei, UENO, Chisato, ERIGUCHI, Takeshi, and TANAKA, Sueta, will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

"NAKASE, Shohichi, and KOBAYASHI, Kazumi, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

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

cc:

Commander in Chief, Pacific and U. S. Pacific Fleet (3)  
Judge Advocate General, U. S. Navy (3)  
Supreme Commander for the Allied Powers (3)  
Commanding General, U. S. 8th Army, Japan (3)  
National War Crimes Officer, Washington, D. C. (3)  
Commanding Officer, Marine Barracks, Guam (3)

AUTHENTICATED:

*H. D. VINSTON*  
H. D. VINSTON,  
Flag Secretary.

CASE OF

*ASATO ET AL*

VOLUME 1

SECOND CARBON COPY

0743



Case of

Asano, Shimpei,  
Ueno, Chisato,  
Nakase, Shohichi,  
Eriguchi, Takeshi,  
Kobayashi, Kazumi,  
Tanaka, Sueta.

September 22, 1947

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

VOLUME 1

0744

Asano, Shimpai,  
Ueno, Chisato,  
Nakase, Shohichi,  
Eriguchi, Takeshi,  
Kobayashi, Kazumi,  
Tanaka, Sasta.

**Trial by Military Commission**

at Guam

Marianas Islands

September 22, 1947

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CERTIFIED TO BE A TRUE COPY.

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

0749



TESTIMONY			
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CERTIFIED TO BE A TRUE COPY.

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

0746

EXHIBITS (continued)		
Exhibit	Character of	Admitted in Evidence
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CERTIFIED TO BE A TRUE COPY.

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

0747



A16-2/FF12/  
13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 3785

21 February 1947

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

Subject: Precept for a Military Commission.

1. Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area and further by the specific authority vested in me by the Commander-in-Chief U.S. Pacific Fleet (CinCPac conf. serial 0558, of March 8, 1946), and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas, and by the Judge Advocate General of the Navy (JAG despatch 311730Z, July 1946), a Military Commission is hereby ordered to convene at the Headquarters, Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m. on Saturday, March 1, 1947, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The Military Commission is composed of the following members, any five of whom are empowered to act, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.  
Colonel Vernon M. GUYMON, U. S. Marine Corps.  
Lieutenant Colonel Henry K. ROSCOE, Coast Artillery Corps, United States Army.  
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps, United States Army.  
Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy.  
Commander Charles E. INGALLS, junior, U. S. Navy.  
Lieutenant Commander Bradnor W. LEE, junior, U. S. Naval Reserve, and of Lieutenant David BOLTON, U. S. Navy and Lieutenant James P. KENNY, U. S. Navy, as judge advocates, either of whom is authorized to act as such.

AKIMOTO, Yuichiro, and SUZUKI, Saizo, of Tokyo, Japan, both furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, all of whom are lawyers, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by accused.

A duly accredited native of the Marshall Islands is authorized to participate as an observer in any trial of an accused charged with offenses against Marshallese.

"A(1)"

CERTIFIED TO BE A TRUE COPY

*James P. Kenny*

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

0748

A16-2/FF12/  
13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 3785

21 February 1947

Subject: Precept for a Military Commission.  
-----

3. The Military Commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over offenses and Japanese military personnel now in the custody of Commander Marianas, referred to in the despatch of the Judge Advocate General of the Navy cited in paragraph one (1) above. It shall also have jurisdiction over all persons in the custody of the convening authority at the time of the trial charged with war crimes committed against United States nationals, and any white person whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

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

5. The proceedings of the Military Commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) L3, Subject: "Regulations Governing the Trials of Accused War Criminals," and modifications thereof) as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

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

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

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

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

CERTIFIED TO BE A TRUE COPY:

"A(2)"

CERTIFIED TO BE A TRUE COPY  
*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

0749



FF12/A17-11/(WC-20)  
13-JDM-rhj.

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 11380

22 Apr 1947

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. Robinson, U. S. Navy,  
President, Military Commission, Guam.  
Subject: Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy -  
relief of.

1. Subject officer is hereby relieved as a member of the  
Military Commissions of which you are President, convened by my precepts  
of 15 October 1946 and 21 February 1947, upon the completion of the  
trials already begun and except in the event of revision of cases already  
tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Comdr. R. J. Wallenborn.  
Judge Advocate, Military Commission.  
Judge Advocate, General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

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

"B"

0750

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/117-11/(WC-20)  
13-JDM-rhj

Serial: 11381

22 Apr 1947

From: The Commander Marianas Area.  
To: Rear Admiral Arthur G. Robinson, U. S. Navy,  
President, Military Commission, Guam.  
Subject: Commander Charles E. INGALLS, junior, U. S. Navy -  
relief of.

1. Subject officer is hereby relieved as a member of the  
Military Commission of which you are President, convened by my precept  
of 21 February 1947, upon the completion of the trials already begun  
and except in the event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Comdr. C. E. Ingalls, junior.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

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

"C"

0751



UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/117-11/(WC-20)  
13-JDM-rhj

Serial: 11405

22 Apr 1947

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

1. Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Colonel Vernon M. Guymon, U. S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Lieut. Col. A. A. Poindexter.  
Col. V. M. Guymon.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

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

0752

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/117-11/(WC-20)  
13-JDM-rhj

Serial: 11445

23 Apr 1947

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

Subject: Change in membership of Commission.

1. Major James H. Tatsch, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, hereby relieved.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Lieut. Col. A. A. Poindexter.  
Major J. H. Tatsch.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

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

0753



UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12  
13-JDM-cn

Serial: 12301

7 May 1947

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

Subject: Appointment of a Judge Advocate to Commission.

1. Lieutenant Commander Joseph A. REGAN, United States Navy, is hereby appointed a Judge Advocate of the Military Commission of which you are president, convened by my precept of 21 February 1947.

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

Copy to:

Lieutenant Commander Joseph A. REGAN, USN.

A16-2/FF12  
13-JDM-cn

Serial: 12301

7 May 1947

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

Subject: Appointment of a Judge Advocate to Commission.

1. Lieutenant Commander Joseph A. REGAN, United States Navy, is  
**CERTIFIED TO BE A TRUE COPY:** of the Military Commission of which you  
are president, convened by my precept of 21 February 1947.

*James P. Kenny*

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

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

Copy to:

Lieutenant Commander Joseph A. REGAN, USN.

WFO

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FF12/A17-11/(WC-20)/  
13-MEC-on

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 12973

26 May 1947

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

1. Lieut. Col. William K. LANMAN, Jr., USMC 04681, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Major James H. Tatsch, U. S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc: Lt. Col. W.K. Lanman, Jr.  
Major J.H. Tatsch,  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

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

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FF12/A17-11/(WC-20)/  
13-JDM-rhj

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial 17497

29 Aug 1947

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

Subject: Change in membership of Commission.

1. Major Joseph T. SMITH, junior, U.S.M.C., 08191, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Ltut. Col. William K. LANMAN, junior, U.S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. POWNALL,

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

cc: Major J. T. Smith, Jr.  
Lt. Col. W. K. LANMAN.  
Judge Advocate, Military Commission.  
Judge Advocate, U.S. Navy.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny*

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

"H"

0756

**OBJECTION TO THE CHARGES AND INVESTIGATIONS DELIVERED BY**

**MR. KUNATA, H.M.A.**

**Original document in Japanese prefixed to the original record.**

**Certified translation prefixed herewith marked "J".**

0757



Objections to the Charges and Specifications in the case of Captain ASANO, Shimpei, I.J.N., and others, et al delivered by KUWATA, Hideo Defense Counsel on September 22nd, 1947.

All the accused object to the charges and specifications for the following reasons.

1. Objection common to all the charges and specifications.

Throughout all the charges and specifications, it is alleged that the acts of the accused are in violation of the law and customs of war. However, what law and what customs they violated are not shown in a concrete manner. This is prejudicial to the substantive rights of the accused, because they are precluded from preparing a proper defense, unless they are fully apprised of the law and customs which they are alleged to have violated.

Not only is this way of specification prejudicial to the substantive rights of the accused, but also it is obviously violative of Section 27 of Naval Courts and Boards, which reads: "It is not essential to state in a specification that an offense was committed in breach of any Federal statute, articles of the government of the Navy, law of the State in which the court is sitting, or general regulation, as the court takes judicial notice of such statute, article, state law, or regulation under which the charge is laid, but whenever the offense comes directly under any enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other facts."

While it is obvious that the law and customs of war which the accused are alleged to have violated cannot be any Federal statute of the United States of America, much less article, State law or regulation, because the accused who are the Japanese nationals should not be tried and adjudged in the light of American laws and customs for the offenses committed at the place constituting a part of the Japanese territory at the time of the action. Hence, we cannot but consider that the law and customs of war which they are alleged to have breached are the international law and international customs, which are not within the realm of the laws and customs of the U.S.A. when they are viewed from the standpoint of the legal system of the United States of America. Consequently, the charges and specifications of the present case are clearly in breach of the above mentioned rule stated in Section 27 of Naval Courts and Boards, because the law and customs of war which the accused are alleged to have violated, are not set forth in verbatim therein.

II. Objection to each specific charge and specification.

1) Objection to each Specification of Charge I and Specification 1 of Charge II

a) Throughout the above-mentioned Specifications, the term "acting jointly" and that of "did each and together" are used concurrently. But these terms are contradictory to each other. Particularly, the term "acting jointly" is quite inconsistent with the term "did each". If the accused acted jointly in perpetration of the alleged offenses they cannot each have done them. On the contrary, if the accused did each do the alleged offenses, they cannot have acted jointly. Consequently one or the other of the above mentioned two terms should be eliminated from the specifications.

*[Signature]*  
Lieutenant, U. S. Navy  
Judge Advocate.

"J (1)"

0758

b) Specification 1 and 2 of Charge II allege that the accused together with others to the relator unknown did assault, wound, strike, kill and cause to be killed American prisoners of war by beheading with a sword or by stabbing with a bayonet, and Specification 1 of Charge II alleges that the accused together with others to the relators unknown did assault, strike, mistreat, torture and abuse an American prisoner of war by conducting surgical explorations in and upon the live body of the said prisoner. Does this mean that each of the accused committed all these acts such as assault, strike, wound, mistreat, torture, abuse, kill and cause to be killed? This is not conceivable, because, for instance, it is quite evident that no man can kill and cause to be killed another person at the same time at the same place. It can be safely concluded, therefore, that each of the accused did one or more, but not all of the above mentioned acts. It should be clearly shown in the specifications, which of one accused did which of these acts. Otherwise, the accused cannot understand with what action they are charged, and thus they are prevented from full preparation of their defense. This is most prejudicial to the substantive rights of the accused.

2) Objection to Specification 1 of Charge II

Charge II is labeled "Violation of the law and customs of war", but Specification 1 of charge II is quite different, in its nature, from the other specifications of the same charge; in the former, the accused are charged with such positive actions as assault, strike, mistreat, torture and abuse, while in the latter the accused Asano, Shimpei, and Ueno, Chisato are charged with neglect of duty in that they did unlawfully disregard and fail to discharge their duty, ASANO, Shippei as the Commanding Officer of the 41st Naval Guards, and UENO, Chisato as the acting head Medical Officer of the same Guards.

There is a vast difference in nature between an offense constituted by willful commission of a certain act and that constituted by negligent omission of a certain duty legally imposed upon a person. Neglect of duty consisting of negligence in its subjective aspect is quite different in its nature from the offense alleged in Specification 1 of Charge II which is constituted by willful commission of criminal acts. Furthermore, the other specifications of the same charge are concerned with only ASANO, Shimpei or UENO, Chisato, while in this specification NAKASE, KOBAYASHI and some others are alleged together with ASANO and UENO. Such a way of specification laying offenses of a different nature under the same charge violates the rule of Section 23 of Naval Courts and Boards, which reads, "Care should be exercised to insure that offenses of a different nature are not laid under the same charge". Therefore, Specification 1 of Charge II should be excluded from Charge II and laid under a separate charge. If it is asserted that Specification 1 of Charge II is of the same nature as the other specifications of the same charge on the ground that they are all in violation of the law and custom of war, the assertion will be rebutted in such a way as Charge I is also in its nature in violation of the law and customs of war, and yet it is separately charged from Charge II. So long as the murder is alleged under the separate charge, the offense in Specification 1 of Charge II should be also alleged under a separate charge.

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"J (2)"

*James E. Henry*  
JAMES E. HENRY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

0759



3) Objection to Specification 2 and 3 of Charge II.

It is alleged in Specification 2 of Charge II that ASANO, Shimpei did unlawfully disregard and fail to discharge his duty to control the operation of members of his command and persons subject to his control and supervision, while Specification 3 of Charge II alleges that ASANO, Shimpei did unlawfully disregard and fail to discharge his duty to take such measures as were within his power and appropriate under the circumstances to protect American prisoners of war, as it was his duty to do. This should be clearly considered as duplication of allegation. Because, both of them alleges the neglect of duty on the part of ASANO, Shimpei as the Commandant of the 41st Naval Guards, while ASANO's neglect of duty as the commandant of the 41st Naval Guards is just one, and should never be divided into two or more. Moreover, the commission which constitutes the neglect of duty on the part of ASANO, Shimpei is completely identical in these two specifications, namely, in that he permitted the visiting of cruelties upon, and the commission of atrocities and other offenses against American prisoners of war by the members of his command and persons subject to his control and supervision. This clearly charges the identical neglect of duty from two different standpoints; one as the supervision of his subordinates, and the other as the administrator of the official installation of the 41st Naval Guards.

If the accused is held responsible in duplicate for the commission of an unlawful act or the omission of one legal duty, it is clearly violative of the basic principles of criminal jurisprudence and most prejudicial to the rights of the accused.

For the reasons stated above, it is firmly asserted that Specification 2 and Specification 3 of Charge II should be consolidated into one specification.

4) Objection to Specification 4 of Charge II

Specification 4 of Charge II alleges the neglect of duty on the part of the accused UENO, Chisato, while Specification 2 and 3 of the same charge do the same of the accused ASANO, Shimpei. The offenses alleged in these specifications are of the same nature in that they are neglect of duty. We admit that Section 23 of Naval Courts and Boards states, "Different offenses, however, if of the same nature, should be included in separate specifications under the same charge." This is applicable, however, only to the case where a criminal committed two or more different offenses of the same nature, and it should not be extensively construed as applicable to the case where two or more persons perpetrated different offenses of the same nature. Because such a way of interpretation is most prejudicial to the substantive right of the accused.

By the reasons stated above, the accused objects to the charges and specifications preferred against them.

KUWATA, Hideo

I certify the above consisting of three (3) typewritten pages to be a true and complete translation of the original argument to the best of my ability.

CERTIFIED TO BE A TRUE COPY

EUGENE E. KERRICK, Jr.,  
Lieutenant, USNR.

"J (3)"

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

0760

Objection to the Charges and Specifications in the case of Asano, Shimpei; Ueno, Chisato; Nakase, Shohichi; Eriguchi, Takeshi; Kobayashi, Kazumi; Taraka, Sueta, Imperial Japanese Navy, delivered by Martin E. Carlson, Commander, USNR, Defense Counsel on Monday, September 22, 1947, before the Military Commission convened by the Commander Marianas Area, at Guam, Marianas Islands.

All of the accused object to the charges and specifications for the following reasons:

First, the accused object to the trial in joinder. Section 17, Naval Courts and Boards reads: "Trial in joinder - Accused persons will not be joined in the same charge and specification unless for concert of action in an offense.

"The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge."

C.M.O. 77-1919 states the rule as to when joint trial should not be held. Trial in joinder: When joint trial should not be had.

"The mere fact the several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge. Thus where two or more persons in the naval service take occasion to desert or absent themselves without leave, in company but not in pursuance of a common unlawful design and concert, the case is not one of a single joint offense, but of several separate offenses of the same character, which are no less several in law though committed at the same moment."

"File 26262-5714, G.C.M. Rec. No. 41468."

C.M.O. 1-1929 reads: "It is well settled that the necessary elements for a joint charge and joint trial are that the offense must be one that is not in its nature several, and that there must exist a conspiracy or concert of action.

In Digest of Opinions of the Judge Advocate General of the Army (1901) p. 201 it is stated: Properly warrant the joinding of several persons in the same charge and bringing them to trial together thereon, the offense must be such as required for its commission, a combination of action and must have been committed by the accused in concert or in pursuance of a common intent...."

In C.M.O. 4-1931 pp. 13-14, the JAG held: "Parties to the particular offense alleged under the charge: "Striking another person in the Navy", may, under certain circumstances, namely, where common unlawful design, concerted action, or conspiracy are involved, be properly joined; but a trial in joinder cannot properly be had unless these circumstances are alleged to have obtained ....., the mere fact that several persons happen to have committed the same offense at the same time does not authorize them being joined in the charge. (See also File: A17-9 (3) EN4 (211227) July 23, 1928.

(2) In view of the foregoing, the proceedings, findings, and sentence were set aside."

We hold that the allegations: "acting jointly and in pursuance of a common intent, did, each and together, " is a mere conclusion of the pleader in this present case.

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*James P. Kenne*  
JAMES P. KENNE  
Lieutenant, U. S. Navy  
Judge Advocate.

"K (1)"

0761



We specifically object to those words in specification 1 and 2 charge I and in specification 1 of charge II and move these words be stricken from the specification.

Wintrop's Military Law, P. 208 states: "But whenever the offense is, in its nature, several there can be no joinder."

In foot note 3 on page 208, Wintrop quotes Hawkins, c 25, 389, as follows: Where the offense indicated doth not wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant, without which it would be no offense, ..... the indictment must charge them severally and not jointly."

We hold that the defenses of these joint defendants are antagonistic and it is therefore proper to grant a severance. In support of this we cite Wharton's Criminal Procedure Vol. I page 411 and Wharton cites the following cases: Ala - Hawkins v. State, 25 Ala. 41, 111.- Maton v. People, 15 Ill. 536; Me.- State v. Soper, 16 Me. 293, 33 am Dec 665. Mass. (1 Gray) 555; Miss.- Mask v. State, 32 Miss. 405; Tenn.- Roach v. State, 45 Tenn. (5 Cold) 39; Fed. U.S. v. Marchant, 25 U.S. (12 Wheat.) 480, 6 LED.700; U.S. v. Kelly, 4 Wash. c.c. 528, Fed. Cas. No 15516.

In Texas this is so by statute.- Wiby v. State, 22 Tex. App 408, 3 S. W. 570.

Wharton's Criminal Procedure vol. I page 411 states;

"Where the defenses of joint defendants are antagonistic, it is proper to grant a severance. And this is eminently the case where one joint defendant has made a confession implicating both, and which the prosecution intends to offer on Trial. Citing Com v James 99 Mass, 438. This present case is exactly in point and we move that the commission quash the charges and specifications.

Not only are Asano, Ueno, Nakase, Eriguchi, and Kabayashi joined in specification one of charge I to the prejudice of each one individually but these five accused are joined with "others to the relator unknown". This joining of these five accused with others not even known to the prosecution is certainly vague as to members and as to persons. All of these five accused should be informed who these others are. It is not for the accused to have to prove the specifications are correct and sufficient when the accused are described as "others to the relator unknown". It is however prejudicial to the accused here in court today.

We have always objected to the accused being joined with "others unknown" or as in this instance with "others to the relator unknown". There has yet in previous trial here on Guam been no answer to our objection or has there been any proof in any previous cases as to who these "others unknown" are. Yet the commission invariably find the allegation and "other to the relator Unknown" proved. Can it be said that the "others to the relator unknown" are not accused of the crime charged in specification 1 of Charge I? Why then are they named and why are the five accused who are named joined with "others to the relator unknown". The "others to the relator unknown" is certainly at issue in this trial and the commission should require the allegation to be proved. This is no trivial matter. It prejudices the substantive rights of the accused.

It is important in this case. It was important in the Iwanami case. The commission will remember that in the Iwanami case in specification 2 of Charge I Sakagami and Iwanami were charged with murder of two prisoners

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"K (2)"

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

0762

acting with Okuyama....., and "others unknown". The prosecution in that case only produced one witness Nakamura, Shegeyoshi, who testified Iwanami was not there. The court found the specification not proved as to Iwanami. Nakamura testified only Okuyama, Sakagami and he, Nakamura were there. Here was the testimony that if believed would limit the crime to only three persons, Okuyama, Sakagami and Nakamura. Nakamura wasn't charged with the crime and he committed suicide and yet the commission found the specification as to "others unknown" proved. If the commission believed that the "others unknown" was Nakamura then his testimony was as we held objectionable and Nakamura was not a credible witness especially after having committed suicide while still in the status of a witness. Our objection is as fundamental and as important in this case as in the instance we cited in the Iwanami case.

Take for instance specification 1 of Charge II in which Asano, Ueno, Nakase, and Kobayashi are joined with "other to the relator unknown" in assualting, striking, mistreating, torturing and abusing an American prisoner by conducting before a group of Japanese nationals surgical explorations on the said American prisoner. Clearly there is a limit to the number of the people who were present at this scene. The judge advocate must know the number of persons present and who they were since this case has been investigated for more than two years. Can anyone do the act alleged if he were not present at the scene? The judge advocate must know who every person was at that scene was because he has gone to trial. Not to name these other persons who are also charged in this specification is most unfair and prejudicial to the

substantive rights of these accused, Asano, Shimpei; Ueno, Chisato; Nakase, Shohichi; and Kobayashi, Kazumi, particularly in this instances as to specification 1 of Charge II.

After more than two years of investigation of this incident the judge advocate should know for certain who the accused are to be in this particular trial. We do not ask that they be joined in trial because we object to each and every one of these accused being joined with each other in trial but we do object that here are others who are accused of this same crime and are not named and not brought to trial at this time but are nevertheless joined in trial with these accused under the allegation "and others to the relator unknown".

If these "others to the relator unknown" are the prosecution witnesses we shall object to them as witnesses when they go on the witness stand and here and now we object to the allegation, "and others to the relator unknown". If the judge advocate knows who the others are we ask that they be named at this time; if he does know there were others and knows how many then he should specify how many others; if he does not know after more than two years of investigation that there were others but they are unknown.

This specification 1 of Charge II alleges the four accused named and here in court today "and other to the relator unknown," ... , " did, each and together."

We call the commission's attention to the rule of evidence laid down in Wharton's Criminal Evidence, Volume 2, section 714, which reads: "Narratives of past events after the conspiracy is fully executed are to measures taken

"K (3)"

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

0763



in execution or furtherance of the common purpose inadmissible against co-conspirators."

State v. Huckins, 212 Iowa, 283, 234 NW 554 holds: "One conspirator does not ... by its execution under his authority, authorize his co-conspirator to make confessions or admissions of guilt for him or to narrate past events."

"When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirator is permitted by any subsequent action or declaration of his own to affect the others." from Wharton's Criminal Evidence, Vol. 2 par. 714 citing: Logan v US, 144 U.S. 263, 36L. ed. 429, 12S. ct. 617; Brown v States, 150 U.S. 93, 37L. ed. 1010, 14 Set. 37; Goll v U.S., 1667. 419 (cca 7th); Hauger v U.S., 1737. 54 (cca 4th); Morrow v U.S., 117. (2d) 345 (cca 7th); Sorenson v State (cca 8th) 1437. 820; Whit of certiorari denied in 284 US 654, 76 L.ed. 554, 52 Set. 33; Minner v. U.S., 577 (2d) 506 (cca 10th) 557 (ed) 506; Cendagarda v. U.S., (cca 10th) 647 (2d) 182; U.S. v White, 5 Cranch (cca) 387 Cas. No. 16-675.

Section 33 of Naval Courts and Boards requires that the accused should be described by his rank or rating, Christian name and surname, written at full length. No where in Naval Courts and Boards can we find any authority for describing the accused as ", and others to the relator unknown". Section 34 of Naval Courts and Boards relates only to the party injured. This section reads:

"In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and station, if known. If not known, the party injured must be described as a person "by name to the relator unknown."

We hold that this specification 1 of Charge II as well as specification 1 and 2 of Charge I are not definite enough for the accused to prepare their defense and to get witnesses to meet the charge. citing: People v. Brady, 272 See 401, 112 N.E. 126, Ann Cas 1918 c 540; Brockway v State, 192 Ind 656, 138 N.E. 88, 26 aLR 69.

In 27 Am Jurisprudence page 641 Section 79 it is held "A proper and sufficient allegation of the names of the defendant in the changing part of an indictment or information is essential to the validity thereof and it is the universal rule that the omission of his name therefrom is a fatal and incurable defect." citing Culpepper v State, 173 Ga. 779, 161 Se 623, 79 aLR 217.

In 27 Am Jur. Sec. 183 p. 728.

"If the name of a person, necessary to be referred to is alleged to be to the grand jurors unknown, and it appears that the name could have been easily ascertained, this has been held to be a fatal varrance," citing State v Klasner, 19 N.M. 474, 145p679, Ann Cas. 1917 D 824; Mc Cloy v State, 47 Tex Crim Rep 124, 80 Seu 524, 122 Am St Rep 678."

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"K (4)

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

0764

In Kerrs Wharton's Criminal Procedure Vol I Section 154 P. 210 it is held: "But if the third party's name be known to the grand jury, or would have been known by inquiry of witness at hand, the allegation will be improper, and the defendant must be acquitted on that indictment.

Section 155 of Wharton's bid p.211 says, "The test is, had the grand jury notice, actual or constructive, of the name; for if so, the name must be averred. citing Ind., Blodgett v State, 3 Ind.403; Mass., Com. v. Sherman, 95 Mass. (13 allen) 249; Com. v Glover, Ill Mass. 401; Texas, Atkinson v State, 19 Tex. app. 462; Eng., Rex v Strond, 1 Car. & K. 187, 47 Eng. C.L. 186; Rex v Robinson, Holt N.P. 595, 3 Eng. C.L. 233.

Not to name these other accused perond is most prejudicial to the accused particularly Asano, Shimpei; Ueno, Chisato; and Nakase, Shonichi because the accused are therby prevented from calling certain persons who may be able to testify for them if they are not accused and not naming al' the accused or describing the victims, or the date of the crime exactly, prevents the accused from knowing for a certainty the crime with which they are charged and prevents them from settin' up as a defense the absence of the accused particularly Asano, Ueno and Nakase from the command when the crime was committed. Three years ago is a long time and time gradually wears out proof of innocence.

We make a motion for the request a bill of particulars setting forth the names of the third parties now alleged as "and others to the relator unknown".

If this motion is not granted we move that the words "and others to the relator unknown" be stricken from specification 1 and 2 of Charge I and specification 1 of Charge II.

We further object to the charges and specification because all the accused are not included in both charges. The accused Eriguchi Takeshi is charged in specification 1 of Charge I and Nagashima Mitsuo is charged in specification 2 of Charge I and Tanaka Sueta is charged in specification 2 of Charge I but none of these persons are accused in Charge II.

The rule as laid down in 27 Am Jur. Section 123 page 683 "Different defendants cannot be charged in the same indictment where they are not all included in each count thereof." citing Mc Elroy v U.S. 164US76, 41 Led 355, 17 S. Ct. 31; Culjak v U.S. (cca 9th) 537 (2d) 554 82aLR 480.

We move therefore that the charges be quashed.

We further object to Charge II because of duplicity. The rule is that one offense only can be charged in one count of an indictment. We call the Commission's attention to specification 1 of Charge II wherein Asano, Ueno, Nakase and Kobayashi are charged with assaulting, striking, mistreating, torturing and abusing an American prisoner of war, and in specifications 1 and 2 of Charge I and then in specification 4 of Charge II Ueno only is charged with neglect of duty for the same acts he is charged with doing wilfully under specifications 1 and 2 of Charge II.

In 27 Am Jur, Section 124 pp 683-684 the rule is: "Duplication in criminal pleading is the joinder of two or more distinct and separate offenses in the same count of indictment or information. As sometimes stated, the rule is that offenses created by different statutes, or those to which different punishments are annexed, cannot be included in the same count, (citing Hamilton v State 129 Fla. 219, 176 So 89, 112 aLR 1013 citing RCL)"

All the accused object to Specification 1 and 2 of Charge I labeled

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*James P. Henry*  
JAMES P. HENRY

Lieutenant, U.S. Navy  
Judge Advocate.

0765



"Murder " because these specification do not follow the sample specification in Section 53 Naval Courts and Boards. These specifications not only contain allegations of statutory murder such as "this in violation of the law and customs of war" but allege the elements of common law murder. This sort of pleading is vague and the defendant does not know if he is being charged with common law murder or statutory murder. We object to the common law specifications of murder in both specifications 1 and 2 of Charge I and move that all such allegations as to common law murder be stricken from these specifications. This on the basis that there are no common law offense against the United States.

In American Jurisprudence Criminal Law page 158 we read: "There are no common law offense against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable. Citing Pettit v Walshe, 194 U.S. 205; 18 U.S.C.A. Para 451 et Seq.

The strict common law rule is that all crimes are local. If a common law offense alleged must find that the offense charged is not a common law offense and particularly so when the Federal Case of Pettit v Walshe holds there are no common law offenses against the United States and that the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable.

Remember that at common law it was necessary to allege the name of the person against whom the offense was directed, "And at common law and under the practice in some states, it is vital importance that the name of the person against whom the offense was directed be stated with exactitude." 27 Amer Jur. Sec. 80 P.643 citing Poople v Gormach 302 Ill 332, 134 N.E. 756, 29 ALR 1120; Com v Snow, 269 Mass. 598, 169 N.E. 542.

We object because specification 1 and 2 of Charge I do not show the statute of murder which has been violated. Not to set out the statute verbatim is prejudicial to the substantive rights of the accused and he is precluded from preparing a proper defense not being fully apprised as to the law he has violated.

The specification 1 and 2 of Charge I allege "this in violation of the law and customs of war". What law and what customs of what? We hold that not to set out such law and customs is prejudicial to the substantive rights of the accused. Among other things he is not fully apprised of the law and the customs he has violated, and cannot prepare a proper defense.

In Kerr's Wharton's Criminal Procedure volume I section 269 the rule is laid down that "Where a statute prescribes or implies the form of indictment, it is usually sufficient to describe the offense in the words of the statute, and for this purpose it is essential that these words should be used." The following cases cited: 1 Hale 517, 526, 535; Post. 423, 424; Ala. State v Click, 2 Ala. 26; Lodino v State, 25 Ala. 64; Mason v State 42 Ala. 534; Cal. People v Martin 32 Cal. 91; People v Murray, 67 Cal. 103, 7 Pac. 178; People v Buck, 34 Cal. 661; Ga. Jackson v State, 76 Ga. 551; Ky. Com. v Turner, 71 Ky. (88 Bush) 1; La. State v Pratt, 10 La Ann 191; Me. State v Gurney, 37 Me. 149; Mass. Com v Fenno, 125 Mass. 387; Mo. State v Brister 90 Mo. 514, 2 SW. 834; Neb Denton v State, 21 Neb 448, 32 N.W. 222; N.H. State v Rust 35 N.H. 438; N.J. State v Gibbons, 4 N.J. 438; N.Y. People v Allen, 5 Den 76; Philips v People, 72 N.Y. 334; N.C. State v Schuler, 19 S.C. 140; Tex. Kinney v State 21 Tex app. 348, 17 SW 423; Vt. State v Hoover 58 Vt. 496. 4 Atl. 226; Va. Com. v Hampton, 3 Gratt. 590; Howell v Com., 5 Gratt. 664; Fed. U.S. v Lancaster, 2 Me L.C.C. 431, Fed Cas. No. 15556; U.S. v Pond, 2 curt. C.C. 265, Fed Cas. No 16067; U.S. v Andrews,

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Judge Advocate.

"X (6)"

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2 Paine C.C. 451, Fed Cas. No. 14455; Eng. Rex v Ryan, 7 Car & P. 854, 2 Moody 15, 32 Eng. C. L. 907.

Further in Section 271 of Wharton's I bid, Sec 271. "An indictment, when professing to recite a statute, is bad if the statute is not set forth correctly," citing Com v Burke, 81 Mass (15 Gray) 408; Com v Washburn, 128 Mass 421; Butler v State, 3 Me. C. (S.C.) 383; United States v Goodwin, 207 Fed. 237.

In 27 Am Jur. Sec 100 we read. "Although early authorities are to be formed which imposed a strict rule that a statutory offense must be charged in the exact words of the statute citing Hess v State, 5 Ohio 5, 22 Am. Dec. 767.

Even if this law and these customs of war be the United States Military Law and U.S. customs of war that it is charged these Japanese violated we hold this law and the customs of war should be set out verbatim in view of the fact that accused are on the face of the specification not subject to the jurisdiction of the United States courts having been Navy, Dublon Island, Truk Atoll, Caroline Island, and while so serving at said military installation, ... on or about 20 June 1944. The accused are all former officers and enlisted men of the Japanese Navy and still citizens of Japan. The law does not presume that only these accused Japanese has knowledge of our statute law. We even maintain that there is a presumption that the common law such as we know it in the United States does not exist in Japan. So that the rule laid down in Underhill Criminal Section 45 page 58 to the effect: "Unless otherwise shown, the presumption exists that the law of another state is the same as that of the former state, though only as to the common law and not statutory laws." does not create a presumption that any of these Japanese accused know our common law. The presumption is that they did not know either our common law or our statutory law.

We are at a loss to know what law it is then that these accused are charged with having violated. What does the judge advocate mean by and how are the Commission to know, but far more important what does the accused understand by the words "this in violation of the law and customs of war." This the accused must know before he can make a proper defense. Not to inform these accused is prejudicial to their substantive rights. It denies to these accused due process of law and the equal protection of the law because of the failure to state the evidentiary particulars of the offense which the law and customs of war make an offense.

The specifications are vague and indefinite as to what law and what customs of war are alleged to have been violated by these accused. See 27 Am. Ju. Sec. 111 footnote 12 wherein the following cases are cited: Com. v Sinclair, 195 Mass. 100, 80 N. E. 799, 11 Ann Cas. 217; Com v Suell, 189 Mass 12, 75 N. E. 75, 3 LRA.(NS)1019; State v Van Pelt, 136 N.C. 633, 49 S.E. 177, 68 LRA. 760, 1 Ann Cas. 495.

It was Mr. Justice Rutledge in his dissenting opinion in the General Tomoyuki Yamashita, Petitioner case who said: "It is not in our tradition for anyone to be charged with crime which is defined after his conduct, alleged to be criminal has taken place; or in language not sufficient to inform him of the nature of the offense so to enable him to make defense."

Not only are these accused charged with a violation of the law of war but they are charged with having violated the customs of war. According to Section 5(d) on page 3 of Naval Courts and Boards there are seven principal conditions to be fulfilled in order to constitute a valid custom. We ask that the judge advocate be required to definitely state what these customs of war are that the accused are charged with having violated. How is the commission to know and how are the accused to know if the custom is: (1) long continued;

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Judge Advocate.

"K (7)"

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(2) certain and uniform; (3) compulsory; (4) consistent; (5) general; (6) known; (7) not in opposition to the terms and provisions of a statute or lawful regulation order.

Certainly the customs alleged to have been violated should be set forth.

In Specification 2 and 3 of Charge II it is alleged that the Commanding officer of the 41st Naval Guards failed to discharge his duty as the Commandant .....in violation of the law and customs of war. Since when have either the law or customs of war defined what the duties of a commanding officer in time of war are and imposed a penalty upon the commanding officer for failure to discharge his duty under battle conditions.

I quote again from the dissenting opinion of Mr. Justice Murphy in the Yamashita case: "International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibility of command. The omission is understandable. Duties as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic forms of conduct are then extremely unlikely to be used informing a judgment is an unfortunate but unescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime; however fair the judgment maybe in a particular instance."

Not only are specifications 2, 3 and 4 of charge 2 objected to on the grounds that these specifications are not the basis for a war crime but these specifications are objected to because these three specifications are founded upon the same incidents as is the basis for the crime charged in specification 1 and 2 of charge 1 and specification 1 of charge 2.

Specially specification 2 of charge 2 paragraph (2) is based upon the same incident charged in specification 1 of charge II.

Specification 2 of charge 2 paragraph (b) is based upon specification (1) of charge 1.

Specification 2 of charge 2 paragraph (c) is based upon specification 2 of charge 1.

Turning to specification 3 of charge 2 paragraph (a) is based upon specification 1 of charge 2.

Specification 3 of charge 2 paragraph (b) is based upon specification 1 of charge 1.

Specification 2 of charge 1 paragraph (c) is based upon specification 2 of charge 1.

Specification 4 of charge 2 is based upon specifications 1 and 2 of charge 2.

In CMO 2-1932 p. 13 it was held that "negligence and willfulness are the opposites of each other. They indicate radically different mental states."

The same distinction between negligence and wilfulness was made by the U.S. Circuit Court of Appeals, Seventh Circuit (64 Fed. 823) the court holding:

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"Negligence is negative in its nature, implying the omission of duty, and excludes the idea of wilfulness. Wilfulness or intentional injury implies positive and aggressive conduct and not mere negligent omission of duty."

See also 135 Fed. 74; 89Ed. 374; 173 Ed. 431.

In CMO 1-1939 the Judge Advocate General said: "While there is no rule of law which prohibits making identical facts and circumstances the basis of more than one charge, it has long been the policy not to do this when the offense falls clearly within the definition of a specific article of the articles for the government of the Navy and there are no aggravating circumstances to be set forth under one charge that will distinguish it from the other. (File: M M- Frey, Reinhold/ A 17- 20 (390 203), April (and 26, 1939) citing CMO 10-1926, p 8; CMO 8-1927, p. 6; CMO 1-1937 p. 6 and sec 457 naval courts and boards.

CMO 10-1926 p 8 holds: "As a matter of policy the use of two or more charges is not approved where the identical facts are made the basis of both, and where there are no aggravating circumstances set forth under one charge which distinguish it from the other."

In CMO 8-1927 p. 6 the policy of the navy department is again reiterated and we read: "The Navy Departments instructions merely means that as a matter of policy the rule which permits such duplication of charge is not available of when the offense falls quite clearly within the definition of a specific article, where there are no aggravation circumstances distinguishing it from the ordinary case contemplated by such article, and where there is no necessity to resort to multiplicity or plurality of charges."

So in specification 1 of charge 1 Asano is charged with wilfully doing an act and in specifications 2 and 3 of charge 2 he is charged with neglecting to do an act. Again in specification 2 of charge 1 Asano is charged with doing a positive act and in specification 4 of charge 2 Ueno is charged with neglecting to do his duty by failing to act.

Since charge 1 is the more serious charge we move that in keeping with Navy Department policy that specifications 2, 3, and 4 of charge 2 be quashed.

Section D-13, Naval courts and Boards states: "In the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court-martial practice, and such specification should show on its face the circumstances. Conferring jurisdictions, ...."Section 328 of Naval Courts and Boards states three conditions are necessary to the jurisdiction. (c) "There must be jurisdictions as regards (1) place, (2) time, (3) person, (4) offense.

We object to specifications 1 and 2 of charge 1 on the grounds that in the face of the charges and specifications the murder having been alleged to have been committed June 20, 1944 and the charges and specifications are dated July 15, 1947 the offense charged is barred by the statute of limitations.

Murder as an offense is provided for as follows: Section 53 Naval Court and Boards.

"Murder. This is provided for in the 6th A.G.N. It must have been committed by a person belonging to a public vessel of the United States and outside the territorial jurisdiction thereof."

Section 336 N.C. and Boards reads as follows:

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*James P. Kenny*  
JAMES P. KENNY,  
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"The 6th A.G.N. provides that "if any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death." This precludes a court-martial taking jurisdiction of murder committed within the territorial jurisdiction of the United States. If the crime is committed on the high seas or within a foreign country there is no doubt that court-martial having assumed jurisdiction thereof may proceed to a final judgment."

Article 6 A.G.N. before it was amended reads:

"Murder. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court martial and punished with death. (R.S. sec. 1624, art. 6)."

This must be law applicable because Article 6 A.G.N. was amended by Public Law 245 on Dec. 4, 1945. "Alnav 420 - 45 - 1843 Amendment to Articles for Government of Navy, J.A.G. 8 Dec. 1945.

We specifically object to specification 1 of charge II because this specification improperly alleges matter in aggravation as to specification 1 of charge I. Matter in aggravation is fully explained in Section 166 of Naval Courts and Boards and in accordance with this section matter of this type is introduced after the finding. We hold this is no separate offense.

All the specifications of charge 2 allege the offenses were committed June 20, 1944.

We hold that these accused cannot be punished for the offenses alleged under either charge 1 or charge 2 because of the limitations as to trials.

We ask that the Commission take judicial notice in accordance with Section 3098 of Naval Courts and Boards of Article 61 Title 34 U.S.C. Section 1200 which reads as follows:

"Limitation of trials; offenses in general.

No person shall be tried by Court-Martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been Amenable to justice within that period. (RS. Section 1624 article 61; Feb. 25, 1895, c 128 Stat. 680)"

We object to all the specifications on the grounds that they do not show jurisdiction as is required by Section D-13 Naval Courts and Boards.

According to Wharton's Criminal Procedure Volume 1 Section 369 the indictment, in this case the charges and specifications must show the offense within the statute of limitations or of excluded by statute should by strict practice after facts of exception. I quote section 369: "Indictment should aver offense within statute or if excluded by statute should, by strict practice aver facts of exception. Ordinarily, as we have seen, the offense must be laid in the indictment within the time fixed by the statute of limitations."

Section 179 Whartons, ibid, reads:

"Time should be within limitation. Where a time is limited by general statute for preferring an indictment, the time laid should ordinarily appear

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"K (10)"

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to be within the time so limited, or aver that the case falls within statutory exceptions." citing Whart. Crim. Ev. Sec. 105; Ala. Shelton v State, 1 Stew and P. 208; Ark. Gill v. State, 38 Ark 524; Cal. People v. Miller 12 Cal. 291; Fla. Anderson v. State 20 Fla. 381; Ga. Melane v. State, 4 Ga. 335; Ill. Lamkin v. People 94 Ill. 101; Ind. State v. Rutt, 8 Black f. 195; Hatwood v. State, 18 Ind. 492; Me State v. Hobbs, 39 Me. 212; Mich People v. Gregory, 30 Mich. 371; N.H. State v. Robinson 29 N.H. (9 Fost.) 274; State v. Ingalls, 59 N.H. 88; Tex. Shoefercater v. State, 5 Tex. App. 207; Vt. State v. J.P. , 1 Tyl. 283; Vaughn v. Congdon, 56 Vt. 115, 48 AmRep. 759; Wash State v. Myeberry, 56 Wash, 386, 405 Pac. 624; Fed. U.S. v. Wenslow, 3 Sawy. 337, Fed Cas No. 16742; State v Owen, 13 Sawy. 57, 32 Fed. 537; Eng. Rex v. Brown, M. & M. 163, 22 Eng. C.L. 495.

We make a motion to quash the pleading, i.e. all specifications of both Charge I and Charge II particularly on the grounds of duplicity and mis-joinder. We have pointed out the defects are apparent on the face of the specifications;

In 27 American Jurisprudence Sect. 148 page 704 the rule is laid down that:

"A motion to quash for mis-joinder, either of parties or offences, is addressed to the sound discretion of the court. (citing Culjak v. U.S. (cca 9th) 53 F) 3d) 554, 82AIR. 484) The guiding rule in the disposal of such a motion is that the court shall consider whether some of the defendants may be prejudiced by having evidence applicable to other of the defendants so involve them as to react to their prejudice with the jury, or imperiously affect their right to peremptory challenges. (citing 82 AIR 484.)

Sec. 151 of 27 Am. Jur. page 705:

"It is a well-established rule in many jurisdictions that where a person in custody charged with crime is compelled over his objection to give testimony before the grand jury, which is made the basis of an indictment against him, the indictment should be quashed, (13).....The same result follows where a witness is subpoenaed before a public officer, and compelled to incriminate himself, and a copy of the transcript of his examination, taken by a stenographer, is turned over to the grand jury, which thereupon find an indictment against the accused.(18)"

Footnote 13. State v Ponce, 173 Ind. 99, 87 N.E. 488, 25 LRA (NS) 818, 140 Am. St. Rep. 240, 20 Ann Cas. 1180; Siklek v Comm. 133 Va. 789, 112 S.E. 605, 27 AIR(dictum) State v Lloyd, 152 Wisc. 24, 139 N.W. 514, Ann Cas. 1914 c 415 Arno: 27 AIR 148; 28 LRA. 318; 47 LRA (NS 1210, 1214; 6 Am Cas. 606; Am Cas. 1914 c 418.

Footnote 18 State v Rixon, 18 Minn. 573, 231 N.W. 217, 68 AIR 1501.

In view of the many objections which we have made to the charges and specifications the only practical thing to do is not to try amend the specifications but to quash the specifications and the charges as against these accused.

Respectfully,

CERTIFIED TO BE A TRUE COPY /s/ Martin Emilius Carlson

*James P. Kennedy*  
JAMES P. KENNEDY  
Horton, U.S. Navy  
Judge Advocate

Martin Emilius Carlson  
Commander U.S.N.R.

"K (11)"

0771



22 September 1947.

REPLY TO OBJECTIONS AND  
TO CHARGES AND SPECIFICATION.

DELIVERED BY

LtComdr., Joseph A. Regan.

Duplication of Pleading - Pleading.

Sec. 19 N.C. & B.

"The Law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence.

The obligation of the prosecution under Sec. 12 N.C. & B. is that "a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended." Each specification of each charge does use simple and concise language and does apprise the accused of what is intended.

Attorneys for accused have quarreled with ---

In Charge I - the accused are accused of murder - In Charge II - of Violation of the Law and Customs of War.

They have accused the prosecution of a failure to set forth the precise statute, law or custom violated by the accused.

The violations of law for which these accused are present here today are a violation of the International Law concerning the treatment of prisoners. This law is exemplified by the Geneva (Prisoner of War) Convention of July 1929. Sec. 309 N.C. & B. provides that "Matters of which courts may take judicial notice need neither be charged nor proved." Here we have, since the crimes alleged are violation of the International Law concerning Prisoners been guided in our pleading by Sec. 309 N.C. & B.

It is true that each accused is not mentioned in each specification but Asano is except in the last specification of Charge II. They all acted but Asano and Uno and we are under the compulsion to bring all charges against these persons at the time the trial is had.

These two charges are not the same - and while the circumstances giving rise to the specifications in both charges may be the same, still they allege violations of different duties or obligations of the accused - and in any event - the prosecution must from its specifications in order to take care of every contingency.

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Judge Advocate.

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Again, the Supreme Court in the Yamashita Case said a military court need not have its specifications drawn with the nicety of civil court pleading.

Joinder of Persons -

It is true that there is no conspiracy alleged here - but a concert of action is here alleged. All of the accused had a hand in doing to death two American Prisoners of War. - And so the evidence will show. Each played a part in the ordering, securing, preparing, torturing and so forth. All of them participated in the killing - not as conspirators - but as fellow workers - who acted "jointly, each and together."

Sec. 17 of N.C. & B. says; "Accused persons will not be joined in the same charge and specification unless for a concert of action in an offense." - The evidence will show that a concert of action did exist.

Concerning the defense complaint against the phrase "and others unknown" - The prosecution has no intention of rearguing the Iwanami case and whether or not the courts findings then were proper or not proper. In this case - the phrase is apt and properly used. In both instances - of murders - we do not have all the persons responsible - in fact, we do not even know all of them. The operation was performed before many spectators - In the case of beheading - there were more than 30 persons present - and quite possibly, more than Kobayashi and Enguichi actually had to do with beheading. We know for a fact that Tanaka was not the only one who stabbed - we only know that he was the first person who stabbed. The testimony will show that six persons wielded a bayonet but the investigation has only brought to light the correct identity of Tanaka.

Commander Carlson pays the prosecution too much honor in insisting that because the case has been investigated for such a long time and because we have gone to trial, we must know the other persons "unknown" - If he had any practical experience in questioning recalcitrant evasive, and lying Japanese - he would know that we have gone to trial because we have satisfied ourselves that the persons here in court are responsible for the acts complained of - and we have despaired of properly establishing the identity of other culprits. The defense has not been prejudiced by the complained of phrase - let the accused place proper confidence in their counsel and disclose to them the identity of the persons who aided them in committing these nefarious acts. - The accused did what we shall prove they did - we have supplied them with the names of our witnesses - and as the accused perpetrated the murders, they must know who aided them and who would make proper witnesses.

The accused know the exact date when the crimes were committed, they know best who were present, who aided them and who did the specific things complained of. They have within their own knowledge the actual facts and they are not prejudicial in being advised that we have not been able to identify all the culprits and point out their exact degree of responsibility.

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"L (2)"

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Concerning, the plea for severance because of the difference in interest of the various defendants. This difference in interest is not obvious from the face of the charges and specifications. It may be when the defendants get around to attempting to excuse their acts - they may attempt by their stories to shift the blame one to another but we have accused them all together of murder. What their defenses may be should not influence the commission in deciding whether or not the charges are in due form and technically correct.

It is interesting to note in passing that the attorneys for the defendants do not themselves presently believe that there is a conflict in the interests of the various accused - for they repressed them all.

The defense complains but not too loudly that we have not set out with sufficient definiteness the identity of the victims. They saw them, they tortured them, they killed them, and they exhumed their bones, - and now they complain that the names of the victims have not been supplied.

**Jurisdiction:**

The defense complains that the specifications do not show jurisdiction on their face. - The precept calling this commission into being empowers the commission to try "all persons in the custody of the covenying authority at the time of the trial charged with war crimes committed against U.S. nationals xxx." The murders charged here were U.S. nationals, during the war and they were committed on Japanese territory. The fact of the murders, the nationality of the victims, the place and approximate time, and the identity of the accused are all set out in the specifications thus advising the accused that they are being tried for a war crime and the precept clearly gives the commission jurisdiction over such crimes.

The objection of the counsel made under Sec. B-63, Article 61 - page 469 of Naval Courts and Boards is clearly untenable.

The substance of specification 1 of Charge II is not an improper setting forth of matter in aggravation of Specification 1 of Charge I, but rather a separate occurrence. Charge I is murder - Charge II - involves the torture committed before the death - there is no allegation that it resulted in death. There is no duplicity present in these charges and specifications which is not allowable to provide for the contingencies of the proof and there is no improper joinder. There is here the "concert of action" allowed by Sec. 17 of N.C. & B. and the Judge Advocate asks that the commission find the charges and specifications in due form and technically correct.

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"L (3)"

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Plea to the Jurisdiction

of

The Military Commission

to try

ASANO, Shimpei;

UENO, Chisato;

NAKASE, Shohichi;

ERIGUCHI, Takeshi;

KOBAYASHI, Kazumi;

and

TANAKA, Suota.

Delivered by Commander Martin E. Carlson, United States Naval Reserve, at Guam, Marianas Islands, on Monday, September 22, 1947.

Those six accused object to being tried by this Military Commission and hereby enter this plea to the jurisdiction.

This plea to the jurisdiction is made on the grounds that those six accused, ASANO, Shimpei; UENO, Chisato; NAKASE, Shohichi; ERIGUCHI, Takeshi; KOBAYASHI, Kazumi; and TANAKA, Suota are not subject to the courts' jurisdiction and that the offense is not one cognizable by this Military Commission.

Of those six accused only ASANO, Shimpei, Rear Admiral, I.J.N. never having been demobilized. The other five accused were all regularly demobilized.

The precept for this Military Commission reads that this commission is ordered to convene "for the trial of such persons as may be legally brought before it". We maintain that ASANO, Shimpei, is not legally brought here for trial.

ASANO was never demobilized. He was on Truk with the Japanese forces until July 31, 1946. Then he was interned in the Truk stockade until August 10, 1946, when he was sent to Guam where he has been held in close confinement. Not until July 15, 1947 was he served with the charges and specifications for offenses and neglect of duty as a Japanese naval officer said to have occurred June 20, 1944. Now martial law is not retrospective which only means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's Military Law and Precedents page 837, wherein he cites footnote 75. Furlson, Corns on Mar. Law., 53; Clede, M.L. 189, Thring, Crim. Law of Navy, 42-3; Wols on Jurisdiction 577; 12 Opins. At. Gen., 200; G.O. 26 of 1866; Do. 12 Dept. of the South, 1868; Do. 9. First Mil. Dist. 1870; Digest 507.

We further hold that the jurisdiction of this Military Commission

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is limited by the period and territorial extent of the Military Occupation of Truk by American Naval Forces. In June of 1944 Japan was still in possession of and exercised sovereignty over Truk. So the offense charged was committed long before the United States Navy occupied Truk or declared either martial law or military law on Truk. According to Winthrop page 837, *ibid*, and footnote 95.

This military commission has no jurisdiction over ASANO, Shimpoi, for an offense committed by him June 20, 1944 or for neglect of duty as a Japanese Naval Officer. Nor has it jurisdiction over any of the other five accused.

Commandor Marianas, cannot in his exercise of military government over Truk legally bring to trial before this military commission ASANO, Shimpoi, or any of the other five accused. In footnote 95 on page 837 of Winthrop *ibid* we read the rule of law: "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt 216. And see Jones 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." C.O. 125, Second Mil. Dist. 1867."

And Winthrop lays down the rule; "Thus, a military commander in the exercise of military government over enemy's territory occupied by his army cannot, with whatever good intention, legally bring to trial before military commissions ordered by him offenders whose crimes were committed prior to the occupation." Winthrop, *ibid*. p. 837:.

We hold that Commandor Marianas cannot legally assume jurisdiction because Truk was not within the field of command of the convening authority at the time the offense committed. The precept, serial 3/85 dated Feb. 21, 1947 states: "Pursuant to the authority vested in me by virtue of my office as Commandor Marianas Area and Deputy Military Governor Marianas Area." The specifications of both charges one and two allege the crimes were committed June 20, 1944. On this date Commandor Marianas did not have jurisdiction of Truk either as Commandor Marianas or as Deputy Military Governor Marianas Area. The precept further states: "and by the specific authority vested in me by the Commander in Chief, U.S. Pacific Fleet (CinC Pac conf. serial 0558 of March 8, 1946), and Pacific Ocean Areas." But the confidential serial 0558 is dated March 8, 1946 and the offenses were committed June 20, 1944. Thus neither by virtue of his office or by authority of the confidential serial 0558 dated March 8, 1946 did the Commandor Marianas Area have authority legally to assume jurisdiction of Truk on June 20, 1944. Neither did Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas legally have jurisdiction of Truk on these dates.

That holds for all the accused but particularly for the five accused UENO, NAKASE, ERIGUCHI, KOBAYASHI, and TANAKA, who were all demobilized and are now civilians. Commandor Marianas is no longer the civil administrator of Truk and therefore, has no authority as the civil administrator of Truk.

We deny the right of this military commission to try UENO, Chisato; NAKASE, Shohichi; ERIGUCHI, Takoshi; KOBAYASHI, Kazumi; and TANAKA, Suota, because they were illegally brought within the jurisdiction of Commandor Marianas from Japan. All of these five accused were

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regularly returned to Japan by the United States Navy Department as represented by Commander Marianas and were then regularly demobilized. How they were came back into custody is highly irregular.

NAKASE, Shohichi, was returned to Japan and regularly demobilized on November 30, 1946. On December 20, 1946 he came to Guam as an involuntary witness. He remained in the witness camp under constant restriction until May 8, 1947, when he was placed in solitary confinement. Thus we have a Japanese national, a civilian, who on the supposition that he is to be a witness at a war crime trial here on Guam is for that reason brought here to Guam and then placed in solitary confinement and served with charges and specifications accused as a war criminal.

UENO, Chisato, was returned to Japan and regularly demobilized on July 15, 1946. He soon returned to his civilian profession and as a doctor ran his own private hospital in Japan. He was arrested on February 8, 1947 and kept in a Japanese jail for five days. Then on February 13, 1947 he was sent to the Army prison, Sugamo Prison. He was sent to Guam where he arrived July 3, 1947.

ERIGUCHI, Takeshi, was demobilized on December 28, 1945. He immediately resumed his profession as a dentist. In all Japan with a population of shall we say 80 million people there are not more than 25 thousand dentists so ERIGUCHI was sorely needed as a civilian dentist. But on March 7, 1947 he was arrested and sent to Guam on July 2, 1947.

KOBAYASHI, Kazumi, was regularly demobilized on March 1, 1946. More than a year later, March 19, 1947 he was arrested and the next day put in Sugamo Prison. He arrived on Guam, July 1, 1947.

TANAKA, Suota, was regularly demobilized on December 11, 1945. In May of 1947 he was arrested and on May 21, 1947 put in Sugamo Prison. He was sent to Guam July 10, 1947.

In 14 Am. Jur. Criminal Law section 217, page 919, the rule is that there are some cases which deny the right of a court to try one who has been illegally brought within the jurisdiction from another state or country. Annotation: 18 A.L.R. 512; 15 A.L.R. 177.

In the footnote 4 supporting this rule we have the rule that:

"One seized under a mistake as to identity by the United States soldiers in the country of his residence, and carried into the United States, not having been kidnapped, cannot be tried there for offenses committed other than that for which he was seized, until he has voluntarily submitted himself to the jurisdiction or consent to his trial by the country of his residence, has been secured. *Dominguez v. State*, 90 Tex. Crim. Rep. 92, 234, S.W. 79, 18 A.L.R. 503.

In *re. Robinson*, 29 Neb. 135, 45 N.W. 267, 8 L.R.A. 398, 26 Am. St. Rep. 378, a person accused of committing a crime in Nebraska was arrested in Kansas by the order of a Kansas justice of the peace and delivered to a Nebraska constable, who forcibly, and against the will of the accused and without any warrant, requisition, or other legal process conveyed the accused out of the state of Kansas into Nebraska. Holding that the Nebraska court was without jurisdiction, the court said, "In

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principle there is no difference between the case at bar and where a person is held for an offense other than the one he was extradited for. In either case it is an abuse of judicial process, which the law does not allow. Ample provisions are made for the arrest and return of a person accused of crime, who has fled to a sister state, by extradition warrants issued by the executives of the states. There is no excuse for a citizen or officer arresting, without authority of law, a fugitive, and taking him forcibly and against his will into the jurisdiction of the state for the purpose of prosecution. We cannot sanction the method adopted to bring the petitioner into the jurisdiction of this state. He did not come into the state voluntarily, but because he could not avoid it. The district court, therefore, did not acquire jurisdiction of the person of the petitioner, and his detention is unlawful."

NAKASE came to Guam as an involuntary witness and then without any legal process whatsoever was placed in solitary confinement and then on July 20, 1947, served with the charges and specifications and to-day finds himself in court charged with murder. He objects to the jurisdiction of this commission to try him.

The four accused, UENO, ERIGUCHI, KOBAYASHI, and TANAKA, also object to the jurisdiction of this commission on the grounds that they were illegally extradited from Japan.

Simply because these persons are not citizens of the United States does not put them outside the protection of the Constitution of the United States of America when we take them into custody to try them in our courts. Article IV Amendment to the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, all particularly describing the place to be searched, and the persons or things to be seized."

Each of these four accused persons states that no warrant was ever served upon them. They were told by the Japanese police to come along with them; then were taken to a Japanese police station and from there taken to the United States Army Prison, Sugamo, Tokyo, Japan.

How did these four persons get to Guam? Is it enough to merely say that they were properly extradited? We hold that there was no proper extradition. International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one par. 1 on page 243 of volume 22. American Jurisprudence we read:

"Since the United States cannot as a matter of comity, surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See infra, par. 4. sec 4. Moore, International Law Digest, p. 246P. 580."

In this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these four persons that they

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decide the validity of the extradition proceedings by which the four accused were removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of these four persons. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of these four accused.

In Vol. 22, American Jurisprudence page 245: "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision. citing *Valentine v. U.S.* 299 U.S. 5., 81 L(ed) 5, 57 S. Ct. 100; *Factor v. Laubonheimer*, 290 U.S. 276, 78 L(d). 315, 54 S. Ct. 101; *Torlunden v. Amos*, 184 U.S. 270 46 L(d). 534, 22 S. Ct. 484; *U.S. v. Raushner*, 119 U.S. 407, 30 L(d) 425, 7S. Ct. 234.

Later cases, however, have made it clear that in the absence of such conventional or legislative provision, the Executive has no power to surrender the fugitive criminal to a foreign government. Citing *Valentine v. U.S.* 299 U.S. 5, 81, L(d) 5, S.Ct. 100. See also *Factor v. Laubonheimer*, 290 U.S. 276, 78 L(d) 315, 54 S. Ct. 191."

In footnote 9 page 249 of volume 22 of American Jurisprudence:

"Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected courts are without the power or authority to construe such act liberally, but will be compelled to follow the rule laid down by the Federal Court and require that all of the provisions of the Federal law relating to requisitions must be strictly observed and respected. Ex parte *Owen*, 10 Okla. Crim. Rep. 284, 136 P. 197, Am. Cas. 1916 A. 682. See also *Courts*, Vol. 14, p. 337, par. 117."

It is well that we consider who may be extradited. On page 235 of Vol. 22 of American Jurisprudence we read: "The persons against whom extradition proceedings are directed must, of course, be fugitives from justice," citing *Jones v. Tobin*, 240 U.S. 127, 60 L(d). 562, 36 S. Ct. 290; *Tennosco v. Jackson* (D.C) 36 F. 258, 1 L.R.A. 370; *Jones v. Leonard*, 50 Iowa, 106, 32 Am. Rep. 116; *Kellor v. Butter*, 246 N.Y. 249 158 N.E. 510, 55 A.L.R. 394; *State ex rel. Lea v. Brown*, 166 Tenn. 669, 64 G.W. (2d) 841, 91 A.L.R. 1246, writ of certiorari denied in 292 U.S. 638, 78 L(d). 1491, 54 S.Ct. 717; Ex parte *McDaniel*, 76, Tex Crim Rep, 184, 173, S.W. 1018, Am. Cas. 1917 B. 335.

Annotation: 7 Ann. Cas. 1076; 13 Ann. Cas. 907.

The surrender of a person in one state for removal to another as a fugitive is expressly or by necessary implication prohibited by U.S. Rev. Stat. Para 5278, 18 U.S.C.A. Para 662, where it clearly appears that the person was not, and could not have been, a fugitive from justice of the demanding state. *Jones v. Tobin*, 240 U.S. 127, 60 L. od. 562, 36 S.Ct. 290.

We call the commission's attention that these four persons were released as prisoners of war by the United States and returned to Japan where they were demobilized from the Japanese Navy. Clearly therefore they are not fugitives from justice nor did they flee from the custody of the United States or were they personally present at the time the crime was committed within the demanding state, the United States.

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We continue to quote from 22 Am Jurisprudence page 255: "The language of the Federal statutes seems to contemplate that the crime shall have been committed by one, who, at the time, was personally present within the demanding state. Thus, it refers to a demand by the Executive of a state for the surrender of a person as a fugitive from justice to the executive of a state 'to which such person has fled,' and it requires the production of a copy of the indictment found, or the affidavit made, before a magistrate, containing the necessary charges and properly certified by the executive of the state or territory 'from which the person so charged has fled,'....."

Can it be said that any of these four persons were personally present within the United States or the territories over which they claimed jurisdiction at the time the crime was committed, June 1944? This seems to be one of the requirements of the Federal statute.

It is a universal rule that a person to be extradited must be charged with a crime against the laws of the state from whose justice he is alleged to have fled. These four persons did not flee; they were demobilized after having been turned over as released prisoners of war to the Japanese authorities. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war.

Page 265, volume 22, American Jurisprudence:

"It is the universal rule that it must appear to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand; is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged." citing many cases such as: *Marbles v. Croocey*, 215 U.S. 53, 54 L. ed. 92, 30 S. Ct. 32; *Compton v. Alabama*, 214 U.S. 1, 53 L. ed. 885, 29 S. Ct. 605, 16 Ann. Cas. 1098; *Pioreo v. Croocey*, 210 U.S. 387, 52 L. ed. 1113, 288. Ct. 714 (rule recognized); *Illinois ex rel McNicholas v. Pease*, 207 U.S. 100, 52 L. ed. 121, 28 S. Ct. 58 (dictum); *Appleyard v. Mass.* 203 U.S. 222, 51 L. ed. 161, 27 S. Ct. 122, 7 Ann. Cas. 1073. Annotation: 81 A.L.R. 555; 1. L.R.A. 301; 11 L.R.A. (N.S.) 426.

Persons cannot be extradited for political crimes and most treaties expressly so provide. There is no question but that all crimes associated with actual conflict of armed forces are of a political character and that the perpetrators of them cannot be extradited. All the specifications allege that these six persons were all attached to the 41st Naval Guards and all attached to the military installations of the Imperial Japanese Navy at Dublon Island, Truk Atoll, Caroline Islands, ..... at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire," ..... These five persons are charged with a political crime.

I would like to read to you what is said in Volume 22, American Jurisprudence on page 271.:

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#### EXTRADITION

"31. Political Crimes. - The development of extradition has evolved the principle that there shall be no international extradition for political crimes and offenses. 20 (Cite: "Annotation: 112 Am. St. Rep. 127. See 1 Moore, Extradition, p. 303, 205; 4 Moore, International Law Digest, p. 332, 604.") In keeping with this tenet of International Law, most extradition treaties with foreign governments expressly provide that they do not apply to charges of political crimes. 1 (Cite: "Annotation: 41 L. ed. 1047. See 1 Moore, Extradition, p. 306 207.") Many of the treaties, however, between the United States and foreign countries expressly provide for extradition of persons charged as assassins or murderers of the heads of the various governments where, although such murder may be classed as one in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. 2. (Cite: "See 1 Moore, Extradition, p. 310, 208; 4 Moore, International Law Digest, p. 332, 604.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. 3 (Cite: "Annotation: 12 Am. St. Rep. 126.") Accordingly, during the progress of a revolution crimes of an atrocious and inhuman character may be committed by the contending forces, and still the perpetrators of such crimes may escape punishment as fugitives beyond the reach of extradition. It does not devolve on the courts in extradition proceedings to determine what acts are, or are not, within the rules of civilized warfare; and, while men in heated blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited, 4 (Cite: "Annotation: 112 Am. St. Rep. 126"). An extradition magistrate has the jurisdiction and it is his duty to decide, with competent legal evidence before him, whether an offense charged is political crimes. 5 (Cite: "Ornealas v. Ruiz 161 U.S. 502, 40 L. ed. 787, 16 S. Ct. 689.") And a decision by a commissioner in favor of the extradition of persons charged with murder and other crimes during a raid into an adjoining country, even though there is some evidence that their purpose was to fight against the foreign government, cannot be reviewed on the weight of the evidence and is final for purpose of the preliminary examination unless palpably erroneous in law. 6 (Cite: "Ibid.")"

Since these five persons are charged with political crimes and extradition is expressly forbidden of persons charged with political crimes we maintain their extradition is illegal and therefore this commission has no jurisdiction of these six persons. Since we object to the jurisdiction on these grounds we insist that the judge advocate produce the extradition papers so that we may inspect them. We feel that this commission cannot legally decide this question without seeing the extradition papers. Unless such extradition papers and warrants are produced by the judge advocate for our inspection we hold that the burden of proof is upon the judge advocate to prove that these five persons are legally before this commission.

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We have pointed out to the commission and the judge advocates have alleged it in the specifications that these six persons were on Truk in July 20, 1944, and that the Japanese government still hold control of Truk on that date. Those six persons were not within the United States when the crimes were committed and this commission should discharge these five persons.

I again cite for you the ruling in volume 22 in American Jurisprudence on page 294:

"Although if it is clearly shown that he was not within the demanding state when the crime was alleged to have been committed, and his extradition is sought on the ground of constructive presence only, the court will ordinarily discharge him. citing: South Carolina v. Bailey, 289 U.S. 412, 77 L. ed. 1292, 53 S. Ct. 667, Hyatt v. New York 188 U.S. 691, 47 L. ed. 657, 23 S. Ct. 456, affirming 172 N.Y. 176, 64 N.E. 825, 60 L.R.A. 774, 92 Am. St. Rep. 706; Ex parte Jowell, 87, Tex. Crim. Rep. 556, 223 S. W. 456, 11 A.L.R. 1407. Annotation: 51 A.L.R. 804, S. 61 A.L.R. 716."

Until we see the extradition papers we cannot know for what offense these four or five persons were extradited. The rule is now well settled that a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in the treaty and for the offense with which he is charged in the proceedings for his extradition until a reasonable time and opportunity have been given him after his release or trial on such charge to return to the country from which he was taken for the purpose alone of trial for the offense specified, in the demand for his surrender. Both English and Canadian cases are in accord with the modern American view, the rule being that they limit the prosecution to the crime of which the fugitive was extradited. citing Buck v. Rex. 55 Can. S.C. 133, 38 D.L.R. 548, Am. Cas. 1918. D. 1023. See page 299 of volume 22 American Jurisprudence.

What is the crime for which these five persons were extradited? Unless we have the opportunity to see the extradition papers we cannot know. Not to produce the extradition papers is prejudicial to the substantive rights of these five accused.

Once having been demobilized, these five persons are no longer individuals of the enemy's army or navy. They are therefore not subject to the jurisdiction of this commission.

We ask that the commission take judicial notice that Truk was a possession of Japan in 1944 and the military and naval forces of Japan were in full possession and control of Truk notwithstanding our many bombings all during the time these crimes were alleged to have been committed that is June 20, 1944, and that the United States did not take over or assume any jurisdiction as to Truk until after August 14, 1945, and that Truk was not actually surrendered to the United States until September 2, 1945.

The commission can therefore have no jurisdiction of any of these accused for crimes committed on Truk, June 20, 1944.

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We also maintain that the offense of murder alleged in Charge I is one not cognizable by this commission.

Since there are no common law offenses against the United States the crime of murder must be statutory murder. In 14 Am. Jur. Criminal Law, Section 15 page 766, the rule is clear and uncontradicted ".....it is now well settled that except as to treason which is defined by the Federal Constitution, there are no common-law offenses against the United States (citing Donnelly v. U.S. 276 U.S. 505, 72 L. ed. 676, 48 S. Ct. 400; U.S. v. Gradwell, 243, U.S. 476, 61 L. ed. 857, 37 S. Ct. 407. Annotation: Ann. Cas. 1918, 991.)

In order that an act may be prosecuted as a crime in the courts of the United States, statutory authority therefor must exist. (citing U.S. v. Bathgate, 246, U.S. 220, 62 L. ed. 676, 388 S. Ct. 269; U.S. v. Eaton, 144 U.S. 677, 36 L. Ed. 591, 12 S. Ct. 764; U.S. v. Browster 139, U.S. 278; 35 L. ed. 190, 11 S. Ct. 538; Manchester v. Mass. 139 U.S. 240, 35 L. Ed. 159, 11 S. Ct. 599; Jones v. U. S. 137, U.S. 202, 34 L. ed. 691, 11 S. Ct. 80; U.S. v. Britton, 108, U.S. 199, 27 L. ed. 698, 2 S. Ct. 531; Cotton v. U.S. 11 How. (U.S.) 229, 13 L. Ed. 675; U.S. v. Hudson, 7 Cranch (U.S.) 32, 3 L. ed. 259. Annotation: Ann. Cas. 1913 E. 1252, S. Ann. Cas. 1918 A, 991.

The courts of the United States in determining what constitutes an offense against the United States must resort to the statutes of the United States enacted in pursuance of the constitution. Re. Kollock, 165 U.S. 526, 41 L. Ed. 813, 17 S. Ct. 444.

The courts have no right to treat an act done within a state as a crime against the United States unless congress has declared it to be such, citing, U.S. v. Reoso, 92 U.S. 214, 23 L. ed. 563."

So to punish those accused we must look to the 6th Article for the Government of the Navy, before it was amended. Clearly those accused are not punishable for murder under the 6th A.G.N. before it was amended. It was amended December 4, 1945.

specification 1 of Charge I<sup>1</sup> does not set forth a crime. Again since there are no common law crimes against the United States it cannot be cognizant by this commission if it alleges a common law offense.

If it is a statutory offense we ask what is the statute and does the statute define it as a misdemeanor or a felony. What punishment does the statute provide and what courts have cognizance of the offense?

We maintain that specification 1 of Charge II does not set forth a cause of action but is matter in aggravation of the offense alleged in specification 1 of Charge I. Section 166, Naval Courts and Boards sets forth the rule as to matter in aggravation. The judge advocate is required to offer such testimony as tends to show the aggravating nature of the offense. "Matter of this type is introduced after the finding" is the rule in Section 166, Naval Courts and Boards.

As to specifications 2, 3, and 4 of Charge II, we hold that neglect of duty is no crime.

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In 14 American Jurisprudence Criminal Law, Section 14 page 764, we find the rule that "In some states no act is to be regarded as a crime unless it is so declared by statute", citing Bradley v. State, 79 Fla. 651; Soper v. State, 169, Ind. 177; Steward v. Jessup 51 Ind. 413; State v. Campbell 217, Iowa, 848; State v. Koontz, 124 Kansas, 216; State v. Shaw, 79, Kan. 396; Kennan v. State 86, Neb. 234; People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001, writ of certiorari denied in 289 U.S. 709, 77 L. Ed. 1464, 53 S. Ct. 786; People v. Knapp 206, N.Y. 373, 99 N.E. 841, Ann. Cas. 1914 B. 243; Toledo Disposal Co. v. State, 89, Ohio St. 230, 106, N.E. 6 L.R.A. 1915 B. 1207; Johnson v. State 66 Ohio St. 59; State v. Ayers 49 or 61; Ex parte Lingenfelter, 64, Texas Crim. Rep. 30 142, S.W. 55 Ann. Cas. 1914 C. 765; Annotation: Ann. Cas. 1913 E. 1252; ann. cast. 1918 A. 991

In this same footnote (2) we find the rule:

"What is known as the (higher law) has no place in the jurisprudence of Oklahoma. Lickfield v. State, 9 Okla. Crim. Rep. 164, 126 P. 707, 45 L.R.A. (NS) 153.

And what does the state of New York say about this question of neglect of duty? This same footnote (2) sets forth the New York rule of law:

"Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so proscribes, as there is no common law crime in the state. People v. Knapp, 206 N.Y. 373, 99 N.E. 841, Ann. Cas. 1914, B. 243.

What does International law have to say about neglect of duty?

There were dissenting opinions by two members of the Supreme Court of the United States in the YAMASHITA Case.

Mr. Justice Rutledge said of the YAMASHITA Case:

"Much less have we condemned one for failing to take action .....  
...I have not been able to find precedent for the proceeding in the system of any nation founded on the basic principles of our Constitutional democracy, in the laws of war or in other internationally binding authority or usage."

Mr. Justice MURPHY of the U.S. Supreme Court in his dissenting opinion said:

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, varying according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander, objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the

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victors' judgment is an unfortunate but unescapable fact. So great is that probability that international law refused to recognize such a judgment as a basis for a war crime, however, fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct."

Respectfully,

MARTIN E. CARLSON.  
Commander, United States Naval Reserve.

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**PLEA**

**In Bar of Trial**

**of**

**ASANO, Shimpai;**

**UENO, Chisato;**

**NAKASE, Shohichi;**

**ERIGUCHI, Takeshi;**

**KOBAYASHI, Kasumi;**

**and**

**TANAKA, Sueta.**

Delivered by Commander Martin E. CARLSON, United States Naval Reserve, at Guam, Marianas Islands, on Monday, September 22, 1947.

- - - - -

These six accused, ASANO, Shimpai; UENO, Chisato; NAKASE, Shohichi; ERIGUCHI, Takeshi; KOBAYASHI, Kasumi; TANAKA, Sueta, make this plea in bar of trial on the grounds of the statute of limitations.

All offenses are alleged to have been committed on June 20, 1944. The charges and specifications are dated July 15, 1947, more than three years after the offenses were committed.

Appendix B, Naval Courts and Boards has this to say regarding the laws governing the administration of justice in the Navy.

"The laws governing the administration of justice in the Navy are codified in section 1200, title 34 of the United States Code under the title of 'Articles for the Government of the Navy'."

On June 30, 1926, Congress enacted the Code of Laws of the United States of America, referred to as the U. S. Code and cited as "U.S.C." The present case is the 1934 edition of the United States Code and is the official restatement in convenient form of the general and permanent laws of the United States in force January 3, 1935. It is composed of 50 titles. Title 34 contains the laws relating to the Navy and section 1200 of that title contains the Articles for the Government of the Navy. In enacting the U.S. Code, Congress did not enact any new laws, nor was any law repealed. To provide for any errors that might be made, the enacting clause contains the following:

The matter set forth in the code ... shall establish prima facie the laws of the United States, general and permanent in their nature, in force ...; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the code. In case of any inconsistency arising through omission

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or otherwise between the provisions of any section of this code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

.....  
The code is presumed to be the law.  
.....

The Navy of the United States shall be governed by the following articles (R.S., sec. 1624):

Article 61. Limitation of trials; offenses in general. -  
No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself or of some other manifest impediment he shall not have been amenable to justice within that period (R.S. sec. 1624, Art. 61; Feb. 25, 1895, c. 128, 28 Stat. 680.).

This we maintain is the statute of limitations which is applicable in this present case.

The case of U.S. v. White (cc Dist Col. 1836) Fed. Cas. Nos. 16675, 16676, holds, "The statute of limitations runs in favor of an offender, although it was not known that he was the person who committed the offense." (See page 138 U.S.C. Annotated, Title 18 Criminal Code & Criminal Procedure.)

The criminal charge in this case was not made until the formal written accusation was made on July 15, 1947.

"In the eyes of the law a person is charged with crime only when he is called upon in a legal proceeding to answer to such a charge. More investigation by prosecution officers or even inquiry and consideration by examination magistrates of the propriety of instituting a prosecution do not of themselves create a criminal charge. citing United States v. Patterson, 150 U.S. 65, 37 L. ed. 999, 14 S. Ct. 20". 14 American Jurisprudence Criminal Law, sec 4, page 758.

This statute of limitation is like all other statutes of limitation regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense (citing Wheeler v. Castor 11 N.D. 347, 92 N.W. 381, 61 L.R.A. 746, Miller & Co. v. Malone 11 Okla 241, 67, P. 479, 56, L.R.A. 620.) And is one to which, in proper circumstances, all men are entitled as a right. (citing Anaconda Mon. Co. v. Sails, 16 Mont. 8, 39, P. 909, 50 Am. St. Rep. 472; Carter v. Collins, 174, Okla, 4, 50 p. (2d) 203 34 American Jurisprudence page 23 also states:

"The defense is not technical (citing U.S. v. Oregon Lumber Co. 260 U.S. 290, 67, L. Ed. 261, 43 S. Ct. 100) but is deemed to be legitimate (citing O'Malley v. Sums, 51 Ariz, 155, 75 P. (2d) 50, 115, A.L.R. 634) substantial, and meritorious". (citing Guaranty Trust

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"N (2)"

*James P. Kenna*  
JAMES P. KENNA,  
Lieutenant, U. S. Navy.  
Judge Advocate.

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Ce. v. U.S. 304 U.S. 126, 82 L ed 1224, 58 S. Ct. 785; Dupree v. Mansur, 214, U.S. 161, 53 L ed 950, 29 S. Ct. 548; McClary v. Silliman, 3 Pot (US) 270, 7 L ed 676; Lilly-Brackett Co. v. Sonnemann, 157, Cal., 192, 106 P. 715, 21 Am. Cas. 1279; Whoratt v. Worth, 108 Wisc, 291, 84, N.W. 441, 81 Am. St. Rep. 899.

In 15 Am. Jur. Criminal Law Section 342 page 32 it is stated:

"Statutes of limitation in criminal cases differ from those in civil cases. In civil cases they are statutes of repose, while in criminal cases they create a bar to the prosecution (citing State v. Steensland 33 Idaho 529, 195 P. 1080, 13 A.L.R. 1442; People ex rel. Roibman v. Warden, 242, App. Div. 282, 275, N.Y.S. 59 citing R.C. L.)

A judgment for the def on a plea of the statute is necessarily an acquittal of the charge, and not a mere abatement of the action. Therefore, it has been universally classed as a plea in bar and not in abatement (citing U.S. v. Oppenheimer 242, U.S. 85, 61 L ed. 161, 37, S. Ct. 68, 3 A.L.R. 516; U.S. v. Barber, 219 U.S. 72, 55 L ed. 99, 31 S. Ct. 209.

Since we have raised the issue of the statute of limitation in this case it is incumbent upon the judge advocates to affirmatively prove the commission of the offenses charged within the statutory period.

We cite from 15 Am. Jur. Criminal Law section 343, page 32: "Where the issue of the statute of limitations is raised, the state must affirmatively prove the commission of the offense within the statutory period. In many jurisdictions, if the state relies upon an exception to remove the bar of the statute, it is incumbent upon the state to prove the exception."

The case of Hegoboom v. Stato, 120 Neb. 525, 234, N.W. 422, 79, A.L.R. 1171 holds that Statutes of limitation as applied to criminal procedure... are to be liberally construed in favor of the defendant.

Wharton says this same thing in speaking about statutes of limitation in criminal cases as being different than in civil cases. Yet we know that even at common law pleas of limitation were allowed long before there was any statute on the subject. (See 34 Am. Jur. Limitation of Actions, Section 2, page 14.)

But let us hear what Wharton says: In Wharton's Criminal Procedure, Volume I section 367, is headed: "Statute of limitations construction to be liberal to defendant."

On page 45 we read this regarding such statutes in criminal cases:

"But it is otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs

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"N (3)"

*James R. Kenny*  
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Judge Advocate.

0788

of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned it fixed and positive periods in which it destroys proofs of guilt. (2) " Footnote (2). "This is well exhibited in a famous metaphor by Lord Plunkett of which it is said by Lord Broughman (Works, etc., Edinb. ed. of 1872, IV 341) that "it can not be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced." "Time" so runs this celebrated passage, "with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he notes out the periods of that possession that shall supply the place of the maniments his scythe has destroyed."

In other words the defense of the statute of limitations is one not merely of technical process, to be grudgingly applied, but of right and wise reason, and, therefore, to be generously dispensed. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p. 952.

Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."

In U.S. Code Annotated Title 18 Sec. 582, page 138 in note 6 the case of U.S. v. Watkins (cc. Dist. Cal. 1829) Fed. Cas. No. 16649 is cited and the rule set forth:

"The time of finding the indictment will appear by the caption, and, where it appears therefrom that the offense was committed beyond the time limited, judgment will be rendered for defendant."

These six accused plead the statutes of limitations as a bar to their trial for the offenses committed June 20, 1944, and charged under date of July 15, 1947.

Respectfully,

MARTIN E. CARLSON  
Commander, United States Naval Reserve.

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*James P. Kenny*

JAMES P. KENNY,  
Lieutenant, U.S. Navy,  
Judge Advocate, S. F. 4

"N (4)"

0789



A16-2/FF12/  
13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 15488

15 July 1947.

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

Subject: Charges and Specifications in the case of:

ASANO, Shimpei  
UENO, Chisato  
NAKASE, Shohichi  
ERIGUCHI, Takeshi  
KOBAYASHI, Kazumi  
TANAKA, Sueta

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

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*James P. Kenny*

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

"O (1)"

0790

CHARGE I

MURDER

SPECIFICATION 1

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with a deadly weapon, to wit, a sword, an American prisoner of war, name to the relator unknown, said prisoner of war being then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

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*James A. Kenny*

JAMES A. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

"0 (2)"

0791



CHARGE I (continued)

SPECIFICATION 2

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the 41st Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly with NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the 41st Naval Guards, and others to the relator unknown, and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, wound, strike, kill, and cause to be killed by stabbing with a deadly weapon, to wit, a bayonet, an American prisoner of war, name to the relator unknown, said prisoner of war being then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

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*James P. Kenny*

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

"O (3)"

0792

CHARGE II

VIOLATION OF THE LAW AND CUSTOMS OF WAR

SPECIFICATION 1

In that ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, NAKASE, Chohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the 41st Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, unlawfully, inhumanely, and without justifiable cause, assault, strike, mistreat, torture, and abuse, an American prisoner of war, name to the relator unknown, then and there held captive by the armed forces of Japan, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of the said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, this in violation of the law and customs of war.

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*James P. Kenny*

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

"O (4)"

0793



CHARGE II (continued)

SPECIFICATION 2

In that ASANO, Shimpei, then a captain, IJN, commandant of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commandant of the 41st Naval Guards, to control the operations of members of his command and persons subject to his control and supervision, permitting them to visit cruelties upon, and commit atrocities and other offenses, as hereinafter specified, against American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, in violation of the law and customs of war:

(a) The inhumane and willful mistreatment, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by cutting and wounding him with instruments, exact description to the relator unknown, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, and others to the relator unknown, all attached to, and serving at, the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(b) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by beheading with a deadly weapon, to wit, a sword, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, ERIGUCHI, Takeshi, then a dentist ensign, IJN, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, and others to the relator unknown, all attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(c) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by stabbing with a deadly weapon, to wit, a bayonet, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, namely, UENO, Chisato, then a surgeon lieutenant commander, IJN, NAKASE, Shohichi, then a lieutenant commander, IJN, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, TANAKA, Sueta, then a leading seaman, IJN, and others to the relator unknown, all attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

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*James P. Kenny*

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

"O (5)"

0794

CHARGE II (continued)

SPECIFICATION 3

In that ASANO, Shimpei, then a captain, IJN, commandant of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependancies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commandant of the 41st Naval Guards, to take such measures as were within his power and appropriate in the circumstances to protect American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan under his command and subject to his control and supervision, as it was his duty to do, in that he permitted the visiting of cruelties upon and the commission of atrocities and other offenses, as hereinafter specified, against said American prisoners of war, by members of his command, and persons subject to his control and supervision, in violation of the law and customs of war:

(a) The inhuman and willful mistreatment, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by cutting and wounding him with instruments, exact description to the relator unknown, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll.

(b) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by beheading with a deadly weapon, to wit, a sword, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(c) The willful killing, without justifiable cause, of an American prisoner of war, on or about 20 June 1944, by stabbing with a deadly weapon, to wit, a bayonet, at Dublon Island, Truk Atoll, Caroline Islands, by personnel of the 41st Naval Guards, attached to and serving at the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

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*James P. Kenny*

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

"O (6)"

0795



CHARGE II (continued)

SPECIFICATION 4

In that UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving with said 41st Naval Guards, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the acting head medical officer of the said 41st Naval Guards, to take such measures as were in his power and appropriate under the circumstances, to protect two American prisoners of war, names to the relator unknown, then held captive by the armed forces of Japan, and then and there in the custody of the said UENO, at Dublon Island, Truk Atoll, Caroline Islands, as it was his duty to do, in that he permitted the willful killing, without justifiable cause, on or about 20 June 1944, by personnel of the 41st Naval Guards, of one of said American prisoners of war by beheading and one of said American prisoners of war by stabbing, this in violation of the law and customs of war.

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

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*James P. Kenny*

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

"O (7)"

0796

アメリカ合衆國海軍艦隊  
「アリヤ」方面司令官

昭和二年七月二十五日

發、アメリカ方面司令官

宛、アメリカ合衆國海軍少佐「ジョセフ・モリガン」  
「アメリカ合衆國海軍大尉」ジェームズ・ケネディ  
又「アリヤ」方面司令官部軍式下員會ニ於リル  
檢事トシテ、貴官、後任者

記 交野 新平  
上野 千里  
中野 七郎  
江里 口武  
小林 和三  
田中 末太

「事件ニ於リル起訴罪狀項目

一、以上、人々ハ貴官ガ檢察官タル軍法下員會ニ於テ  
在リ、起訴罪狀項目ニ就テ裁判サレリテ、  
ヨリ貴官ハ裁判長ニ及被告ニ裁判、日清千報ニ  
又ハ通報シ、檢事側及被告側、全渡人ヲ召集セタ

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

"P (1)"

0797



第一起訴  
殺人

罪狀項目 一

カロリニ諸島トラスク環礁同々、日本帝國海軍軍  
事施設ニ配属サレタ。第四十一警備隊司令當時  
海軍大佐交野新平、第四十一警備隊軍医長代理  
當時海軍軍医少佐上野千里、第四十一警備隊  
副長代理當時海軍少佐中瀬庄七、第四十一警  
備隊付當時海軍齒科医少尉江里口武、第四十一  
警備隊付當時海軍衛生兵曹長小林和三、及  
其他姓名不詳者、同軍事施設ニ勤務中、共  
同シ共通、目的達、為テ、合衆國連合諸國  
及其、臣領ガ日本帝國ト戦争状態ニモツタ服<sup>2</sup>  
和十九年八月二十日頃カロリニ諸島トラスク環礁島  
ニ於テ、莫大のニ違法のニ企図ト更ニ莫トシテ、  
正當ノ理由モク同時同処ニ於テ日本盟ニヨリ拘留  
サレテ、タタ當時同ニ姓名不詳、一名、アメリカ人俘  
虜ヲ危険ヲ武器等、タテ、各個ニ籠束シ  
斬リツケ殺シタハ殺サセタ。之ハ戦争法規並ニ慣  
習ニ違反シテキル。

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*James P. Kenny*  
JAMES P. KENNY  
Lieut., U.S.N.  
Judge Advocate.

NP (2)

0798

第二起訴(續)

罪狀項目 二

カリニン諸島トラス環礁無夏島、日本帝國海軍  
軍事施設ニ配属サレキキタ第四十一整備隊  
司令當時海軍大佐浅野新平、第四十一整備  
隊軍医長代理當時海軍軍医少佐上野千里  
第四十一整備隊副長代理當時海軍少佐中  
瀬庄七及び第四十一整備隊付當時海軍水  
兵長田中末太、同軍施設ニ勤務中、第  
四十一整備隊付當時海軍上等兵甚白ナガシ  
ミツヲ、其他姓名不詳者ト共通、目的達成  
ノ為共同シテアメリカ合衆国連合諸國及其  
臣領ガ日本帝國ト戦争状態ニアツタ昭和  
十九年六月二十日頃「カリニン諸島トラス環礁無夏  
島ニ於テ莫大の違法的ニ企圖ト更ニ莫大  
以テ正當ノ理由モク同時同處ニ於テ日本軍ニ  
ヨリ拘留サレキキタ當局ニハ姓名不詳ノアメリカ  
人俘虜一名ヲ危険ノ武器即チ生手ケツ銃劍  
デ各個ニ襲撃、傷付ケ刺シ殺シ又ハ刺ス  
ニヨリ殺サセタ之ハ戦争法規並ニ慣習ニ違反  
シテナル。

五

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*James P. Kenny*  
JAMES P. KENNY  
Lieut., U.S.N.  
Judge Advocate.

"P (3)"

0799



### 第三起訴

戰爭法規並ニ慣習ニ違反

#### 罪狀項目 一

カロリン諸島トラク環礁、夏島、日本帝國軍  
事施設ニ配属サレテキタ第四十一整備隊司令  
令當時海軍大佐交野新平、第四十一整備  
隊軍医長代理當時海軍軍医少佐上野  
千里、第四十一整備隊副長代理海軍少佐  
中瀬庄七、第四十一整備隊付當時海軍衛  
生兵曹長小林和三及其他姓名不詳者ハ  
同軍事施設ニ勤務中共同シテ共通ノ目的  
達成、為メハ也合衆國、連合諸國及其、  
臣領ガ日本帝國ト戦争状態ニツキ昭和十  
九年六月二十日頃「カロリン諸島」トラク環礁、  
夏島ニ於テ莫大ノ違法的、非人道的  
ニ正當ノ理由モナク同時同地ニ於テ日本軍  
隊ニヨリ拘留サレタキタ當局ニハ姓名不詳、  
一名、アメリカ人俘虜カテ一団、日本人、面前テ  
胸部、腹部、陰囊、右大腿部及右足、皮  
下注射ヲ行ツテソ、生体ニ医学的實驗ヲスル  
コトヲ行ヒ、殘虐ノ攻撃ノ虐待ノ甚シメ苛害  
シタ之ハ戰爭法規並ニ慣習ニ違反シテナル。

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*James P. Kenny*  
JAMES P. KENNY  
Lieut., U.S.N.  
Judge Advocate.

NP (4)

0000

## 第二起訴 (續キ)

### 罪狀項目 二

カバリノ諸島トラウノ環礁無負島、日本帝國海軍軍事施設ニ配属サレタ第甲一警備隊司令官當時海軍陸支隊新平ハアメリカ合衆國連合諸國及其、主領ガ日本帝國ト戦争終結ニ付昭和十九年六月二十日頃カバリノ諸島トラウノ環礁無負島ニ於テ彼、指揮下ニ在ッタ人々及彼、取締及監督下ニ在ッタ人々、行動ヲ抑制セズ同時同處ニ於テ日本軍隊ニミリ抑留サレタ第甲一警備隊員即チ同島、日本帝國海軍軍事施設ニ配属勤務中、當時海軍軍医少佐上野千里當時海軍少佐中瀬庄七當時海軍衛生兵曹長小林和ニ及其他姓名不詳者ガ當時同ニハ不詳ノ客員ヨリ一名「アメリカ」人俘虜ヲ拘リ傷ツケ、正當ノ理由、ナシ非人道的責與的虐待ヲ行ツタ。

(一) 昭和十九年六月二十日頃カバリノ諸島トラウノ環礁無負島ニ於テ第甲一警備隊員即チ同島、日本帝國海軍軍事施設ニ配属勤務中、當時海軍軍医少佐上野千里當時海軍少佐中瀬庄七當時海軍衛生兵曹長小林和ニ及其他姓名不詳者ガ當時同ニハ不詳ノ客員ヨリ一名「アメリカ」人俘虜ヲ拘リ傷ツケ、正當ノ理由、ナシ非人道的責與的虐待ヲ行ツタ。

(二) 昭和十九年六月二十日頃カバリノ諸島トラウノ環礁無負島ニ於テ第甲一警備隊員即チ同島、日本帝國海軍軍事施設ニ配属勤務中、當時海軍軍医少佐上野千里當時海軍少佐中瀬庄七當時海軍齒科少尉江里口

PREPARED BY  
JAMES P. KERRY  
U.S.N.  
TRUE COPY



第二起訴 罪狀項目二、續キ

武當時海軍衛生兵曹長小林和三及其他姓名不詳者が危険ヲ武器即チ軍刀ヨリ一名、アメリカ人俘虜、查ラリ正當ト理由、ナイ莫夫のヲ殺人ヲ行ツタ。

(ハ)昭和十九年八月二十日頃カビリン諸島に於テ環礁夏島ニ於テ第四十一警備隊員即チ同島、日本帝國國軍軍施設ニ配属勤務中、當時海軍軍医少佐上野々里當時海軍少佐中瀬 庄七 當時海軍上等兵曹長ガミミツ、當時海軍水兵長田中末太及其他姓名不詳者が危険ヲ武器即チ銃劍ヨリ一名、アメリカ人俘虜ヲ刺シ正當ト理由、ナイ莫夫のヲ殺人ヲ行ツタ。

石

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James P. Kenny

JAMES P. KENNY,  
Lieut. U.S.N.,  
Judge Advocate.

"P (6)"

0802

## 第二起訴（續キ）

### 罪狀項目 三

カロリン諸島トラン環礁夏島、日本帝國海軍軍事施設ニ配属サレテヤ第四十一警備隊司令當時海軍大佐交野新平、同軍事施設ニ勤務中アリシ合衆國連合諸國及其、臣領ガ日本帝國ト戦争能ハシモ昭和十九年六月二十日頃カロリン諸島トラン環礁夏島ニ於テ同時同処ニ於テ彼、指揮取締監督下ニアッタ日本軍隊ニヨリ斯處サレテヤ當時局ニハ姓名不詳、アメリカ人俘虜カラ保護スルコトガ彼、權限内、コトアリ然モ當時、状況不適切ナル処置デアッタニモカカワラス又ソレガ彼ノ職責デアッタニモカカワラス、彼、指揮下ニアッタ人々及彼、取締監督下ニアッタ人々が同アメリカ人俘虜ニ對シ左記、如キ残酷テ行爲、暴行其他、犯罪ヲ行フニテラ許可シ得表的ニ第四十一警備隊司令トシテ、彼ノ職責ヲ無視シ又ハ遂行シタカク之ハ戦争法規並ニ慣習ニ違反シテナル。

(イ) 昭和十九年六月二十日頃カロリン諸島トラン環礁夏島ニ於テ同島、日本帝國海軍軍事施設ニ配属勤務中、第四十一警備隊員ガ當局ニハ不詳、密見ニヨリ一名ノアメリカ人俘虜ヲ拘リ傷ケテ正當ナ理由、ナシ非人道的意思の虐待ヲ行フタ。

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Judge Advocate.

"P (7)"

0003



第二起訴(續キ) 罪狀現目三、續キ

(ロ) 昭和十九年六月二十日頃カリシ諸島に於テ  
環礁島夏島ニ於テ同島、日本帝國海軍  
軍事施設ニ配属勤務中、第四十一警備  
隊員ガ危険ヲ武器即チ軍刀ニヨリ一名、  
アメリカ人俘虜、首ヲ切ッテ正當ト理由、  
ナシ責めの的ト殺人ヲ行ツタ。

(ハ) 昭和十九年六月二十日頃カリシ諸島に於テ  
環礁島夏島ニ於テ同島、日本帝國海軍軍  
事施設ニ配属勤務中、第四十一警備隊員  
ガ危険ヲ武器即チ銃劍ニヨリ一名、アメリカ人  
俘虜ヲ刺シテ正當ト理由、ナシ責めの的ト  
殺人ヲ行ツタ。

8

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JAMES P. KENNY,  
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"P (8)"

0804

第三起訴(續)

罪狀項目 四

カリリノ諸島トシテ環礁夏島、日本帝國海軍軍事施設ニ所ニ定サレテ廿四警備隊軍医長代理當時海軍少佐上野千屋、同第四十一警備隊ニ於テ勤務中、アメリカ合衆國連合諸國及其屬領ニ日本帝國ニ戰争状態ニツキ昭和十九年八月十五日頃カリリノ諸島トシテ環礁夏島ニ於テ同時同処ニ於テ日本軍方ヨリ柳田セウレ同ニ野ノ監視下ニツタ當局ニハ姓名不詳ノ二名ノアメリカ人俘虜ヲ保護スルコトガ彼ノ權限内、フトテリ然モ當時、狀況不適切ナル処置テアツタモカ、ラズ、又ソガ彼ノ職責タツタモカ、ラズ第四十一警備隊員ニ對シテ思的ニ正當ノ理由モナク昭和十九年八月十五日頃一名ノ俘虜、首ヲ切り他一名ヲ刺シテ殺スコトヲ許可シ違法的ニ第四十一警備隊軍医長代理トシテ、彼ノ職責ヲ無視シ遂行シナカッタニハ戰争法規並ニ慣習ニ違反スルモノデアリ。

アメリカ方面司令官。  
アメリカ合衆國海軍少將。  
シ・エ・ポーネル

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JAMES P. KENNY  
Lieut., U.S.N.  
Judge Advocate.

0805



**FIRST DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, September 22, 1947.

The commission met at 9:15 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major Joseph T. Smith, junior, U. S. Marine Corps, members, and  
Lieutenant Commander Joseph A. Regan, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Corporal Arthur E. Manthey, U. S. Marine Corps, entered with the accused  
and reported as provost marshal.

The judge advocate introduced Robert R. Miller, yeoman first class,  
U. S. Navy; Robert Oldham, yeoman third class, U. S. Navy; and Jack H. Meyer,  
seaman first class, U. S. Navy, as reporters; and they were duly sworn.

The judge advocate introduced Mr. Frederick Savory, Mr. Isamu Ueda,  
Mr. Shigeo Yamanouchi, and Mr. George Kumai as interpreters, and they were  
duly sworn.

Each of the accused requested that Commander Martin E. Carlson, U. S.  
Naval Reserve; Mr. Akinoto, Yuichiro; Mr. Kumata, Hideo, and Mr. Karasawa,  
Takumi, act as his counsel. Commander Carlson, Mr. Akinoto, Mr. Kumata,  
and Mr. Karasawa took seat as counsel for the accused.

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

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate did not object to any member.

Mr. Karasawa, Takumi, a counsel for the accused, read a written  
objection in Japanese to Lieutenant Commander Bradner W. Lee, junior,  
U. S. Naval Reserve.

An interpreter read an English translation of the objection of Mr.  
Karasawa to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval  
Reserve, as follows:

The accused object to Lieutenant Commander Bradner W. Lee, junior,  
U. S. Naval Reserve, as a member of the Military Commission to try these  
accused. The accused object to him on the grounds that (1) He was a member  
of the War Crimes Staff, Commander Marianas, during the period of time when  
this case was being investigated and (2) that he sat as a member of the  
Military Commission which tried Iwanami, Hiroshi, et al upon charges based

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*James P. Kenny*  
Lieutenant, U. S. Navy

Judge Advocate.

on crimes committed at the Forty-first Naval Guard Unit, Truk, during the period from January to July, 1944. During the Iwanami trial both Ueno, Chisato and Nakase, Shohichi were frequently mentioned in the testimony and both Ueno, Chisato and Nakase, Shohichi appeared as witnesses. If this challenge is sustained we request that he be replaced by a medical officer, U. S. Navy inasmuch as Ueno, Chisato, a medical officer is being tried in his capacity as acting head medical officer of the Forty-first Naval Guard Unit not only for surgical explorations but also for failure to discharge his duty as the acting head medical officer of the Forty-first Naval Guard Unit.

The judge advocate made the following statement:

The judge advocate does not feel that the challenge is well founded. However, before the challenged member replies, we respectfully call the commission's attention to two dispatches concerning this matter, one from Commander Marianas to SecNav JAG, requesting permission to relax in these war crime trials, the rule stated in Section 388(e) of Naval Courts and Boards and the second is a reply in the affirmative from JAG.

The certified true copies of the two dispatches were presented to Commander Carlson, counsel for the accused, and to the commission.

The challenged member replied as follows:

I, Bradner W. Lee, junior, lieutenant commander, U. S. Naval Reserve, state that it is true that I am attached to the staff of the War Crimes Office which office it is alleged investigated the facts in this case. However, I can truly state that I have not personally investigated the charges in this case or expressed an opinion thereon; that I have not formed a positive and definite opinion as to the guilt or innocence of any of the accused, and that I am not interested in the case. In September 1946 I was ordered to Commander Marianas for duty in connection with war crimes trials and I reported to the Commander Marianas and was assigned to duty in the office of the Director of War Crimes, Pacific Ocean Areas, now designated Pacific Fleet; that I have made no investigation of, nor do I know any of the details of the charges or the specifications or any of the facts pertaining to this case. I can truly state that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission was cleared. The challenged member withdrawing.

The commission was opened and all parties to the trial entered. The commission announced that the objection of the accused was not sustained.

Mr. Karasawa, Takami, a counsel for the accused, read a written objection in Japanese to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army.

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*James P. Kenny*  
JAMES P. KENNY  
Lieutenant, U. S. Navy. 2  
Judge Advocate.

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An interpreter read an English translation of the objection of Mr. Karasawa to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army as follows:

The accused object to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army as a member of the Military Commission to try these accused. The accused object to him on the grounds that he sat as a member of the Military Commission which tried Iwanami, Hiroshi, et al, upon charges based on crimes committed at the Forty-first Naval Guard Unit, Truk, during the period from January to July, 1944. During the Iwanami trial both Ueno, Chisato and Nakase, Shohichi were frequently mentioned and evidence introduced to show that Ueno was acting head medical officer at the Forty-first Naval Guard Unit and Nakase was acting executive officer at the Forty-first Naval Guard Unit at the time when prisoners in the custody of the Forty-first Naval Guard Unit were experimented upon and were killed by the accused in the Iwanami trial together with "others unknown." Ueno, Chisato and Nakase, Shohichi both appeared as witnesses in the Iwanami et al trial. All of these accused were members of the Forty-first Naval Guard Unit during the time the crimes alleged in the Iwanami et al trial occurred. If this challenge is sustained we request that he be replaced by a medical officer of the U. S. Navy or a dental officer of the U. S. Navy inasmuch as Ueno, Chisato, a medical officer is being tried in his capacity as acting head medical officer of the Forty-first Naval Guard Unit not only for surgical explorations but also for failure to discharge his duty as the acting head medical officer of the Forty-first Naval Guard Unit and Higuchi, Takeshi is being tried for alleged crime committed June 20, 1944 at Truk Atoll while he was then a dentist ensign, Imperial Japanese Navy.

The challenged member replied as follows:

I, Victor J. Garbarino, acknowledge that the statements of the defense counsel are substantially correct. However, I wish to assure all parties of this trial that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for trial, the customs of war in like cases and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

Mr. Karasawa, Takami, a counsel for the accused, read a written objection in Japanese to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army.

An interpreter read an English translation of the objection of Mr. Karasawa to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army as follows:

The accused object to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army, as a member of the Military Commission to try these accused. The accused object to him on the grounds that he sat as a member of the Military Commission which tried Iwanami, Hiroshi, et al,

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

upon charges based on crimes committed at the Forty-first Naval Guard Unit, Truk, during the period from January to July, 1944. During the Iwanami trial both Ueno, Chisato and Nakase, Shohichi were frequently mentioned and evidence introduced to show that Ueno was acting head medical officer at the Forty-first Naval Guard Unit and Nakase was acting executive officer at the Forty-first Naval Guard Unit at the time when prisoners in custody of the Forty-first Naval Guard Unit were experimented upon and were killed by the accused in the Iwanami trial together with "others unknown." Ueno, Chisato and Nakase, Shohichi both appeared as witnesses in the Iwanami et al trial. All of these accused were members of the Forty-first Naval Guard Unit during the time the crimes alleged in the Iwanami et al trial occurred. If this challenge is sustained we request that he be replaced by a medical officer of the U. S. Navy or a dental officer of the U. S. Navy inasmuch as Ueno, Chisato, a medical officer is being tried in his capacity as acting head medical officer of the Forty-first Naval Guard Unit not only for surgical explorations but also for failure to discharge his duty as the acting head medical officer of the Forty-first Naval Guard Unit and Kiguchi, Takashi is being tried for alleged crime committed June 20, 1944 at Truk Atoll while he was then a dentist ensign, Imperial Japanese Navy.

The challenged member replied as follows:

I acknowledge the statements of the defense counsel are substantially correct. I believe, however, that I can truly try without prejudice or partiality the case now pending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

Mr. Kanasawa, Takami, a counsel for the accused, read a written objection in Japanese to Rear Admiral Arthur G. Robinson, U. S. Navy.

An interpreter read an English translation of the objection of Mr. Kanasawa to Rear Admiral Arthur G. Robinson, U. S. Navy as follows:

The accused object to Rear Admiral Arthur G. Robinson, U. S. Navy, as a member of the Military Commission to try these accused. The accused object to him on the grounds that he sat as a member of the Military Commission which tried Iwanami, Kiroshi, et al, upon charges based on crimes committed at the Forty-first Naval Guard Unit, Truk, during the period from January to July 1944. During the Iwanami trial both Ueno, Chisato and Nakase, Shohichi were frequently mentioned and evidence introduced to show that Ueno was acting head medical officer at the Forty-first Naval Guard Unit and Nakase was acting executive officer at the Forty-first Naval Guard Unit at the time when prisoners in the custody of the Forty-first Naval Guard Unit were experimented upon and were killed by the accused in the Iwanami trial together with "others unknown." Ueno, Chisato and Nakase, Shohichi both appeared as witnesses in the Iwanami et al trial. All of these accused were members of the Forty-first Naval Guard Unit during the time the crimes alleged in the Iwanami et al trial occurred.

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*James P. Kenny*  
JAMES P. KENNY, 4  
Lieutenant, U. S. Navy,  
Judge Advocate.

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The challenged member replied as follows:

It is true that I sat in the previous trial mentioned by the defense counsel. However, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission announced that in view of the fact the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

The judge advocates and each member were duly sworn.

Each of the accused stated that he had received a copy of the charges and specifications preferred against him, both in English and in Japanese, on July 28, 1947.

The judge advocate asked the accused if they had any objections to make to the charges and specifications.

The accused replied in the affirmative. Mr. Kumata, Hideo, a counsel for the accused, read a written objection to the charges and specifications, prefixed marked "K."

An interpreter read an English translation of Mr. Kumata's objection, prefixed marked "J."

The commission then, at 10:35 a.m., took a recess until 10:50 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlisch, U. S. Naval Reserve, a counsel for the accused, read a further written objection to the charges and specifications, prefixed marked "E."

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

The commission then, at 11:32 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

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

The judge advocate read a written reply to the objection to the charges and specifications, prefixed marked "L."

The accused waived the right to have this reply read in Japanese in open court.

The commission was cleared.

The commission was opened and all parties to the trial entered.

The commission made the following ruling:

The commission rules that the objections of the accused to the charges and specifications are not sustained, and that the commission finds the charges and specifications in due form and technically correct.

An interpreter read the ruling of the commission in Japanese.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, copy prefixed marked "M."

The accused waived the right to have the objection of Commander Carlson read in Japanese in open court at this time.

The commission was cleared.

The commission was opened and all parties to the trial entered.

The commission announced that the plea to jurisdiction was not sustained.

Each of the accused stated that he was ready for trial.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written plea in bar of trial, copy prefixed marked "N."

The accused waived the right to have the plea in bar of trial of Commander Carlson read in Japanese in open court at this time.

The judge advocate replied to the plea in bar of trial.

The accused waived the right to have the reply of the judge advocate read in Japanese in open court at this time.

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

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*James A. Henry*

JAMES A. HENRY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

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The judge advocate read the letter containing the charges and specifications, original prefixed marked "O."

An interpreter read the charges and specifications in Japanese, prefixed marked "P."

The judge advocate arraigned the accused as follows:

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

A. Not guilty.

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

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JAMES A. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

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Q. To the second charge, guilty or not guilty?  
A. Not guilty.

Q. Ueno, Chisato, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty?  
A. Not guilty.

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

Q. To the first charge, guilty or not guilty?  
A. Not guilty.

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

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

Q. To the second charge, guilty or not guilty?  
A. Not guilty.

Q. Briguchi, Takeshi, you have heard the charge and specification preferred against you; how say you to the first specification of the first charge, guilty or not guilty.  
A. Not guilty.

Q. To the first charge, guilty or not guilty?  
A. Not guilty.

Q. Kojashi, Kazumi, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty.  
A. Not guilty.

Q. To the first charge, guilty or not guilty?  
A. Not guilty.

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

Q. To the second charge, guilty or not guilty?  
A. Not guilty.

Q. Tanaka, Susa, you have heard the charge and specification preferred against you; how say you to the second specification of the first charge, guilty or not guilty?  
A. Not guilty.

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JAMES H. KENNY,  
Lieutenant, U. S. Navy.  
Judge Advocate.

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Q. To the first charge, guilty or not guilty?  
A. Not guilty.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow,  
Tuesday, September 23, 1947.

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*James A. Kenny*

JAMES A. KENNY, 8  
Lieutenant, U. S. Navy.  
Judge Advocate.

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**SECOND DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, September 23, 1947.

The commission met at 9 a.m.

**Presents:**

Rear Admiral Arthur G. Robinson, U. S. Navy.  
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major Joseph T. Smith, junior, U. S. Marine Corps, members, and  
Lieutenant Commander Joseph A. Regan, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The prosecution began.

The judge advocate read a written opening statement, appended marked "q."

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

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

That a state of war existed between the United States of America and the Imperial Japanese Empire during the year 1944.

The Potsdam Declaration of July 26, 1945, particularly paragraph 10, which reads in part as follows: "We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Article 2 of Title I of that convention which reads as follows: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them."

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Judge Advocate.



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

"Measures of reprisal against them are prohibited."

That Truk Atoll was part of the territory under the command of Commander Marianas at the time the precept and charges and specifications were drawn, and that Dublin Island is one of the islands of Truk Atoll.

The Hague Convention of October 18, 1907, and especially Article 23(e) which reads as follows: "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion."

An interpreter read the request to take judicial notice in Japanese.

The accused made the following objections:

The accused object to the commission taking judicial notice of the Hague Convention or the Geneva Prisoner of War Convention inasmuch as these are not United States statutes or United States laws. We also object to the commission taking judicial notice of the Potsdam declaration. There has been no showing by the judge advocate that these declarations and conventions are in force or applicable in this case, that they are relevant to the issues here being tried or that they are material or that the accused are in any way bound by these declarations and conventions. We particularly object to paragraph ten of the Potsdam Declaration as being immaterial and irrelevant and prejudicial to the rights of the accused. We feel that if the commission takes judicial notice of this they would logically be prejudiced. We particularly object to the use of the expression of "stern" justice shall be meted out to all war criminals." The use of the words "stern" and "war criminals" in our opinion prejudice the commission. The accused are, it is true, suspected war criminals. Until they are found guilty by this commission they cannot be war criminals. We feel that justice is all that this commission should mete out, not stern justice. The accused further object to the commission taking judicial notice of the fact that Dublin Island, part of Truk Atoll, was part of the territory under the command of Commander Marianas at the time the precept and charges and specifications were drawn and feel that it should be proved like any other fact as they are required to do by sections 27 and 309 of Naval Courts and Boards.

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

The judge advocate replied,

The commission was cleared. The commission was opened and all parties to the trial entered.

The commission announced that the objection was not sustained, and the commission will take judicial notice of the documents and matters referred to by the judge advocate.

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Judge Advocate.

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The judge advocate introduced Lieutenant Eugene E. Kerrick, junior, U. S. Naval Reserve, as an interpreter and he was duly sworn.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.  
A. Former Corporal Petty Officer First Class Kodama, Akira.
2. If you recognize any of these accused state their names and former ranks.

The witness correctly identified all of the accused.

3. Q. During what period were you attached to the Imperial Japanese Navy?  
A. From 1 May 1941 till January 1946.

4. Q. During what period of that time were you stationed at Truk?  
A. From 1 December 1943 till the end of the war.

5. Q. During the year 1944 did you receive any assignment in connection with some prisoners of war?  
A. Yes.

6. Q. When did you receive this assignment?  
A. I think it was around July 1944 I received an order from Petty Officer Uehihira to take instruments to the air raid shelter to be used in operating on a prisoner.

7. Q. At about what time of the day did you receive this order from Petty Officer Uehihira?  
A. I have no distinct recollection. I do not remember if it was the morning or afternoon.

8. Q. Tell this commission what you did as a result of that order.  
A. I went to the air raid shelter which was the battle first aid station, taking the instruments. There I was ordered by Surgeon Commander Ueno to take out the spencer forceps. Commander Ueno then removed the toe nail of the prisoner, next made an incision in the abdomen, next revealed the appendix, next made an incision in the thigh, after which he made an incision in the scrotum. After he had finished he sewed and bandaged the abdomen and ordered the prisoner carried to the back of the sick bay. The senior petty officer, Uehihira, and myself carried the prisoner there, and then Higuchi was shown how to cut by Ensign Kobayashi and Higuchi beheaded the prisoner.

9. Q. As you entered the air raid shelter did you notice anything unusual outside?  
A. I saw nothing until I entered the air raid shelter.

10. Q. Did you use the entrance to the air raid shelter that is nearest the dispensary?

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Lieutenant, U. S. Navy.  
Judge Advocate.

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

The judge advocate replied,

The commission announced that the objection was sustained.

11. Q. Which end of the air raid shelter did you enter?  
A. Through the west entrance.

12. Q. What do you mean by the west entrance?  
A. The entrance opposite the sick bay.

13. Q. When you entered the air raid shelter what did you see?  
A. I saw a stand about one meter high and on it was a stretcher with a prisoner lying on his back.

14. Q. What was the color of the skin of this prisoner?  
A. I have no distinct recollection.

15. Q. Do you know what the nationality of the prisoner was?  
A. I do not know.

16. Q. How long was this air raid shelter?  
A. I think it was about five meters.

17. Q. What was the width of it?  
A. Approximately three meters.

18. Q. When you entered the air raid shelter who was present?  
A. Commander Ueno, Ensign Briguchi, Ensign Kobayashi, Petty Officer Uchihira, Petty Officer Hoshino, Lieutenant Kinoshita, the rest I do not remember.

19. Q. Do you remember anyone else entering during the course of the operation?  
A. I do not remember.

20. Q. Which toe nail was removed from the prisoner?  
A. I think it was the nail of the big toe of the right foot.

21. Q. Which end of the prisoner's body was toward the entrance nearest the sick bay?  
A. The head.

22. Q. On which side of the prisoner was Ueno standing?  
A. Looking from the head of the prisoner he was standing toward the right of the prisoner.

23. Q. Did anyone other than Ueno do the cutting on this prisoner?  
A. I do not remember.

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Lieutenant, U. S. Navy  
Judge Advocate.

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24. Q. Was Ueno assisted by anyone during this operation?

A. I do not remember.

25. Q. Was an anaesthetic administered?

A. Yes.

26. Q. Who administered it?

A. It was Uchihira.

27. Q. You have stated that Ueno made an incision in the thigh. Which thigh was it?

A. As I remember it was the right thigh.

28. Q. Was any particular part of the anatomy exposed by that incision?

A. I do not remember.

29. Q. Did Ueno say anything when he removed the right toe nail?

A. I do not remember.

30. Q. Did he say anything when he made the incision in the right thigh?

A. I do not remember.

31. Q. You have stated that Ueno cut the scrotum. What particular part of the scrotum was cut?

A. As I remember, I remember his making an incision in the center of the scrotum.

32. Q. Were either of the testicles cut?

A. As I remember the right testicle was cut.

33. Q. After cutting the right testicle, the outer skin, did he remove anything?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Nothing was removed.

34. Q. After cutting the right testicle what was the next part of the anatomy that was cut?

A. As I recall the appendix was cut.

35. Q. Where was the incision made?

A. I do not understand.

36. Q. You have stated that the appendix was cut. Where was the incision made on the body to get to the appendix?

A. As I remember the appendix was removed through the incision that was formerly made in the abdomen.

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*James H. Kenny*

JAMES H. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

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37. Q. Will you indicate on your own body the length of this incision that was made on the abdomen?  
A. As I recall the distance was this.

(Witness indicated a point from about the mid-chest to slightly below the navel.)

38. Q. Was the appendix removed?  
A. I think it was.

39. Q. Did you see anything else done to the abdomen?  
A. When the abdomen was cut open I think he said, "This is the intestines."

40. Q. When you say "he," whom do you mean?  
A. Commander Ueno.

41. Q. When he made this statement did he do anything with the intestines?  
A. All he did was to touch the intestines.

42. Q. While this operation was going on did you leave the air raid shelter at any time?  
A. I do not remember the exact time but I think it was about twenty minutes before the operation was over, I went toward my quarters to get a drink of water.

43. Q. When you got outside the air raid shelter did you see anything unusual?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did.

44. Q. Tell this commission what you saw.  
A. After I left the air raid shelter, east of the tank about thirty to forty meters in front of me I saw an American soldier tied like a scarecrow and I saw Tanaka stab the prisoner in the chest.

45. Q. When you say Tanaka do you mean the individual who was a short time ago identified in this court by you as one of the accused?  
A. Yes.

46. Q. With what did you see Tanaka stab the prisoner?  
A. A rifle and bayonet.

47. Q. Was he the only one you saw stab the prisoner?  
A. Yes.

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*James R. Kenny*

JAMES R. KENNY,  
Lieutenant, U. S. Navy 14  
Judge Advocate.

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48. Q. Was the scene of this stabbing at the same location as the place where you saw the prisoner who was operated on being beheaded?

This question was objected to by the accused on the ground that there had been no such testimony.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember distinctly, but I think they were a little apart.

49. Q. About how many people did you see at the scene of this stabbing?

A. Approximately I think there were about twenty to thirty persons.

50. Q. Approximately how far were you standing from the scene at the time you saw Tanaka stab the prisoner?

A. Approximately thirty to forty meters.

51. Q. Are you able to tell us any of the officers who were present at the scene?

This question was objected to by the accused on the ground that there had been no testimony that there were any officers present at the scene.

The judge advocate withdrew the question.

52. Q. Did you see any officers present at the stabbing?

A. Because of the distance I do not remember distinctly.

53. Q. Before leaving the air raid shelter did you hear anything going on outside of that shelter?

A. Do you mean some sort of work they were doing?

54. Q. Did you hear anything going on?

A. I did not hear anyone talking but I think I heard a cough.

55. Q. Did you hear anything said at the time you heard this cough?

A. No.

56. Q. Did you recognize this cough as belonging to any particular individual?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall it was a cough which was Lieutenant Commander Nakase's.

57. Q. After witnessing the stabbing by Tanaka what did you do?

A. Do you mean after I returned to the air raid shelter?

58. Q. After the stabbing what did you do?

A. The senior petty officer and myself were ordered to take the American prisoner back to the ship and we took the prisoner there.

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Judge Advocate



The commission then, at 10:46 a.m., took a recess until 11:09 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

59. Q. Who was the senior petty officer who helped you carry the prisoner out of the air raid shelter?

A. Uehihira.

60. Q. Did anyone give the order to take the prisoner from the air raid shelter?

A. I received the order from Commander Ueno.

61. Q. What did Ueno say?

A. I think he ordered the prisoner carried to the back of the sick bay.

62. Q. Did he say what was to be done with the prisoner when he got to the back of the sick bay?

A. I do not remember.

63. Q. How was the prisoner carried to that spot?

A. The prisoner was carried lying on his back on a stretcher.

64. Q. Who put him on the stretcher?

A. As the prisoner was operated upon on a stretcher he was carried out just as he was.

65. Q. You said the prisoner's abdomen was sewed. Was the skin of the abdomen brought together?

A. As I recall, yes.

66. Q. After the sewing were the intestines visible?

A. I do not remember.

67. Q. Were any of the other parts of the body which had been cut sewed?

A. I do not think they were sewed.

The accused moved to strike this answer on the ground that it was the opinion of the witness and was prejudicial to the rights of the accused.

The commission announced that the motion to strike was denied and further stated that the commission would give the answer its proper weight.

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Lieutenant, U. S. Navy.  
Judge Advocate.

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68. Q. Did the prisoner regain consciousness before leaving the air raid shelter?

A. After the operation was over the prisoner was mumbling.

69. Q. Was the prisoner completely stripped of clothing at that time?

A. I do not remember.

70. Q. Was he carrying anything in his hands?

A. I do not think he had anything in his hands but after the operation when he was mumbling I think he had a rosary in his hand.

The commission requested the judge advocate to follow up the words "I think" and try to get a definite meaning to them.

71. Q. When you say "I think" do you mean that is what you recall happened?

A. This is something which occurred two or three years back and if I do not remember distinctly I state "I think" because that is what I think occurred.

72. Q. Is that your best recollection of what occurred?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained and further stated that it would give the answer the proper weight.

A. I remember most clearly that Ueno made an incision in the abdomen, that Higuchi beheaded the prisoner and that Leading Seaman Tanaka stabbed the prisoners.

73. Q. When you and Uchihira got to the spot in back of the dispensary with the prisoner what did you see there?

A. I did not look into the hole, but I saw that a hole had been dug.

74. Q. Did you at any time prior to the execution of this prisoner when you had carried there look into that hole?

A. No.

75. Q. Where was this prisoner placed with relation to the hole which had already been dug?

A. I think the prisoner was placed about one meter in front of where the hole was dug.

76. Q. Was he still on the stretcher?

A. Yes.

77. Q. What was done with the prisoner after that?

A. I was ordered by Ensign Kobayashi to bring a board. After I brought the board the prisoner was placed on the board and I took the stretcher away.

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Lieutenant, U.S. Navy  
Judge Advocate

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78. Q. What did you do with the board and the prisoner after you had placed him on the board?

A. The prisoner was beheaded but I do not know who disposed of the board.

79. Q. Where was the prisoner beheaded with reference to the hole that had already been dug?

A. The prisoner was sitting on the board right by the hole that had already been dug.

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

80. Q. About how many people were present at the scene of the beheading?

A. As I recall it was about twenty.

81. Q. Give us the names of the people whom you recall as being present?

A. Ensign Eriguchi; Ensign Kobayashi; Commander Ueno; Petty Officer Uehihira. The rest I do not remember.

82. Q. You have stated that Kobayashi showed Eriguchi how to do the beheading. Was that the Kobayashi you have identified in this court room this morning?

A. Yes.

83. Q. Will you demonstrate for this commission just what Kobayashi did when he showed Eriguchi how to do the beheading?

The witness took a standing position with his left foot forward of his right and made a motion with both hands as if to chop.

A. That is how it was.

84. Q. Where was Ueno standing with reference to the prisoner at the time the beheading took place?

A. As I remember he was east of the prisoner about five to ten meters away from him.

85. Q. Where was Kobayashi standing with reference to the prisoner when he made this demonstration to Eriguchi?

A. About five meters away from the prisoner toward the West.

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JAMES P. KENNY, 18  
Lieutenant, U. S. Navy.  
Judge Advocate.

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86. Q. Was the head of the prisoner severed by the blow of Eriguchi?

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

The judge advocate withdrew the question.

87. Q. What happened to the head of the prisoner when Eriguchi struck the blow?

A. It fell to the ground.

88. Q. What was done with the body after the beheading?

A. I do not know what happened afterwards.

89. Q. Was the body buried?

A. I do not remember.

90. Q. What did you do in the air raid shelter during the operation?

A. I handed the forceps and spinners to Commander Ueno and watched.

91. Q. Did any of the accused ever mention this incident to you or within your hearing after this day?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Do you mean other to this incident?

92. Q. This incident.

A. Do you mean what I know about this incident?

93. Q. Was anything said to you about this incident by any of these accused at a date later than the occurrence itself?

A. After the end of the war I received instructions concerning prisoners from Commander Ueno. He stated that "If you are questioned state that the prisoners came to the sick bay but were treated and soon returned."

The accused moved to strike the answer on the ground that it was an admission of the accused after the event had occurred, therefore, not permissible against the accused.

The judge advocate replied.

The commission announced that the objection was not sustained.

94. Q. Did Commander Ueno indicate which prisoners he was talking about?

A. I do not remember.

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

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95. Q. After this beheading of one prisoner and the stabbing of the other did you at any time see the bodies or the bones of either of these prisoners?

A. Yes, I have.

96. Q. When was this?

A. I do not remember the month but it was after the end of the war.

97. Q. How did you happen to see these bodies?

A. After the end of the war according to the orders of Ensign Kobayashi we were ordered to dig up the bones and I saw them at that time.

98. Q. Did Kobayashi indicate why the bones were being dug up?

A. No.

99. Q. Did you find the bones?

A. Yes.

100. Q. Where did you find them?

A. It was in the back of the sick bay near the place where the beheading had occurred.

101. Q. The bones of how many prisoners did you locate?

A. As I recall it was the bones of about two persons.

102. Q. How long did it take you to locate these bones?

A. I do not remember the number of days.

103. Q. Who worked with you on locating the bones?

A. Kanai, Saito, Hoshino, myself and Uchihira. That is all I remember.

104. Q. What was your rank at the time of this incident?

A. I was a leading seaman.

105. Q. What was the rank of Ueno?

A. As I recall he was a lieutenant commander.

106. Q. What was the rank of Briguchi?

A. As I recall he was an Ensign.

107. Q. What was the rank of Kobayashi?

A. As I recall he was a warrant officer.

108. Q. What was the rank of Tanaka?

A. He was a leading seaman.

109. Q. To what unit were all these people connected?

A. The 41st Naval Guard Unit on Dublon, Truk.

110. Q. To what unit were you attached?

A. From December 1943 until May of 1944 I was attached to the 4th Fleet Headquarters. After that until the end of the war I returned to the 41st Naval Guard Unit and was there until the end of the war.

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JAMES P. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate. 20

0826

111. Q. What was the connection of Ueno with that unit in June and July of 1944?

A. He was the acting head medical officer of the 41st Naval Guard Unit.

Interpreter's Notes:

The Japanese word "kaibitai" can be translated either Naval Guard Unit or Naval Guards.

112. Q. Who was the commandant of the 41st Naval Guards?

A. As I remember it was Captain Asano, Shinpei.

113. Q. What was done with the bones of these prisoners after they were dug up following the end of the war?

A. I do not know what was done with them.

Cross-examined by the accused:

114. Q. You testified that you were stationed at the 41st Naval Guards at the time of the incident. What was your position at the 41st Naval Guards at this time?

A. At this time I was attached to the Medical Section of the 41st Naval Guards and I had duties in the surgical room.

115. Q. You testified that you were given an order in 1944 concerning prisoners. At what place were you given this order?

A. When I was ordered to prepare the instruments for operating on the prisoner I received the order from Uchihira, the senior petty officer, in the surgical room.

116. Q. Was there anyone else besides yourself in the room?

A. As I recall Hoshino was there.

117. Q. Was Hoshino also given this order?

A. I do not remember.

118. Q. What were you doing when you received this order?

A. I was putting things in order in the surgical room.

119. Q. You stated that Uchihira was the senior petty officer. What was he the senior petty officer of?

A. He was the senior petty officer of the Medical Section.

120. Q. What was his rank?

A. He was a corpman chief petty officer.

121. Q. You testified that you were ordered to bring operating instruments by Uchihira. What instruments were you ordered to bring.

A. Operating instruments.

122. Q. When you say "operating instruments" it is vague. What sort of instruments?

A. I mean instruments which are used for operating.

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*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate. 21

0827



123. Q. You worked in the surgical room and must have seen many operations. What kind of instruments are there when you say "operating instruments"?  
A. I am not very well versed in surgery but among the operating instruments are scalpels, forceps, spincers, and small forceps.

124. Q. From where did you get these instruments?  
A. I got them from the air raid shelter about 100 meters away from the sick bay and took them to this other air raid shelter.

125. Q. Is this an air raid shelter where medical supplies, and operating instruments are usually stored?  
A. As I recall the instruments were scattered and stored. The instruments were dispersed and stored due to bombings.

126. Q. In direct examination when you were asked, "Through what entrance did you enter this air raid shelter where the operation was performed?" You testified "It was the west entrance," and you were asked, "What do you mean by the 'west entrance'?" and you testified that you mean the entrance opposite the entrance to the sick bay. Why did you enter the air raid shelter through this entrance?  
A. Because the entrance was facing the road.

127. Q. Then wasn't there a road at the other entrance?  
A. The entrance facing the road that I came in was a large one where persons usually walked and the road at the other entrance was a small path.

128. Q. You testified that when you entered the air raid shelter, Ueno, Briguishi, and Uchihiro were present. Were they present all through the operation?  
A. I have no distinct recollection whether all of them stayed all through the operation.

129. Q. Is there any that you remember leaving the air raid shelter during the operation?  
A. I do not remember.

130. Q. Did Kobayashi ever leave this air raid shelter during the operation?

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

The accused made no reply.

The commission announced that the objection was sustained.

131. Q. You testified that after you entered the air raid shelter you handed the instruments to Ueno and you watched. Do you remember what the others were doing; for instance - Briguishi?  
A. I have no recollection.

132. Q. Do you have any recollection of what Kobayashi was doing?  
A. I do not remember.

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

0828

133. Q. Do you have any recollection of what Kinoshita, Uchihiro, and Hoshina were doing?

A. I have no recollection.

134. Q. Was there anything wrong with his foot other than the toe nail that was removed?

A. I do not remember.

135. Q. You testified that Petty Officer Uchihiro administered the anaesthetic. What kind of anaesthetic did he administer?

A. The anaesthetic was administered through the mouth, but I do not know what kind of anaesthetic was used.

136. Q. What do you mean when you say "It was administered through the mouth," that he was made to swallow it?

A. As I recall it was dropped into the open mouth.

137. Q. You were asked in a question, "What part of the testicle did Commander Ueno cut" and you testified "about the middle." Instead of the testicle do you mean the scrotum?

This question was objected to by the judge advocate on the ground that it was vague and the accused was misquoting the witness.

The accused withdrew the question.

138. Q. You testified that Commander Ueno cut the testicle, what part of the testicle did he cut?

A. As I recall he cut the scrotum over the right testicle.

139. Q. Did you see the testicle at this time?

A. Yes.

140. Q. How many did you see?

A. I saw two.

141. Q. You testified that the appendix was removed. Did you see this appendix?

A. Yes.

142. Q. How large was it? What was its size?

A. As I recall its length was approximately four centimeters.

143. Q. You testified this morning that during the operation you went out to get a drink of water. When you went out to take this drink of water, through which entrance did you leave the air raid shelter?

A. Through the west where the road is.

144. Q. You testified that when you left this air raid shelter to get a drink of water that it was about twenty minutes before the end of the operation. How long was it from the time the operation began and when you left to take a drink of water?

A. Approximately twenty minutes.

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*James P. Kenny*

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

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145. Q. When you went to take this drink of water, in what stage was this operation?

A. It was about the time when the incision in the thigh was made.

146. Q. This morning when you were asked the question, "Did you notice anything unusual when you left the air raid shelter to get the drink of water?", you testified that you did and you were asked, "What was this unusual thing that you noticed?", you stated that thirty or forty meters in front of you there was an American soldier who was tied like a scarecrow and that you saw Tanaka stab him in the chest. How did you know that it was an American soldier at this time?

A. As I was attached to duty at the South Sea Area I presumed that all prisoners coming from this part would be Americans.

147. Q. When you were asked what was the color of the skin of the prisoner who was being operated on you replied that you had no recollection and you were asked what was the nationality of the prisoner being operated on and you testified that you did not recall. How could you tell that the prisoner who was being stabbed was an American when you could not identify the prisoner who was being operated on right in front of you?

A. At first I just stated a prisoner but I thought it was not good by just stating prisoner, so I stated American prisoner.

148. Q. You testified that when you left the air raid shelter you saw Tanaka stab. Before Tanaka stabbed did you frequently come in contact with Tanaka and have a chance to talk with him?

A. While I was working in the surgical room Tanaka used to come in there because of the superficial wound and that is why I remember him.

149. Q. How long was this before the stabbing incident?

A. I have no distinct recollection. I saw him every once in awhile at the surgical room as he came for treatment.

150. Q. Then from the place you saw the stabbing and the place where the stabbing occurred was there nothing to obstruct your view?

A. The only thing that was between myself and the scene was banana trees which were planted about one meter apart about five meters in front of me.

151. Q. You testified that there were about twenty or thirty persons at the scene when you saw Tanaka stab. Is there any one else in the group of twenty or thirty persons other than Tanaka that you remember?

A. There are none that I remember.

152. Q. What were the positions of the twenty or thirty persons in relation to the prisoner?

A. As I recall they were about five meters away from the prisoner and approximately the shape of a fan.

153. Q. When you say in the shape of a fan, were they in front or in back of the prisoner or to the side of the prisoner?

A. In front of the prisoner.

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*James P. Kenny*

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

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0830

The commission then, at 3:20 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Presents: All the members, the judge advocates, the reported, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

154. Q. I would like to have the witness draw a diagram of the relative position of the spectators, and the prisoners, the sick bay, the air raid shelter, the banana trees, to what he has explained.

The witness drew a diagram as requested by counsel.

The diagram drawn by Kodama, Akira, was submitted to the judge advocate, and to the commission, and by the accused offered in evidence.

There being no objection, it was so received, and appended marked "Exhibit 1."

155. Q. According to this diagram that you have written, this round line facing the prisoner is this the line of spectators that you said were in a shape of a fan?

A. Yes.

156. Q. Where was your position from which you saw the stabbing?

The witness indicated his position on Exhibit 1.

157. Q. In answer to the question of the judge advocate this morning, "Did you hear anything outside while you were in the air raid shelter?", and you answered "No." Then you were asked, "Did you hear anything?" to that you stated that you heard a cough before you left the air raid shelter. Is it correct to understand before you left the air raid shelter as before you left to take a drink of water?

A. Yes.

158. Q. How long after you heard this cough was it that you left to take a drink of water?

A. I do not recollect the time.

159. Q. Then how did you figure that it was twenty minutes before the end of the operation that you went to get a drink of water?

A. It was a period of time which I estimated.

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*James P. Kenny*

JAMES P. KENNY,  
Lieutenant, U. S. Navy. 25  
Judge Advocate.

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160. Q. Then estimate the period of time between the time you heard the cough and the time you left the air raid shelter to go and get a drink of water?

A. In my estimate it was about ten minutes after I heard this cough that I left to get a drink of water.

161. Q. Then you heard nothing other than this cough. Is that correct?

A. As I recall, I heard nothing else.

162. Q. In the next question you were asked, "Did you recognize whose cough this was?" and you testified that it was the cough of Lieutenant Commander Nakase. Before this time did you frequently meet Commander Nakase?

A. Before I was assigned duty at the surgical room I was assigned duty in the Internal Medicine Ward and during my period of duty there Commander Nakase was in the ward with diarrhea for several weeks and as I recall the cough was the same cough.

163. Q. How long before this incident was Commander Nakase entered with diarrhea in the ward?

A. As I recall it was about two to three months before.

164. Q. How long before this incident occurred were you assigned duty in the surgical room?

A. As I recall it was about the middle of June.

165. Q. How many times did he cough?

A. I only recall one cough.

166. Q. While the operation was being performed was it being performed silently or were explanations on the operation being made?

A. Other to the person who was performing the operation I believe every one was silent.

167. Q. Then was this cough a special kind of cough which persons other than the one performing the operation could hear?

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

The accused withdrew the question.

168. Q. How is it that you remember this cough?

A. While he was entered in the Internal Medicine Ward with amoebic dysentery I frequently heard this cough and when I said this all I meant was that I recognized this cough.

169. Q. You testified that after you saw Tanaka stab you returned to the air raid shelter and that you were ordered together with Uchihira, senior petty officer, to carry the prisoner back of the sick bay. What did you do from the time you took a drink of water until the time you carried the prisoner in back of the sick bay with senior petty officer Uchihira?

A. After I returned to the air raid shelter the incision of the abdomen was sewed up and bandaged by the order of Commander Uno. Then, myself and senior petty officer Uchihira carried the prisoner out.

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

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170. Q. You testified that Uchihira and yourself carried the prisoner out. How did you carry the prisoner out?  
A. We carried him in a stretcher between us.

171. Q. When you carried the prisoner out did any one go along with you or were you and Uchihira the only ones who went?  
A. As I recall the only ones who went were myself and Uchihira.

172. Q. In answer to the question, "Was the prisoner conscious when you carried him out of the air raid shelter?" you stated that "The prisoner was mumbling." Was there any signs on the prisoner that showed he was suffering?  
A. After the operation I saw the prisoner put his hands toward a rosary which was around his neck and clasp his hands, mumbling.

173. Q. My question was, "Were there any signs to show that he was suffering at this time?"  
A. I could see no signs to show that he was suffering.

174. Q. You testified concerning a rosary. Was the prisoner wearing this rosary all through the operation around his neck.  
A. That is how I remember it.

175. Q. How was he clasping this rosary?  
A. He wrapped it around his clasped hands and kept rubbing his hands together.

176. Q. You testified that Kobayashi ordered you to bring a board and place the prisoner from the stretcher on the board, and the stretcher was taken away. Who was it that ordered Kobayashi to bring this board?  
A. I was ordered by Kobayashi to bring the board but I do not know who ordered Kobayashi to order me to bring this board.

177. Q. Where did you bring this board from?  
A. From the front of the sick bay.

178. Q. Is the Kobayashi that ordered you to bring this board the same Kobayashi that is in this court?  
A. Yes.

179. Q. You testified that Kobayashi showed Briguchi how to cut and you indicated how Kobayashi showed Briguchi. Did Kobayashi say anything at this time?  
A. I remember Kobayashi saying to take the stretcher away.

180. Q. My question is did Kobayashi say anything other than just indicating how to cut the prisoner?  
A. I have no recollection.

181. Q. The person who showed Briguchi how to cut the prisoner, could Kobayashi have been mistaken for Yoshinuma?

This question was objected to by the judge advocate on the ground that there had been no testimony that Yoshinuma was present.

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

0833



The accused withdrew the question.

182. Q. You testified that Kobayashi was the one who showed Kriguchi how to behead the prisoner. Could it be possible that you mistook Kobayashi for someone else?

A. According to my recollections it was Kobayashi.

183. Q. Do you have any recollections of how Kobayashi was dressed at this time?

A. I recall that he was wearing a summer uniform and that he was wearing brown colored shoes.

184. Q. You were asked where the prisoners bodies were buried and you stated that you did not know. Then you were asked do you know what happened to the bodies and you stated that you did not know. What did you do after you saw the beheading of the prisoner?

A. As I did not assist in the burial of the prisoners or <sup>dis</sup>dispose of the dead bodies of the prisoners I do not know.

185. Q. My question is not what happened to the dead bodies of the prisoners, but what did you do after the beheading?

A. After I saw the beheading, I was ordered by Kobayashi to take the stretcher back to the sick bay so I took it back.

186. Q. Then when you left the scene what was the condition of the prisoner and what about his body.

A. He was in the same position in which he had been beheaded and his body as I recall when I left was just as it was.

187. Q. You testified that later you helped in digging up the bones and you were asked how many bones of how many persons did you dig up and you testified that you dug up the bones of about two bodies. How can you say that there were the bones of about two bodies?

A. When I first entered the Navy and was going through the usual course of corpsman indoctrination, I saw matters of human skeleton and comparing the skeleton with the bones I estimated that there were bones of about two persons.

188. Q. Then were the bones all mixed up or did they still retain the form of a skeleton?

A. As I recall the head corpsman put the bones together in approximately the shape of a human skeleton.

189. Q. You testified that there was twenty or thirty persons watching at the scene when Tanaka stabbed and you also stated that you knew no one in that group of twenty or thirty persons. Isn't it true that at this time you didn't know Tanaka?

A. Looking at the outline of his body and what I have seen of him I could perceive even from where I was that it was Tanaka.

190. Q. How was the prisoner that Tanaka stabbed at this time?

A. From where I was standing the prisoner looked as if he was standing in a position of a scarecrow.

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

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0834

191. Q. Was he blindfolded?

A. Due to the way he was standing I could not see if he was blindfolded or not.

192. Q. You say that he was standing like a scarecrow. What was he tied to?

A. He just looked as if he was standing like a scarecrow and I could not see very well how he was standing like a scarecrow.

193. Q. What was the length of time that you were standing and watching this scene?

A. According to my recollection it was about three minutes.

194. Q. Then you did not go toward the scene?

A. No.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, September 24, 1947.

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*James P. Kenny*

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

0835



**THIRD DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Wednesday, September 24, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United  
States Army,  
Lieutenant Colonel Victor J. Cartarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major Joseph T. Smith, junior, U. S. Marine Corps, members, and  
Lieutenant Commander Joseph A. Ragan, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Kodama, Akira, the witness under examination when the adjournment was  
taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Cross-examination continued.)

195. Q. You have talked about an air raid shelter and battle dressing  
station. Is this the same place? Do you mean by these expressions the  
same identical place?

A. When I say the battle first aid station I mean the place where the  
prisoner was operated on. When I say air raid shelter I mean the shelter  
that was across the road where we took shelter during air raids.

196. Q. This battle first aid station had formerly been an air raid  
shelter, had it not?

A. No.

197. Q. Was this the first order that you had ever received in July 1944  
to take surgical instruments to this battle dressing station?

A. Yes, this was the first time.

198. Q. So that the instruments that you had to take and which were  
used in the operation were not kept at this battle dressing station at all?

A. There are many kinds of surgical instruments and what I was ordered  
to bring were operating instruments.

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*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate. 30

0836

199. Q. Were any operating instruments kept at this battle dressing station?  
A. As I recall the emergency instruments were kept there.

200. Q. The instruments that you did bring to the battle dressing station were instruments that were used to operate on the Japanese that had been wounded?  
A. Yes.

201. Q. Was there an air raid the day that this incident happened?  
A. There were air raids just about every day and I believe there was an air raid that day in the morning or afternoon.

202. Q. Do you remember whether you received the order to take these instruments to the battle dressing station before the air raid or after the air raid?  
A. There was an air raid at dawn so I think it was after the air raid.

203. Q. This anaesthetic that you used on the prisoner was it the same kind you used on Japanese?  
A. That is how I remember it.

204. Q. When you carried this prisoner from the sick bay to the battle dressing station was he fully clothed?

This question was objected to by the judge advocate on the ground that counsel was misquoting the witness.

The accused withdrew the question.

205. Q. Did you carry the prisoner from the sick bay to the battle dressing station?  
A. No.

206. Q. Did you see Commander Ueno take out the appendix of this prisoner?  
A. Yes.

207. Q. What did this appendix look like?  
A. It was in the shape of the little finger.

208. Q. Was it highly inflamed?  
A. It was in its normal state.

209. Q. It had not burst then before the operation?  
A. As I recall, no.

210. Q. Did Commander Ueno say why he was removing the appendix then?  
A. I was not told.

211. Q. But did Commander Ueno say at that time or did you hear him say why he was removing the appendix?  
A. No.

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*James P. Kerry*

JAMES P. KERRY,  
Lieutenant, J. S. Navy  
Judge Advocate.

31

0837



212. Q. You testified as to five stages or operations that you saw Commander Uno do on the prisoner. Did you see all five that you said he did?

A. Yes.

213. Q. Did you see him sew up the abdomen?

A. As I recall according to my recollection he sewed the abdomen.

214. Q. What do you recall he sewed up the abdomen with?

A. As I recall he sewed it as is usually done with needle and thread.

215. Q. Had you ever seen Commander Uno operate before?

A. No.

216. Q. Can you state whether Commander Uno operated skillfully on this prisoner or not?

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

The accused replied.

The commission announced that the objection was sustained.

217. Q. You testified that someone showed Eriguchi how to cut. Isn't it true that this was shown him not at the scene of the cutting but near the sick bay?

A. As I recall it was approximately in the vicinity of the scene.

218. Q. How many spectators were present when Eriguchi was shown how to cut?

A. As I recall there was no one nearby.

219. Q. Was this just at the time that you were carrying the prisoner back from the battle dressing station to the sick bay?

This question was objected to by the judge advocate on the ground that counsel was misquoting the testimony of the witness.

The accused withdrew the question.

220. Q. You testified that you and Uchihira carried this prisoner from the battle dressing station to a spot back of the sick bay. Isn't this the spot where you saw Eriguchi being shown by someone how to cut?

A. It was in the neighborhood of the hole by which we carried the prisoner on the stretcher.

221. Q. You refer to Kobayashi as an ensign. Was he an ensign at that time?

A. The rank which I referred to in my testimony is the rank that he had after the end of the war.

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

32

0838

222. Q. What was his rank at this time in July 1944?

A. Who do you mean?

223. Q. Kobayashi.

A. As I recall he was a warrant officer.

224. Q. As you recall he was a warrant officer in July 1944?

A. That is how I remember it.

225. Q. Do you remember whether the person who showed Eriguchi how to cut was an ensign?

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

The accused replied.

The commission announced that the objection was sustained.

226. Q. Do you know Yoshinuma?

A. When he was at the guard unit I knew that Yoshinuma was the officer in charge of maintenance.

227. Q. Do you know what his rank was at this time?

A. I do not know.

228. Q. Do you want to change your testimony to the fact that it was Yoshinuma who showed Eriguchi how to cut and not Kobayashi?

This question was objected to by the judge advocate on the ground that it was argumentative and improperly harassed the witness.

The accused withdrew the question.

229. Q. Wasn't it Yoshinuma who showed Eriguchi how to cut and not Kobayashi?

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

The accused replied.

The commission announced that the objection was not sustained.

A. As I recall it was Kobayashi.

230. Q. You testified regarding the position of Commander Uno when he operated. You said he stood at the right of the prisoner. Did he stand at the right of the prisoner all during the operation.

A. As I recall, yes.

231. Q. Was this incision of the abdomen the second stage of the operation?

A. According to my recollection, yes.

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



232. Q. And when you returned from getting this drink of water was Commander Ueno sewing up the abdomen?

A. As I recall he was still operating on the thigh.

233. Q. Had he started to operate on the thigh before you left?

A. According to my recollection it was after I went to take a drink of water and came back that he started that operation.

234. Q. How long were you gone?

A. As I recall about five or six minutes.

235. Q. Did you get permission to leave?

A. As I was thirsty I left without saying anything.

236. Q. Why did you come back?

A. Because that is the custom at the unit.

237. Q. Had Commander Ueno performed any operations while you were gone?

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

The accused made no reply.

The commission announced that the objection was sustained.

238. Q. How long did the entire operation last?

A. According to my recollection approximately forty minutes.

239. Q. Do you know what was wrong with the right toe that Commander Ueno operated on?

A. I do not recall.

240. Q. Did you testify that the prisoner had a rosary around his neck?

A. As I was not asked I did not say anything about this but he had a rosary around his neck.

241. Q. Did he have identification tags around his neck also?

A. I do not know what you mean by identification tag.

242. Q. Did he have anything else but the rosary around his neck?

A. As I recall he had nothing else.

243. Q. You testified you saw Commander Ueno touch an intestine. Which intestine did you see him touch?

The question was objected to by the judge advocate on the ground that it was vague.

The accused replied.

The commission announced that the objection was not sustained.

A. He touched the colon.

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*James P. Kenny*

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

34

0840

244. Q. What was your rate at the time of this incident?

A. I was a leading seaman.

245. Q. What kind of a leading seaman were you?

A. A carpenter leading seaman.

246. Q. You testified that you were thirty to forty meters away from Tanaka when you saw Tanaka stab. How far away were you from the prisoner?

A. As I recall it was the same distance.

247. Q. From that distance would you recognize that the prisoner was an American?

A. As he was taller than the Japanese I could recognize him.

248. Q. Could you recognize him as an American?

A. I could not definitely recognize him as an American.

249. Q. How was he dressed?

A. I do not remember.

250. Q. How many spectators did you see at this time?

A. As I recall approximately twenty to thirty persons.

251. Q. Could you recognize them from the distance of thirty to forty meters?

A. The number of persons was the approximate estimate that I saw.

252. Q. Could you recognize any of them?

A. No.

253. Q. Were they standing between you and the prisoner?

A. No.

254. Q. Do you mean that they were on the other side of the prisoner?

A. As the prisoner was facing toward the west standing like a scarecrow, the persons who were watching were standing toward the right side of the prisoner.

255. Q. How many banana trees were between you and the prisoner?

A. If the prisoner was standing toward the west and I was standing toward the east the banana trees were planted in a row from north to south. It is vague, I cannot say how many banana trees there were.

256. Q. How close were they planted together?

A. About one meter to two meters apart.

257. Q. And how high were they?

A. It varied but I think they were about three meters high.

258. Q. This prisoner that you saw, did he have a shirt on?

A. I do not remember.

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*James P. Kenny*

JAMES P. KENNY, 35  
Lieutenant, U. S. Navy  
Judge Advocate.

0841



259. Q. This Tanaka that you say you saw stab the prisoner was he a hospital corpsman?

A. He was not in the corpsman division. He was in another division.

260. Q. Was he a patient at the sick bay?

A. Who do you mean by a patient?

261. Q. Was Tanaka a patient at the sick bay at this time?

A. He was not a patient of the surgical ward. He may have been at the sick bay with another sickness. I do not know.

262. Q. When you first looked at this scene and this group of twenty to thirty people, was there only one person who had a rifle and bayonet?

A. When I looked at the scene the prisoner was already standing like a scarecrow and twenty to thirty people were assembled there.

263. Q. How many persons had rifles and bayonets?

A. I do not remember.

264. Q. During the three minutes that you looked at this scene was Tanaka the only person that you saw stab?

A. Yes.

265. Q. How many times did you see him stab?

A. Just once.

266. Q. And it took him three minutes to stab one time?

A. The time includes a short period before the stabbing.

267. Q. Was he lined up with a group of other people in a line of stabbers?

A. No.

268. Q. Did you see Tanaka's bayonet pierce the prisoner?

A. Yes.

269. Q. Did you see blood on the bayonet after he extracted it?

A. It was too far away and I could not see it.

270. Q. Did you hear the prisoner scream when he was bayoneted?

A. As I recall it sounded as if he screamed.

271. Q. Did Tanaka say anything when he stabbed the prisoner?

A. I could not hear.

272. Q. But you could hear that the prisoner said something. Is that correct?

A. Yes.

273. Q. Do you know how many persons were attached to the guard unit at this time?

A. As it is divided up into divisions I do not know how many there were at the guard unit.

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*James P. Kenny*

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

36

0842

274. Q. Do you know approximately how many there were?

A. I imagine about one hundred.

275. Q. Would the number not be more accurate if you said five hundred?

A. As I have never counted the men at the guard unit I would leave it to your imagination.

276. Q. How many officers were there at the guard unit at this time?

A. As I recall about twenty.

277. Q. Did you see the person that you heard cough while this operation was going on?

A. No.

278. Q. Why is it then that out of one hundred men and some twenty officers that you recognize immediately and remember after three years that it was the cough of Nakase?

A. I recall this because when I was in the internal medical section the person with the cough was a patient there with amoebic dysentery.

279. Q. Then you would say that the cough that Nakase had was different than the cough of all the other people at the guard unit?

A. I cannot say that it is a particular cough but it was a cough that I have heard frequently and judged.

280. Q. So that you could recognize the cough of Nakase without having seen him but you could not recognize any one else in a group of people when you were about twenty to thirty meters away from them?

This question was objected to by the judge advocate on the ground that it was argumentative and double.

The accused withdrew the question.

281. Q. Why is it that you could not recognize any of the people in that group of twenty to thirty people you saw watching the stabbing?

A. It was far away and also they were persons from a different division.

282. Q. Did you ever verify that it was the cough of Nakase by asking him if he was outside and coughing at the time?

A. No.

283. Q. What were you doing at the time that you heard this cough?

A. It was approximately the time when I was watching the incision being made in the abdomen.

284. Q. Were you standing near the entrance to the battle dressing station?

A. I was standing by the west entrance which faced toward the road.

285. Q. As you heard this cough didn't you see someone walking by?

A. No, I did not look toward the entrance.

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*James P. Kenna*

JAMES P. KENNY,  
Lieutenant, U. S. Navy 37  
Judge Advocate.

0843

286. Q. When were you assigned to the Forty-first Naval Guard Unit dispensary from the Fourth Fleet?

A. As I recall it was the beginning of May 1944.

287. Q. And this incident happened in July 1944, is that right?

A. According to my recollection, yes.

288. Q. Do you know approximately how many days after you had been assigned to the guard unit that this incident occurred?

A. As I recall approximately about fifty days.

The commission then, at 10:18 a.m., took a recess until 10:39 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

289. Q. When was Nakase a patient at the dispensary?

A. According to my recollection it was two or three months before.

290. Q. Before what?

A. Before the time of the incident.

291. Q. By that you mean in May 1944 Nakase was a patient at the dispensary?

A. That is how I recall it in general.

292. Q. Was he a patient all during the month of May?

A. I think he was there for several weeks but I did not count the number of days.

293. Q. Was he a patient when you first arrived at the guard unit?

A. I think it was shortly after I arrived that he became a patient.

294. Q. Can you remember what part of the month of May you arrived at the guard unit?

A. I do not remember the day that I came to take up duties at the guard unit.

295. Q. Do you remember whether it was the first or last part of May?

A. I think it was the beginning of May.

296. Q. It was during this time that Nakase was a patient at the dispensary and you became familiar with his cough and could recall it. Is that correct?

A. Yes.

297. Q. When you testified that you heard the prisoner mumble that was being operated on, did you recognize what he was mumbling?

A. It was in Japanese and I could not understand it.

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



298. Q. These two prisoners that you have testified about were they the only two prisoners that you ever saw at the Forty-first Naval Guard Unit?  
A. Yes.

299. Q. Were they the only two that you ever saw at the guard unit dispensary?

This question was objected to by the judge advocate on the ground that counsel was misquoting the witness as there had been no testimony that the witness saw the prisoners at the guard unit dispensary.

The accused withdrew the question.

300. Q. Were these the only two prisoners that you ever saw within the area of the guard unit dispensary?

A. The only two prisoners that I saw were the one that was operated on in the battle first aid station and the other was the prisoner who looked like an American that was stabbed.

301. Q. Were these the only two prisoners that were buried at the guard unit?

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

The accused withdrew the question.

302. Q. Do you know if these were the only two prisoners that were buried at the guard unit?

A. The only ones that I remember are the ones that the bones were dug up after the end of the war by the order of Kobayashi about the site where the execution occurred and the bones of which seemed to be of about two persons.

303. Q. Did you know about three American prisoners that were killed by American bombings?

A. I do not know about them.

304. Q. Do you know whether Kobayashi decided to dig up the bones of his own volition or whether someone else decided to dig up the bones?

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

The accused made no reply.

The commission announced that the objection was sustained.

305. Q. Do you know approximately how many bones there are in a human body?

A. I have never counted the bones so I do not know.

306. Q. Do you know approximately?

A. I do not know.

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*James P. Henry*  
JAMES P. HENRY,

Lieutenant, U. S. Navy.  
Judge Advocate.

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307. Q. How many bones did you locate when you dug for these bones?

A. I did not count how many there were.

308. Q. Approximately how many?

A. As I did not count them I can not estimate.

309. Q. Can you name any of the bones that you located?

A. I cannot recall what bones I dug up.

310. Q. Do you know approximately how many Japanese were killed on Truk by American bombings?

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

The accused replied.

The commission announced that the objection was not sustained.

A. When you say Truk there are many islands on Truk and I cannot estimate unless a specific bombing is stated because there were bombings from the end of 1943 until the end of the war.

311. Q. Were there more than one hundred Japanese killed by American bombings on Truk Atoll?

A. With all of Truk I can imagine that over one hundred people were killed by bombings.

312. Q. How these Japanese that were killed, weren't they also buried?

A. I do not get what you mean when you say "also buried."

313. Q. These Japanese that were killed, isn't it true that they were buried?

A. What place do you mean they were buried in?

314. Q. On Dublin Island.

A. On Dublin there are many other units other than the guard unit and the other units did bury their own dead and as I had no connection with them I could not say.

315. Q. How could you tell the difference between the bones that you dug up and you said were the bones of American prisoners and the bones of Japanese that were killed on the island?

A. I could not tell if they were bones of Americans as I was just ordered to dig so that is what I did.

316. Q. You testified that Ueno was the acting head medical officer at the Forty-first Naval Guard Unit. What do you mean by acting head medical officer?

A. For instance if a person had two houses one of which he was the head and then he kept another house, therefore it would be the same as in this case that person would be the head of both houses.

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*James P. Kenny*

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

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317. Q. Then was there another head medical officer of the guard unit?  
A. The enlisted men did not know about the duties of their superiors.

318. Q. Then on what do you base your answer that Ueno was the head medical officer?  
A. Because when I came to the sick bay I heard that he was the acting head medical officer.

319. Q. Then as far as you know he might not have been attached to the guard unit at all. Is that correct?  
A. Because he was the acting head medical officer I do not think he was regularly attached to the Forty-first Naval Guard Unit.

320. Q. Did you ever hear who he was acting for as the acting head medical officer?  
A. No.

321. Q. This prisoner that you saw Ueno operate on. Do you know whether this prisoner died as a result of the operation performed by Commander Ueno?  
A. After Commander Ueno finished the operation the prisoner was moving his hands and mumbling so I do not think he was dead.

322. Q. At what stage of the operation did you see Kobayashi enter this battle dressing station? Did he enter while Commander Ueno was operating on the abdomen?  
A. I do not remember.

323. Q. Do you remember whether he was there all during the time <sup>of</sup> the operation?  
A. Who do you mean?

324. Q. Kobayashi.  
A. I do not remember.

325. Q. You testified that at first you only answered prisoner and then you thought it would be better to say American prisoner. For who would it be better to say American prisoner?  
A. I thought it would be better for the court.

326. Q. And that is the reason why you testified he was an American prisoner?  
A. Yes.

327. Q. You have never seen an American before?  
A. No.

328. Q. After the operation did you take the prisoner to the sick bay or just where did you take him?  
A. I carried the prisoner together with the senior petty officer to a spot in back of the sick bay where a hole was dug.

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*James P. Kenny* 41

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

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329. Q. Who was this senior petty officer?

A. Petty Officer Uchihira.

330. Q. Was the prisoner tied when you carried him to this spot?

A. Do you mean the period of time when he was carried from the first aid station to the spot where the hole was dug?

331. Q. Yes.

A. No, he was not tied.

332. Q. Was he ever moved from this spot to another spot before he was executed?

A. No.

333. Q. When you arrived at this spot were there any spectators there?

A. In the neighborhood of the scene as I recall Eriguchi and Kobayashi were present.

334. Q. They were the only two that were present?

A. As I recall the only two who were near the hole were these two.

335. Q. Who next arrived at the scene?

A. I do not know who next arrived at the scene.

336. Q. You said you had no distinct recollection of the color of the skin of this prisoner. Was his skin black?

A. I do not recall.

337. Q. Going back to the battle dressing station. You named six persons whom you saw when you entered this battle dressing station. Isn't it true that there were no other persons present during the operation but these six and yourself?

A. I do not remember if there were any others.

338. Q. When you entered this battle dressing station for the first time, was Ueno operating?

A. He had not yet begun to operate.

339. Q. You stated that you brought a Spencer forceps to this place. Is this the only instrument that you brought to the operation?

A. Yes, those are the only ones that I brought.

340. Q. Is this the only instrument that Commander Ueno used in operating on the prisoner?

A. The only instruments that I remember his using were the scalpel, forceps and Spencers.

341. Q. These were all instruments that you brought?

A. The only instruments that I brought were forceps and Spencers.

342. Q. Do you know who brought the scalpels?

A. I do not know.

343. Q. Had you ever seen an appendix removed before?

A. Do you mean other to the prisoner?

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*James F. Kenny* 42  
JAMES F. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

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344. Q. Yes.

A. While in Japan I saw a doctor remove the appendix from several Japanese soldiers when they were ailing with appendicitis.

345. Q. Did this prisoner open his eyes while you were carrying him away from the operation to the spot back of the sick bay?

A. He opened his eyes.

346. Q. You answered a question by testifying, "I did not hear anyone talking but I think I heard a cough." Can you cough so you can let us know what you thought was a cough?

A. Is it all right if the voice is different?

347. Q. Yes.

(Witness coughed.)

348. Q. In your opinion how far away from you was the person who coughed?

A. He was not too far away nor was he very close.

349. Q. Thirty meters away?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I estimate it was about six to seven meters away.

350. Q. How many persons were present when Eriguchi was shown how to cut?

A. There were about twenty persons a little distance away from where he was being shown how to cut.

351. Q. But in the immediate vicinity were there only the three of you? You, Eriguchi and this other person who showed Eriguchi how to cut.

A. When Eriguchi was being shown how to cut I was already about five meters away from where they were.

352. Q. Are you sure that Kobayashi was a warrant officer at this time?

A. That is how I remember it.

353. Q. Were you ever trained as a swordsman as a hospital corpsman?

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

The accused replied.

The commission announced that the objection was not sustained.

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*James P. Kenny*

JAMES P. KENNY, 43  
Lieutenant, U. S. Navy,  
Judge Advocate.

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A. No.

354. Q. Did Kobayashi have a reputation as a swordsman at the guard unit?

A. I have never heard that he was an expert with a sword, I have heard that he was unskilled with a sword and hardly ever had a sword in his hand.

355. Q. Did he have a sword of his own?

A. I have never seen him with a sword.

356. Q. Do you know whether Yoshinuma had a reputation as a swordsman?

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

The accused replied.

The commission announced that the objection was sustained.

Reexamined by the judge advocate:

357. Q. What was the position of the prisoner just prior to the beheading? What was his position on the board?

The witness took a kneeling position with both arms clasped about his abdomen.

358. Q. When you took him from the stretcher and put him on the board did he take that position?

A. Yes.

359. Q. Were any Japanese who died on Dublin ever buried to your knowledge alongside the dispensary at the site where these executions took place?

A. I do not know.

360. Q. When you were directed by Kobayashi after the end of the war to dig at that site did he indicate what you were looking for?

A. No.

361. Q. Wasn't anything said by anybody as to what you were to search for?

A. All we were told by Kobayashi was to dig up some bones.

362. Q. Did he say to whom those bones belonged?

A. No.

Recross-examined by the accused:

363. Q. Isn't it true that someone had to prep the prisoner in the position that you just showed here in court?

A. When myself and Senior Petty Officer Uchihira placed the prisoner on the board from the stretcher he took this position.

364. Q. You and Uchihira did not prep him up in that position then?

A. As I recall he just took this position.

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*James P. Kenny*

JAMES P. KENNY, 44  
Lieutenant, USN, Navy.  
Judge Advocate, S. Navy.  
Judge Advocate

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365. Q. By that you mean he got up off the stretcher and sat down in the position that you showed?

A. When we were ordered to move the prisoner from the stretcher to the board myself and Uchihira helped him and when he was moved to the board as I recall he just took the position as I showed.

366. Q. Did anyone order him to take this position?

A. I remember moving him from the stretcher to the board but I do not remember about his position.

367. Q. How long after the operation did you move him from the stretcher to the board?

A. I think it was shortly after the operation but I could not recall the amount of time that elapsed.

368. Q. But you can recall that after the operation occurred that the prisoner that you carried on a stretcher from the battle dressing station to this spot got up out of the stretcher and assumed the position that you have just indicated here in court by himself?

This question was objected to by the judge advocate on the ground that counsel was misquoting the witness.

The accused made no reply.

The commission announced that the objection was sustained.

369. Q. Isn't it true that the only reason the prisoner was brought to this board alongside the hole was to bury the prisoner?

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

The accused made no reply.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 11:33 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

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*James P. Henry*  
JAMES P. HENRY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

0851

(Recess-examination continued.)

370. Q. Do you know if anyone ordered Eriguchi to cut?

A. No.

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

The commission did not desire to examine this witness.

The witness made the following statement:

I recall nothing further than to what I have stated in my testimony yesterday morning, yesterday afternoon and this morning.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Former Surgeon Lieutenant Kinoshita, Hiroshi.

2. Q. If you recognize any of these accused, state as whom?

A. Former Rear Admiral Asano, Shimpei; former Lieutenant Commander Nakase, Shohichi; former Surgeon Commander Ueno, Chisato; former Dentist Ensign Eriguchi, Takeshi; former Corporal Ensign Kobayashi, Kasumi; former Petty Officer Second Class Tanaka.

3. Q. During what period were you a member of the Imperial Japanese Navy?

A. From the first of October 1942 until the 24th of January 1946.

4. Q. During what period were you stationed on Dublon Island, Truk Atoll?

A. From the 17th of March 1944 to the 4th of January 1946.

5. Q. To what unit were you attached on Dublon Island?

A. The 41st Naval Guards.

6. Q. During the year 1944 did you receive any assignment in connection with prisoners of war?

A. Yes.

7. Q. From when did you receive that assignment?

A. At that time Surgeon Lieutenant Commander Ueno, Chisato.

8. Q. To what unit was Ueno attached?

A. The 41st Naval Guards.

9. Q. In what capacity?

A. He was the acting head medical officer of the 41st Naval Guards.

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*James P. Henry*

JAMES P. HENRY  
Lieutenant, U. S. Navy  
Judge Advocate

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10. Q. What did Ueno say to you when he gave you this assignment?

A. One day after the noon meal Lieutenant Kuno and myself were sitting on the veranda of the officers quarters, Commander Ueno came and sat down besides us. He said "In the afternoon I am going to operate on two prisoners and this will be of some educational value."

11. Q. About what time of the year did this conversation take place?

A. As I recall it was the beginning part of July of 1944.

12. Q. Did you have a further conversation with Ueno relative to this assignment?

A. After I heard this I went to the officers' room of the sick bay. Ueno then came and said "I have been ordered to dispose of two prisoners by the executive officer and I am going to perform research on them."

13. Q. What did you do following this conversation?

A. Commander Ueno then ordered me to assist in the operation and he ordered me to bring the prisoners to the battle first aid station, that he was going to perform the operation in the battle first aid station and ordered me to bring the prisoners there.

14. Q. What did you do as a result of this order?

A. I ordered some corporals to take a stretcher and go to the place of confinement of the prisoners which was by the side of the entrance of the guard unit.

15. Q. Did you go along with them?

A. Yes, I did.

16. Q. What did you do when you got to the place of confinement?

A. I told the petty officer on guard duty that the head medical officer was going to perform an operation on the prisoners at the sick bay and that I had come to get them.

17. Q. Did you go into the room in which these prisoners were confined?

The question was objected to by the accused on the ground that it was leading.

The judge advocate withdrew the question.

18. Q. Where did you find the prisoners?

A. They were in a small cell inside of the place of confinement.

19. Q. Were they both in the same cell?

A. As I recall they were in separate cells.

20. Q. When you saw them what were they doing?

A. They were standing in front of the door.

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*James P. Keary*  
Lieutenant, U. S. Navy  
Judge Advocate.

0853



21. Q. Did you say anything to them?  
A. The senior petty officer opened the door so I said to them in English, "Come with me."
22. Q. Why did you address them in English?  
A. Because I thought they could not understand me unless it was in English.
23. Q. Why did you think <sup>they</sup> would not understand you unless you spoke to them in the English language?  
A. Because I thought they did not understand Japanese.
24. Q. What was the color of the skin of these two prisoners?  
A. Their faces were a little sun burned and was red but their skin was white.
25. Q. How tall were they?  
A. One was very tall, the other was about medium height.
26. Q. How were they dressed?  
A. They were wearing a simple summer uniform.
27. Q. At that time did you notice any insignia on either of these two prisoners?  
A. There were markings on one of them. They were in a shape of a mountain and in stripes.
28. Q. Where were these markings?  
A. As I recall on his arm.
29. Q. How many marks were there?  
A. As I recall there were about three.
30. Q. Were these markings similar to the ones worn by the corporal of the guard here in this court room?  
A. As I recall it was made of cloth and sewn on.
31. Q. When you told these prisoners in English to come with you, did they comply with your request?  
A. They came out two or three steps from their cells.
32. Q. Who had custody of prisoners of war at the 41st Naval Guards?

This question was objected to by the accused on the ground that it was calling for an opinion of the witness which he was not qualified to give.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. It was the commanding officer of the Naval Guards, at that time Captain Anne, Shippey.

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*James I. Kanay*  
James I. Kanay  
Lieutenant, U. S. Navy  
Judge Advocate

0854

33. Q. Was there any subordinate of Captain Asano who was particularly charged with the custody of these prisoners?

A. At that time it was Lieutenant Commander Nakase, Shohichi who was the acting executive Officer and at that time he was the officer of the guards.

34. Q. What did you do after telling these prisoners to come with you?

A. While I had one prisoner placed on the stretcher they had brought the other prisoner's hands were tied.

35. Q. Where did you take the prisoners?

A. I took them to the battle first aid station.

36. Q. What did you do when you got to the first aid station?

A. When I had the prisoner carried into the first aid station the preparations for the operation had already been completed and I saw Commander Ueno, Surgeon Lieutenant Kuno and corpsmen were already present.

37. Q. What corpsmen were there?

A. I do not remember their names.

38. Q. You say you took one prisoner inside what did you do with the other prisoner?

A. As the other prisoner did not have to be carried on a stretcher I had him start out toward the battle dressing station.

39. Q. Where did you leave the one that was not taken into the air raid shelter?

A. As I had him go ahead and I did not see him I do not know where he was.

40. Q. Had you given directions to the men that took him as to where they should leave him?

A. I told them to take him to the battle dressing station but I did not tell him what spot.

41. Q. Which of the two entrances of the battle dressing station did you enter through?

A. I entered through the entrance facing the road.

42. Q. Which entrance was that with reference to the sick bay? Was it the near end or the far end to the sick bay?

A. It was the entrance on the far side of the sick bay.

43. Q. What was done after you arrived in the air raid shelter with the prisoner?

A. He was taken off the stretcher and placed on the operating table.

44. Q. What was done with him after he was put on the operating table?

A. His clothes were removed and Commander Ueno performed a simple physical examination.

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*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy

Judge Advocate.

0855

45. Q. What was done then?

A. He ordered an anaesthetic administered to the prisoner and as I had been ordered to assist I took my place toward the left, toward the head of the prisoner and started to administer the anaesthetic.

46. Q. On what side of the prisoner was Ueno standing?

A. He was standing to the right side of the prisoner.

47. Q. Did you administer the anaesthetic?

A. Yes.

48. Q. What type of anaesthetic was administered?

A. At first chloroform ether was administered.

49. Q. What was done after that?

A. After the prisoner had come under the influence of chloroform Commander Ueno operated on the toe nail of the foot and removed the toe nail.

50. Q. Do you know why that toe nail was removed?

A. I did not know.

51. Q. As a doctor did you notice anything wrong with that toe?

This question was objected to by the accused on the ground that it was immaterial, irrelevant and not binding upon any of these accused, particularly Commander Ueno.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. As I was administering the anaesthetic I was furthest away from where the operation was being performed but as there were wounds in several places in the body due to the bombing I think there may have been wounds on the toe.

52. Q. Did Commander Ueno say why he removed that toe nail?

A. It looked as if Commander Ueno was explaining completely the removal of the toe nail but I forget what he said.

53. Q. Did you see Commander Ueno administer any treatment to that toe from which he removed the nail.

The question was objected to by the accused on the ground that it was leading.

The judge advocate withdrew the question.

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*James B. Kenny*

JAMES B. KENNY,  
Lieutenant, U. S. Navy.  
Judge Advocate.

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54. Q. Did you see Ueno do anything to that toe after he removed the toe nail?

A. It was just as he had left it.

55. Q. Which toe was this?

A. It was the right toe.

56. Q. At that time did Ueno say why he was performing this operation?

A. It seems that he was explaining concerning it but I do not recall what he said.

57. Q. After removing the toe nail what was done to the prisoner next?

A. After this an incision was made on the thigh of the same leg and the femoral artery in the inguinal region brought to the surface. The artery was not cut.

58. Q. Were you still administering the anesthetic at this time?

A. At this time I was told to assist Commander Ueno and had the senior petty officer, Uchihiro, do the administering of the anesthetic. I went to the right of the prisoner and stayed toward the left of Commander Ueno, assisted him by wiping away the blood, stopping the blood whenever blood vessels were cut and assisted him.

59. Q. So that you were assisting at the time the right thigh was cut. Is that right?

A. Yes.

60. Q. What artery was exposed?

This question was objected to by the accused on the ground that there has been no showing that any of the arteries had been exposed.

The judge advocate withdrew the question.

61. Q. Was the artery exposed?

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

The judge advocate withdrew the question.

62. Q. You say the femoral artery was brought to the surface. Who brought it to the surface?

A. It was the head medical officer, Ueno.

63. Q. Did he say anything while he was doing this?

A. I think he was explaining about the bringing it to the surface.

64. Q. Do you know why this incision was made in the right inguinal region and the femoral artery exposed?

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*James P. Kenny*

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

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This question was objected to by the accused on the ground that it was asking for an opinion of the witness who was not qualified to answer.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I do not know.

65. Q. Was there anything wrong in that region where this incision was made?

A. I did not think there was anything wrong with that region.

This answer was objected to by the accused on the ground that it was a self serving statement and moved that it be stricken from the record.

The judge advocate replied.

The commission announced that the objection was not sustained.

66. Q. After the incision and the exposure of the femoral artery what was done next?

A. He examined the scrotum and said there only seems to be one testicle after which he made an incision in the scrotum, the right part of the scrotum.

67. Q. You stated that Commander Ueno said that there only appears to be one testicle, how many testicles did you notice that the prisoner had?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I thought there were two.

68. Q. What was done when the right portion of the scrotum was cut?

A. While explaining how to operate in making a person sterile he removed the testicle.

69. Q. What did he do with the testicle that was removed?

A. The testicle was placed on a perringer and placed on the table.

70. Q. Other than explaining how to perform castration did Ueno give other reasons why this piece of surgery was performed?

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*James P. Kenny*

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

0858

A. While he was performing this operation he explained to us the method of castration, therefore, I think he was teaching us this method.

The accused moved to strike the words, "I think he was teaching us this method" out of the record on the ground that they were the opinion of the witness.

The judge advocate made no reply.

The commission directed that the words be stricken.

71. Q. Were you assisting Ueno at that time?  
A. I had gauze and was wiping away the blood.

72. Q. Did Ueno at that time state why he castrated this prisoner?  
A. I do not remember.

73. Q. Did you notice any abnormal pathology in the area of the scrotum?  
A. I do not recall noticing any abnormal pathology.

74. Q. Did Ueno point any out?  
A. I have no recollection.

75. Q. After the removal of the testicle what was done next to the prisoner?  
A. Next, I think it was through the center of the abdomen from the depression just above the abdomen, the incision was made down to just below the navel.

76. Q. About how long was that incision?  
A. I think it was about fourteen to fifteen centimeters in length.

77. Q. Who made the incision?  
A. The head medical officer, Ueno.

78. Q. What was done after making the incision?  
A. He examined the intestines in several places.

79. Q. When you say he examined the intestines just what do you mean?  
A. As I recall he stated that if a bomb dropped nearby your intestines are damaged by the blast of bombing and I think he was examining the intestines to see if the intestines were bleeding.

80. Q. In this examination did he touch the intestines?  
A. Yes.

The commission then, at 3:20 p.m., took a recess until 3:35 p.m., at which time it reconvened.

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

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*James P. Kenny*

JAMES P. KENNY, 53  
HONORARY, U. S. NAVY  
Judge Advocate.

0859



No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

81. Q. Describe for us just how Ueno handled the intestines?

A. He did not handle the intestines very much but as I recall he brought forth the appendix.

82. Q. What did he say when he brought forth the appendix?

A. As I recall he explained concerning the appendix but as I recall he did not remove the appendix.

83. Q. Did you notice anything wrong with that appendix?

A. I do not think there was anything wrong with the appendix.

84. Q. Prior to the start of this operation did Ueno examine the prisoner to see if there was any pain in that region?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not recall.

85. Q. Did you hear anybody ask the prisoner if he had pain in that region?

A. The prisoner was completely under ether and he was in a state in which he could not say anything.

86. Q. He wasn't under ether when you brought him into the battle station, was he?

A. When I brought him in he was not under an anesthetic.

87. Q. Was anything else done to the abdomen?

A. Nothing else was done to the abdomen.

88. Q. What next was done to this prisoner?

A. An incision was made in the right breast over a rib.

89. Q. Did Ueno say why he did this?

A. As I recall he did not say anything.

90. Q. Did you notice anything wrong with that region of the breast?

A. I have no recollection if there was anything wrong with that part of the body.

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*James I. Kenney*  
JAMES I. KENNEY,  
Lieutenant, U. S. Navy  
Judge Advocate.

0860

91. Q. You say he cut the breast in the region over the rib. Did he expose the rib?

A. He exposed a muscle and revealed a part of the rib.

92. Q. After the rib was exposed did he then say anything?

A. He explained on the methods of removing the rib.

93. Q. While he was explaining to those present the method of removing the rib, did Vane give any other reason why he did this?

A. I have no recollection.

94. Q. Do you know for whose benefit all this explanation was given while this surgery was going on?

A. I think the explanations were being made to myself and Lieutenant Kuno.

95. Q. Other than showing you and Lieutenant Kuno how to do these things, do you as a medical practitioner know of any reason why these things were done to that prisoner?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. At the very beginning he stated that it was for research in surgery and I think the reason for it was research.

96. Q. Was there anything done during the whole of this operation that was beneficial to the prisoner?

This question was objected to by the accused on the ground that it called for the opinion of the witness and asked for a self serving statement of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not understand when you say "beneficial to the prisoner."

The judge advocate reframed the question.

97. Q. Did anything that Vane did in the course of all this surgery help the condition of that prisoner?

A. To my recollection I do not think there were any.

98. Q. Were any other parts of the body cut by Vane?

A. Other parts were not cut.

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*James F. Kuntz*

JAMES F. KUNTZ,  
Lieutenant, U. S. Navy,  
Judge Advocate.

0861

99. Q. What was done after the rib had been exposed?

A. Commander Veno explained a little on the removal of the periosteum (the lining around the bone), and after that the operation was over.

100. Q. While the operation was going on did you hear anything from the outside of that air raid shelter?

A. Near the entrance of the air raid shelter of the battle dressing station many people were going in and out of the entrance and there was much talk.

101. Q. While you were in the air raid shelter did you hear any orders called out from the outside.

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

The judge advocate made no reply.

The commission announced that the objection was sustained.

102. Q. Were you able to recognize any of the voices that you heard on the outside of that air raid shelter?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I heard a voice saying they are going to do the other prisoner next from the entrance which was toward the sick bay.

103. Q. Have you heard that voice on previous occasions?

A. According to my recollection it seemed to be the voice of Executive Officer Nakase.

The accused moved to strike the answer on the ground that it was the opinion of the witness.

The judge advocate replied.

The commission announced that the motion was denied.

104. Q. Had you heard Nakase speak on many occasions before this?

A. Yes.

105. Q. What was done to the prisoner at the close of the operation?

A. It was said that "The operation is over" and the prisoner was temporarily bandaged.

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

0862



106. Q. To what part of the body were the bandages applied?

A. Temporary bandages were bandaged about the abdomen.

107. Q. Were any other parts of the body which had been cut open bandaged?

A. The wounds in the chest and the inguinal regions were small and as I recollect they were not bandaged.

108. Q. What was done with the prisoner then?

A. As Kriguchi was standing close by at this time Commander Ueno said "Put the prisoner 'at ease' and ordered him to dispose of the prisoner.

109. Q. Did you understand what Ueno meant when he said "Put the prisoner at ease?"

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

The judge advocate replied.

The commission announced that the objection was sustained.

110. Q. Do those words "at ease" have any particular meaning in the Japanese armed forces?

A. It was said in the entrance that the other prisoner was to be disposed of and the persons at the entrance went toward this other prisoner and therefore, when it was said "Put the prisoner at ease" we naturally thought it meant to dispose of him.

111. Q. When did Kriguchi enter the battle dressing station?

A. I think it was during the operation. I do not remember when he entered the battle dressing station.

112. Q. You have testified that Ueno and Kuno were present when you came there with the prisoners and that Kriguchi came in during the course of the operation. Was there anybody else that came in there while the operation was in progress?

A. I have no recollection.

113. Q. How long did this operation take?

A. It seemed to me it took about an hour and a half but I can not tell the exact time.

114. Q. After the prisoner had been bandaged what was then done with him?

A. The head of the hospital ordered the prisoner carried out. He was placed on a stretcher and carried out.

115. Q. Did the head of the hospital, Ueno, indicate where the prisoner was to be taken?

A. All I can remember is that he said carry him out.

116. Q. What did you do at this time?

A. Later I left this battle dressing station and washed my hands at a water tank at the side of the sick bay.

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*James P. Kenny*

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

0863

117. Q. What did you do after washing your hands?

A. There were many people going back and forth between the scene of the execution and the battle dressing station and therefore I went with the persons toward the scene of the execution.

118. Q. When you got to the scene of the execution, tell us what you saw?

A. As I recall on a small path leading to the scene of the execution I saw Rear Admiral Asano.

119. Q. When you got to the scene of the execution where was the prisoner?

A. Just in front of the hole. He was still on the stretcher and the stretcher had been placed on the ground.

120. Q. Did you speak to the prisoner?

A. As he was coming out of the anaesthetic I talked to him and he told me his name, age, and that he had a mother and a sister.

121. Q. Do you recall what he said his name was?

A. I can not recall his name.

122. Q. How old did he say he was?

A. As I recall he said he was twenty-seven.

123. Q. In what language was this conversation held?

A. It was English.

124. Q. Had you seen Americans before this time?

A. Yes, I have seen foreigners, but I can not distinguish which is French, etc.

125. Q. I again ask you, had you seen Americans before this time?

A. In Japan I had frequently seen foreigners but I can not distinguish between their nationalities.

126. Q. Did you look into the hole that was at this scene?

A. No.

127. Q. You did not look in there at any time?

A. I did not look into the hole but I looked toward the hole.

128. Q. Could you see into the hole?

A. According to my recollection I saw water in the hole, therefore, I could see into it.

129. Q. Other than water could you see anything else in that hole?

A. I could see the back of a human being floating in the water.

130. Q. Did you recognize anything about that body that was in the hole?

A. The body was wearing a uniform, or a suit, and I could not see the body, only the suit of clothing.

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*James P. Kenny*

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

58

0864

131. Q. Did you recognize anything on the clothing?  
A. I did not notice anything on the suit.

132. Q. Had you seen that body before?  
A. He was wearing clothes and I could not see the body.

133. Q. Had you seen those clothes before that time?  
A. Yes.

134. Q. Where had you seen them?  
A. It seemed to be the clothing of the other prisoner that I had brought from the place of confinement to the battle dressing station.

135. Q. After you had spoken to this prisoner at the scene, what was done to him?  
A. About the time I had finished speaking with the prisoner Eriguchi had returned with his sword. The prisoner was taken to the other side of the hole.

136. Q. What was done with him then?  
A. He was lowered to the ground and according to the order of head-medical officer, Ueno, he was beheaded by Eriguchi.

137. Q. With what did Eriguchi behead him?  
A. It was a sword.

138. Q. What was done with the body of the executed prisoner?  
A. After I saw the beheading I returned to my officers quarter in the sick bay and therefore do not know what happened afterwards.

139. Q. What officers were present at the scene of the execution?  
A. Commander Ueno of the medical section, also Surgeon Lieutenant Kuno, myself and the head carpenter, Kobayashi.

140. Q. Do you recall any other officers who were present?  
A. I seem to recall Asano standing on the small path.

141. Q. Approximately how many people were present at the beheading?  
A. According to my recollection there were about one hundred.

142. Q. And did that gathering of spectators run right up to this road on which you say you recall Asano being present?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

The question was repeated.

A. Yes.

The witness was duly warned.

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Thursday, 25 September 1947.

JAMES H. KENNY  
Lieutenant, U. S. Navy  
Judge Advocate



**FOURTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Thursday, September 25, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United  
States Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major Joseph T. Smith, junior, U. S. Marine Corps, members, and  
Lieutenant Commander Joseph A. Regan, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Kinoshita, Hiroshi, the witness under examination when the adjournment  
was taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

**Cross-examined by the accused:**

143. Q. What was your position at the Forty-first Naval Guards?  
A. I was a division officer in the medical section of the Forty-first  
Naval Guards.

144. Q. Was your specialty in this medical section?  
A. I did not have any specialty in this medical section but the medical  
section was divided into two sections, the internal medical section and  
the surgical section and we were ordered to alternate in these duties.

145. Q. In yesterday's testimony in direct examination you testified that  
you remember the incident taking place in the beginning of July 1944. Do  
you have any basis for this date?  
A. During June I had been detached for duty at Pagan Island. Toward the  
end of the month I was stricken with acute appendicitis and returned to the  
guard unit and this incident occurred shortly after I returned to the  
guard unit. According to my recollection the incident occurred about the  
beginning of July.

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*James P. Kenny*

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

60

0866

146. Q. Do you remember the exact date that you returned to the naval guard unit?

A. I do not remember the exact date.

147. Q. Do you know the time that the Forty-first Naval Guards were bombed and American prisoners and a Japanese soldier were killed?

A. While I was on Param Island I saw explosions on the side of the mountain which was just above the Forty-first Naval Guards.

148. Q. What is the relation between the time you saw this explosion and this incident?

A. It was one or two days after I saw this explosion on the side of the mountain that I returned to the guard unit and this incident occurred two or three days after I had returned to the guard unit.

149. Q. When this bombing occurred wasn't it about the twentieth of June?

A. I do not remember the exact date that the bombing occurred.

150. Q. You testified that the place where the operation was performed was the battle dressing station. What sort of place was this battle dressing station?

A. This was a battle dressing station which was set up in an air raid shelter to give first aid when under attack by a task force or under air raids for a long time.

151. Q. How large was this battle dressing station?

A. The width was about four meters, the length about five to six meters.

152. Q. You testified that when you and Kuno were sitting on the veranda Ueno came and said, "This afternoon I shall operate on two prisoners and it would be of some educational value." Was this the only conversation that was held on the veranda at this time?

A. Yes.

153. Q. Did you and Kuno say anything at this time?

A. We said nothing.

154. Q. Do you know where Ueno came from at this time?

A. In the middle of the veranda is the wardrobe and Ueno came from the other side of this wardrobe.

155. Q. Where was Ueno living at this time?

A. He was living in the officers' quarters at the sick bay.

156. Q. Was there any reason for his living in the officers' quarters at the sick bay?

A. I think it was because at this time the officers' quarters of the guard unit were very crowded due to the increase in officers. That is why he stayed at the sick bay.

157. Q. Do you know of Commander Ueno becoming sick in the beginning of June and at this time he was still recuperating from his sickness?

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*James A. Kenny*

JAMES A. KENNY,  
Lieutenant, U. S. Navy 61  
Judge Advocate.

0867

A. During June as I was on Param Island I did not see him while he was sick but I heard of his being sick after I returned to the guard unit.

158. Q. Did you know that Commander Ueno was still not feeling well because of this sickness?

A. Yes.

159. Q. What time was it when Ueno said that he was going to operate on the two prisoners?

A. The noon meal is at 10 a.m. and it was shortly after the noon meal.

160. Q. You testified that hearing that there was going to be an operation you went to the officers' quarters at the sick bay. There Commander Ueno came and said, "I have been ordered to dispose of the prisoners by the executive officer" and that he was going to do research on them. What time was it when he said this?

A. According to my recollection it was close to 11 o'clock.

161. Q. How much time was there between the first conversation on the veranda and the next conversation?

A. As I recall it was about twenty to thirty minutes.

162. Q. When you testified that in the first conversation he did not state that he had been ordered to dispose of the prisoners by the executive officer do you mean that he was ordered between that time and the next conversation by the executive officer to dispose of the prisoners?

A. After this conversation on the veranda I went to the sick bay. There I was ordered to assist Commander Ueno and I do not know when the head medical officer was ordered by the executive officer.

163. When Commander Ueno talked to you about the operation did you understand that Commander Ueno had been ordered to perform the operation by the executive officer?

A. I thought Commander Ueno had been ordered by his superiors to perform the operation and therefore had determined to do it.

164. Q. Doesn't a doctor operate according to the necessity of his patients?

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

The accused replied.

The commission announced that the objection was sustained.

165. Q. You said you were ordered according to the orders of Commander Ueno to take the stretcher and go with guards to the place where the prisoners were confined and get the prisoners. Who were these guards?

A. I went together with four or five persons but I do not remember their names.

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*James P. Kenny*

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

0868



166. Q. How many stretchers did you take?

A. According to my recollection two.

167. Q. Did you receive instructions from anyone to take the stretchers along or were they something that you thought of by yourself?

A. It was my idea.

168. Q. Then did you know that stretchers were necessary?

A. As for myself I did not know anything at all about the condition of the prisoners so I thought it might be necessary to take stretchers along.

169. Q. These two prisoners who remained out of the five who were bombed, had you heard that the two remaining prisoners had been effected by the bomb blast?

This question was objected to by the judge advocate on the ground that there had been no testimony about five prisoners being killed or injured in any air raid.

The accused replied.

The commission announced that the objection was not sustained.

A. I had not heard about the prisoners who had lived through the bombing but as it was right after they had been bombed I thought they may have been weakened so I took the stretcher.

170. Q. You testified that you went to the guard house and told the senior petty officer of the guard that you had come to get the prisoners by the orders of the head medical officer Vemo. Who was this senior petty officer of the guard?

A. I do not remember.

171. Q. When you said this to the senior petty officer of the guard did he say anything to you?

A. He acknowledged what I had said and replied yes.

172. Q. You testified that when the senior petty officer of the guard unit opened the door to their cells the prisoners were standing by the door?

A. As I recall, yes.

173. Q. You testified that after the door had been opened you stated in English, "Come with me" and they had taken two or three steps out of the cell. Was this true of both of the prisoners?

A. Yes.

174. Q. Then the prisoner that you took away on the stretcher was he also able to walk?

A. He seemed to be much weaker than the other prisoner but he was able to take two or three steps.

175. Q. When he was taking these steps did he show any signs of limping or suffering?

A. He seemed to be very weak.

*James P. Kenny*

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

66

0869

176. Q. One you placed on the stretcher and the other you determined that it was not necessary to place him on the stretcher, he was strong enough to walk and you had him go on ahead. Is this correct?  
A. This is correct.

177. Q. What is the distance from the place of confinement to the battle dressing station?  
A. As I recall it was about one hundred meters.

178. Q. Then was it that you determined that the prisoner you had placed on the stretcher could not walk one hundred meters?  
A. Yes.

179. Q. Could you see any outward signs which showed that he had to be carried on a stretcher?  
A. On his hands and feet were scratches or bruises which were due to the bombing. His face looked very tired.

180. Q. On what parts of his hands and feet did you see these scratches and bruises?  
A. As I recall I saw them on the upper part of his arms and the part of his legs which showed beneath his pants.

181. Q. Did you see any scratches or bruises on the toes of his feet?  
A. I seem to recall some.

182. Q. Do you know that wounds from the blast of explosion are light on the outside and very serious internally?  
A. When a bomb explodes near a person he is effected by the blast in especially the breast and abdomen which you cannot see from the outside but are of serious nature. I have seen many patients who have been weakened by the effects of the blast and that is why I know of this.

183. Q. Then this prisoner that you placed on the stretcher, the wounds on the surface were the ones on his arms and legs. Did you as a doctor fear that he had been wounded internally so that he had to be carried on a stretcher?  
A. As I did not examine him closely I could not determine if there was anything wrong with him internally or not.

184. Q. You are a doctor, the question is if it were only the wounds which could be determined from the outside it was not necessary to place him on a stretcher. Didn't you think at this time that because the person had been wounded seriously internally that he had to be placed on a stretcher?

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

The accused replied,

The commission announced that the objection was sustained.

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*James P. Kennedy*  
JAMES P. KENNEDY, JR.  
Lieutenant, U. S. Navy,  
Judge Advocate.

0870

185. Q. You have testified you could not see many outside wounds but that you had seen many patients who had been effected by the blast internally. How did you go about determining these wounds?

A. By asking the patient questions, listening to his heart beat, feeling his chest, ask him if he feels any pain and also by examining his urine and feces.

186. Q. Can you determine by these examinations what kind of a wound and where that wound was?

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

The accused replied.

The commission announced that the objection was sustained.

187. Q. You testified that Commander Ueno examined the prisoner that you had brought on the stretcher. What sort of examination did Ueno perform?

A. He removed the clothes of the prisoner and examined the prisoners face, chest and abdomen. He made a superficial examination.

188. Q. Did he examine the prisoner by touching the various parts of the body?

A. As I recall he did not examine the prisoner by feeling the parts of his body.

189. Q. When Commander Ueno made this superficial examination what were the outward results of the examination?

A. I do not know what deductions Commander Ueno drew from this examination.

190. Q. What deductions did you arrive at?

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

The accused replied.

The commission announced that the objection was not sustained.

A. As I recall there were no outward signs of anything being wrong in the chest and abdomen.

191. Q. You could see no outward signs of any wounds but this prisoner had to be carried on a stretcher while the other prisoner could walk. He was very weak. Why was he so weak when there were no outward signs? Didn't you think at this time that he may have internal wounds which weakened him?

This question was objected to by the judge advocate on the ground that it was double and speculative.

The accused replied.

The commission announced that the objection was sustained.

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*James P. Kenny*

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

0871



The commission then, at 10:17 a.m., took a recess until 10:39 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

192. Q. When you saw the prisoner at the place of confinement did you notice if he was barefooted or not?

A. According to my recollection he was barefooted.

193. Q. You testified that you noticed bruises and scratches on the toes of the prisoner. Did you notice this at the place of confinement or after he had been taken to the battle dressing station?

A. There seemed to be mud or dirt on his feet or the part of his legs that showed and I think I noticed abrasions on his toes at this time.

194. Q. The question was if you noticed these abrasions at the place of confinement or at the battle dressing station.

A. I did not notice them at the place of confinement. When he was being placed on the operating table from the stretcher I noticed them.

195. Q. You testified that you lost sight of the other prisoner that you had seen ahead and that you did not see him. Did you ask concerning his whereabouts?

A. No.

196. Q. Was there someone with this prisoner?

A. I do not remember.

197. Q. You testified that when you arrived at this battle dressing station the preparations for the operation had already been completed. What preparations had been completed?

A. In the middle of the air raid shelter lengthwise and a little toward the right from the center of the air raid shelter was an operating table and to the left of this operating table there was a small stand for instruments.

198. Q. What kind of instruments were on the stand?

A. There was a box of naval surgical instruments in which there were many different kinds of instruments.

199. Q. In this box of medical instruments what kind of instruments were there?

A. Many different kinds of instruments such as to treat the usual wounded person and the various operations.

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*James P. Kenny*

JAMES P. KENNY,  
Lieutenant, U. S. Navy, 66  
Judge Advocate.

0872

200. Q. Who placed the prisoner from the stretcher on the operating table?

A. I think it was a corpsman who had brought the prisoner to the battle dressing station and the corpsmen who were already in the battle dressing station.

201. Q. You testified that Commander Ueno operated on the big toe of the right foot and that he removed the toenail. Were these abrasions that you saw on the feet of the prisoner on this toe?

A. According to my recollection there were abrasions on various parts of his body and there was also an abrasion on the big toe of the right foot.

202. Q. Wasn't it a fact that this abrasion on the big toe of the right foot had become infected and that a paronychia had developed on the toe?

A. As I was standing to the left of the prisoner and administered the anesthetic when Commander Ueno was operating I could not see if a paronychia had developed on the big toe.

203. Q. Didn't Commander Ueno state at this time that the toenail had to be removed because a paronychia had developed there?

A. I do not remember.

204. Q. Is it usual to operate and remove the toenail when a paronychia develops?

A. According to the extent which it develops it may be necessary to remove the toenail.

205. Q. When this paronychia develops do you know that injections in the arteries become necessary for instance that you would have to inject sulfa drugs into the arteries of the patient?

A. When the paronychia becomes worse and inflames the subcutaneous connective tissues I know that sulfa drugs are to be injected into the arteries.

206. Q. Wasn't it to make this injection that Commander Ueno revealed the femoral artery?

A. I do not know for what reason Commander Ueno revealed the femoral artery but as he explained how to reveal the artery I thought his reason for doing so was for research purposes.

207. Q. As a doctor in treating infected wounds or areas have you seen injections being made into the femoral artery?

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

The accused replied.

The commission announced that the objection was sustained.

208. Q. You testified that in revealing the femoral artery an incision was made in the inguinal region. Isn't this a mistake for the inner part of the thigh?

A. It can be also said to be the inguinal region. It was approximately in the upper part of the inner side of the thigh.

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*James P. Kenny*

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

0873

209. Q. A great mistake can be made when it is not definite whether it was in the inguinal region or whether it was the inner side of the thigh in which the femoral artery was revealed. This point will have to be cleared up. Do you mean that it was in the lower part of the inguinal region and the inner side of the upper thigh?

A. Yes.

210. Q. Show us on what part of the body you mean.

A. It is as I have shown.

(The witness indicated the upper part of the inner thigh.)

211. Q. When Commander Veno made this incision did he state anything when he noticed that there were no sulfa drugs at hand?

This question was objected to by the judge advocate on the ground that there had been no testimony that Commander Veno had noticed that there were no sulfa drugs at hand.

The accused replied.

The commission announced that the objection was sustained.

212. Q. You testified that before Commander Veno made an incision in the scrotum he examined the testicles and stated that there was only one. Is this correct?

A. As I recall, this is what he said.

213. Q. At this time did you examine the testicles?

A. I was standing to the left of the head medical officer and looking on.

214. Q. Then you yourself did not directly examine him. Is that correct?

A. I did not directly examine the prisoner.

215. Q. You testified that you did not directly examine the prisoner and that Commander Veno who directly examined the prisoner stated that there was only one testicle. You replied to the question of the judge advocate that you thought there were two. What is the basis for this?

A. When Commander Veno made an incision in the scrotum and was explaining the method of castration I noticed that there were two.

216. Q. When Commander Veno found that there was only one what did you think at this time?

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

The accused replied.

The commission announced that the objection was sustained.

217. Q. As a doctor do you know of instances when there are normally two testicles but a blast of explosion one of them is blown into the body?

A. In cases of peritonitis afflicted with hernia when there is an open space in the wall of the stomach I think this is possible.

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*James A. Kenny*

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Judge Advocate.

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218. Q. Didn't Commander Ueno state that he thought that one of the testicles had been blown into the body of the prisoner in this case?

A. I heard him state there seems to be only one testicle but I do not think I heard him say that it had been blown into the body.

219. Q. When Commander Ueno stated there seems to be only one testicle and you thought there were two did you express your opinion on this to him?

A. No.

220. Q. When persons are operating together isn't it the duty of doctors who are operating together to point this out?

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

The accused made no reply.

The commission announced that the objection was sustained.

221. Q. You testified that Commander Ueno removed the testicle of the prisoner. This differs from the testimony of other witnesses. Is your recollection clear on this point?

A. I have a distinct recollection that he removed the testicle.

222. Q. When you say removed do you mean that he revealed the testicle and brought it forth without damaging any of its connections and then replaced it?

A. No.

The witness was duly warned.

The commission then, at 11:23 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued)

223. Q. You testified that Commander Ueno had said he had been ordered to dispose of the prisoners by the executive officer and that was why he was going to operate. Did the executive officer order Commander Ueno to operate on the prisoners?

A. According to my recollection I recall that when we were in the officers' quarters of the sick bay Commander Ueno said, "I have been ordered to dispose of the prisoners by the executive officer and I am going to do research on them."

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Judge Advocate.

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224. Q. Then did you understand this as meaning what Commander Ueno did was according to the orders of the executive officer?

A. I understood it as the head medical officer, Ueno, being ordered to dispose of the prisoners by the executive officer and the head medical officer determined to do research on them.

225. Q. You testified that Captain Asano was the person responsible for the prisoners and that the person under Captain Asano who was responsible for the prisoners was the executive officer. On what do you base these conclusions?

A. According to what I remember Captain Asano was the commanding officer of the 41st Naval Guards. He was the department head and had full responsibility for the custody of the prisoners. The executive officer was at this time also head of the guards and that place where these prisoners were confined was in a jail where members, if violating regulations, were placed and came under the head of the guards and therefore, I think he was responsible.

226. Q. Then, when you state that these persons had the responsibility you mean that they had the responsibility according to the organization and you did not know if actually they had the responsibility, is this correct?

This question was objected to by the judge advocate on the ground that the counsel was testifying.

The accused replied.

The commission announced that the objection was sustained.

227. Q. Do you know who actually was in charge of these prisoners?

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

The accused withdrew the question.

228. Q. Do you know if there was anyone junior to the commanding officer and the executive officer who was directly in charge of these prisoners?

A. At the time of the incident I did not know, but after the end of the war I heard that these prisoners had been temporarily placed in the custody of the guard unit by the headquarters and as there was not a regular set up to handle these prisoners there was no one regularly appointed to take charge of prisoners.

The judge advocate moved to strike that part of the answer beginning with and following the words "but after the" and of the word "heard" on the ground that it was not responsive and was hearsay.

The accused made no reply.

The commission directed that the words be stricken out.

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*James P. Kenny*

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229. Q. You have testified that the head medical officer made an incision in the abdomen lengthwise down the abdomen and that he examined various parts of the intestines and that you thought he was looking to see if there was any intestinal bleeding in the intestines. Was this usually done in a case of having been exposed to a bomb explosion?

A. This is not always the case. It varies according to the position, the distance from the blast. In some cases incisions are made and in some cases not and it isn't necessary to perform incisions on all persons who have been exposed to explosions.

230. Q. Have you experienced such a case in which damage had been caused internally due to a blast of explosion?

A. I would like to modify my testimony of this morning. I have had experience with persons who had experienced blasts and spoke of pain in their chest but have had no experience with internal bleeding in the abdomen due to blast of explosions.

231. Q. This incision that Commander Ueno made in the abdomen. In medical terms isn't this called a diagnosis incision?

A. I do not know for what reason Commander Ueno, the head medical officer, made this incision but I seem to recall that I heard him explaining internal bleeding occurred when exposed to blast of explosions.

232. Q. I asked was this incision that Commander Ueno made the same kind of an incision that is made in medical schools for purposes of diagnosis?

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

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. This incision, lengthwise down the abdomen is the same incision which is usually used for diagnosis purposes.

233. Q. Then if a doctor thought there was something wrong inside of the abdomen, is this the incision that he would make? Is it natural to make this incision?

A. This is the natural incision to make but I do not know what Commander Ueno thought as to whether there was anything wrong inside the abdomen or not.

The accused moved to strike the last part of the answer beginning with and following the words "but I do not know" on the ground that it was not responsive to the question.

The judge advocate concurred.

The commission directed that the words be stricken.

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*James P. Henry*  
JAMES P. HENRY  
Lieutenant, U. S. Navy.  
Judge Advocate.

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234. Q. You testified that you saw abrasions on the chest also. Was this incision in the chest also made on the basis of those bruises for the purpose of examination?

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

The accused replied.

The commission announced that the objection was sustained.

235. Q. You testified that Commander Ueno said he was going to operate and do research and therefore you testified that this operation was done for research. Is that what you surmised?

A. As for myself I was told I am going to do research and also the prisoner was weak but as a doctor I saw no need for these operations. Also he explained about these operations. Therefore, I thought it was for research.

236. Q. You testified that as a doctor you did not think the operations necessary. You did not actually examine the prisoner, you were looking on from afar and Commander Ueno actually examined the prisoner. Do you have the ability to judge this?

This question was objected to by the judge advocate on the ground that the counsel was misquoting the witness.

The accused replied.

The commission announced that the objection was sustained.

237. Q. You were asked yesterday by the judge advocate, "Did you hear anything toward the entrance of the air raid shelter?", and you stated that you heard voices of many persons outside the air raid shelter. You were asked, "Were there any voices among those voices which you recognized?", and you testified that you heard some one say, "We are going to do the other one now," and that it seemed to be the voice of the Executive Officer, Nakase. When was it that you heard this?

A. As I recall it was about the time the incision in the abdomen was being completed or the incision on the rib about ~~the~~ to begin.

238. Q. About what time was it?

A. The operation started about noon, and it was about an hour and ten to twenty minutes after. As there was no clock I do not know the exact time.

239. Q. When you heard this what were you doing?

A. I was by the side of the head medical officer and acting as his assistant.

240. Q. What kind of an assistant were you? What were you doing as an assistant?

A. With gauze every once in a while I would wipe away the blood.

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JAMES A. KENNY, 72  
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Judge Advocate.

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241. Q. Other to this voice what did you hear?

A. As a mixture of voices I heard many voices speaking.

242. Q. Among the voices that you heard what persons were speaking?

A. The corporals who were watching and some members of the guard unit.

243. Q. Then the only voice that you heard state anything clearly was the one that said, "The other prisoner we are going to do now," is that correct?

A. I heard this voice saying this and I thought the other prisoner is going to be disposed of. That is why I remembered the voice.

The accused moved to strike out this answer on the ground that it was not responsive to the question.

The judge advocate concurred.

The commission directed that the answer be stricken and that the question be again put to the witness.

A. Yes.

244. Q. Then do you mean that you have no recollections of the other voices?

A. Yes.

245. Q. When you say, "We are going to do the other one now," what is the meaning of that phrase? Do you mean that he is going to be operated on next?

A. I understood it to mean that he is going to be disposed of next.

246. Q. In the Japanese language when one person is being operated on and it is said, "The other one we are going to do now," how can you understand this to mean that he is going to be disposed of?

A. One - that it was the voice of the executive officer. The other - this was said into the air raid shelter. I thought it meant the prisoner was to be disposed of.

247. Q. Then do you mean that you did not understand at that time the prisoner was going to be operated on next?

A. Yes.

248. Q. How did you understand the usual meaning of that phrase in Japanese?

A. Many meanings can be taken from it according to the person that says it.

249. Q. When there are two prisoners and one is being operated upon and when you heard this voice, how did you take it in the ordinary instance?

A. In the battle dressing station there was only one operating table. Commander Uno was operating and as I heard this voice of Commander Nakase I would take it to mean to dispose of the prisoner.

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*James P. Kenny*  
JAMES P. KENNY, 73  
Lieutenant, U. S. Navy  
Judge Advocate.

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250. Q. When you were assisting in this operation did you know that this other prisoner was to be disposed of?

A. Yes.

251. Q. Didn't you go to get the prisoners?

A. Yes.

252. Q. According to the orders of Commander Ueno you went to get two prisoners. One prisoner was operated on. Didn't you go to get the two prisoners to be operated on?

A. At first that is how I think it was.

253. Q. When was this revision made?

A. While Commander Ueno was performing the incision on the abdomen he stated, "I have become tired of this," and he stepped outside for a moment then returned and he made the incision in the rib.

254. Q. Then did you mean that when Commander Ueno stepped outside he talked with Commander Nakase?

A. Commander Ueno left the air raid shelter through the entrance facing the road and he returned through that entrance and the voice I heard shortly afterwards was from the opposite entrance.

255. Q. Then do you mean that is why this revision was made in the plans?

A. I do not know about the plans but I definitely heard Command Nakase's voice at the entrance.

256. Q. To a question you replied that at first there was the plan and then while Commander Ueno was operating he stepped outside and then he made the incision in the ribs. Then I asked if the revision made in the plans because of this. Another question by the counsel then was, "Was the change in plans made because of this?" You then testified you didn't know of any plans. What do you mean? I can not understand your testimony.

A. At first Commander Ueno said that he was going to operate on two prisoners and ordered me to bring them so I brought them to the battle dressing station and after Commander Ueno had been operating for about an hour and a half I heard this voice of the executive officer and I am only stating what I recall. I do not understand the meaning of the question.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

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(Cross-examination continued.)

257. Q. When did you first understand there was to be a change of plans?  
A. When I first understood this was when I heard this voice say, "We are going to do the other one now."

258. Q. Is there any connection between this and when Commander Ueno left the air raid shelter?  
A. It became noisy outside and the head medical officer left the air raid shelter but I do not know what relation there is between this.

259. Q. When you say it became noisy outside, what do you mean by that?  
A. I seem to recall a sound made by the prisoner.

260. Q. You seem to understand English, what did he say?  
A. It was not a word.

261. Q. What was the relation between this sound you seemed to have heard from the prisoner and this voice which said "We are going to do the other one now?"  
A. I heard this sound a short time after I heard this voice.

262. Q. Which was first the voice or the sound?  
A. The sound of the prisoner was first.

263. Q. Then did you understand that the plans were changed because you seemed to recall hearing this sound from the prisoner?

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

The accused withdrew the question.

264. Q. Was it after you saw Commander Ueno leave the air raid shelter that you heard this sound from the prisoner?  
A. I think Commander Ueno heard the sound from the prisoner and went out from the air raid shelter.

265. Q. Are you sure of this?  
A. Yes.

266. Q. You testified that shortly after you heard the sound of the prisoner you heard another voice say "We are going to do the other one now," and you also testified the time that you heard this was during the operation on the abdomen and that Commander Ueno left the air raid shelter just before starting the operation on the rib. Then you testified that Commander Ueno left the air raid shelter upon hearing this sound from the prisoner. Then you testified that Commander Ueno hearing the sound from the prisoner, went outside and after that you heard the voice of Nakase saying, "We are going to do the other prisoner now." According to this testimony it would mean that Ueno would have heard the voice of Nakase before he left the air raid shelter. How do you explain this?

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A. As I recall, while Commander Ueno was performing the operation on the abdomen it became noisy outside. He stepped out and then he returned and while he was continuing the operation I heard this voice stating that, "We are going to do the other one now."

267. Q. Then do you wish to change your previous testimony?

A. I previously stated that I heard the voice of Nakase after the operation on the abdomen had been completed or the operation on the chest had begun, or before the operation on the chest had begun I heard Nakase's voice during the operation on the chest.

268. Q. Either way there is difference in your answer. By the time there was an operation on the abdomen and the operation on the chest Commander Ueno left the air raid shelter and then returned. There is a definite time there, and the time between the operation on the chest and the operation of the abdomen there is considerable time there. Do you wish to change your testimony? I want you to answer my question.

A. I will modify my previous testimony to according to according to my recollection. I heard Nakase's voice during the operation on the chest.

Interpreters note: "Kore Kara" may be interpreted as either "next" or "now."

269. Q. When you heard this voice was it noisy outside?

A. It was noisy outside and I heard no signs from the prisoner other than the one that I heard.

270. Q. Was it noisy when this voice say, "We are going to do the other one next (or now)?"

A. It was noisy.

271. Q. Can you remember any of the words that other persons were saying?

A. I can remember them.

272. Q. From the fact that you remember this one voice, was it a very loud voice?

A. Yes.

273. Q. Are you sure when you say that this was the voice of the executive officer?

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

The accused replied.

The commission announced that the objection was sustained.

274. Q. When were these words that you heard this voice say addressed to?

A. I think it was addressed to the persons by the entrance and to the persons doing the operation and the persons in that neighborhood.

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*James P. Kenny*

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275. Q. Was there anyone who replied to this?  
A. I do not recall.

276. Q. You know the position of the executive officer at the guard unit. Is it usual that the executive officer would come to such a place where persons were talking and say these words?

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

The accused replied.

The commission announced that the objection was sustained.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Friday, September 26, 1947.

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