

SIXTHHILL.MX

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, October 16, 1947.

The commission met at 9:23 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 Bradford 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 fifteenth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An accused, Higuchi, Takashi, was, at his own request, duly sworn
as a witness in his own behalf.

Examined by the judge advocates:

1. Q. Are you an accused in this case?
- A. Yes.

Examined by the accused:

2. Q. When did you enter the navy?
- A. I entered the Naval Medical School on 1 October 1943.
3. Q. In what status did you enter the Naval Medical School?
- A. As a naval dental officer.
4. Q. Have you ever had duty at Truk?
- A. Yes.
5. Q. Through what periods of time did you have duty there?
- A. From 7 June 1944 until 18 December 1945.
6. Q. What was your rank when you arrived on Truk?
- A. I was an ensign.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

7. Q. When did you become an Ensign?

A. I became an Ensign on 1 March 1944.

8. Q. Where on Truk were you stationed?

A. At first I was attached to the Forty-first Naval Guards. In the early part of June 1945 I was transferred to the Pefan Branch of the Fourth Naval Hospital where I was stationed till I was demobilized.

9. Q. What kind of work did you perform while you were attached to the Forty-first Naval Guards?

A. Mainly my work was that of a dentist. In case there were many wounded I would assist in treating them. This I did many times.

10. Q. Have you ever seen any prisoners?

A. Yes.

11. Q. When was it that you saw them?

A. As I recall it was in the latter part of June or the early part of July of 1944 that I saw them.

12. Q. Where did you see them?

A. In the battle dressing station next to the sick bay.

13. Q. What sick bay?

A. The sick bay of the Forty-first Naval Guards.

14. Q. How did you come to go to this battle dressing station?

A. On this day it was after the noon meal as I was resting on the veranda of the officers' quarters at the sick bay, the head medical officer, Vono, came and said, "There is going to be an operation on a prisoner this afternoon, as it may be to your benefit come and witness it."

15. Q. You testified that you were a dentist. What benefit would you derive by witnessing a surgical operation?

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. It is not necessary for a dentist to know about surgical operations in general as his main duties. After I graduated from dental college and entered the Naval Medical School, the training I received there was that the duties of a dental officer at the front include work not only as a dentist but also emergency work which can be done. This I was taught at the Naval Medical School. Also in many documents it was stated that dental officers should study concerning generally about surgery. As it was also stated in these documents I came to study surgery.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

269

1079

16. Q. You testified generally as to why a dentist had to study surgery. Wasn't this more so necessary at Truk?

A. At Truk as there was an acute shortage of medical officers, the dentists were trained so they could be qualified to administer emergency treatments and were told to study by the head medical officer, Vene.

17. Q. You testified that you went to the battle dressing station. What did you see at the battle dressing station?

A. I saw a prisoner operated on.

18. Q. What part of the prisoner's body was being operated on?

A. When I entered, the chest of the prisoner was about to be operated on.

19. Q. Did you do anything to this prisoner?

A. No.

20. Q. Then do you mean that you were not involved in this operation?

A. Yes.

21. Q. Did you do anything to the prisoner other than the operation?

A. Do you mean did I do something to the prisoner?

22. Q. Yes.

A. After the operation at the back of the sick bay I beheaded the prisoner upon orders.

23. Q. You testified that by orders you beheaded the prisoner. By whose and what kind of an order did you behead this prisoner?

A. I was ordered by the head medical officer, Vene, to hurry up and put the prisoner at ease.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion to strike out this answer on the ground that it was prejudicial to the rights of the accused, Vene, and that one codefendant was testifying against another codefendant.

The judge advocate replied.

The commission announced that the motion to strike was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused made the following plea:

If it please the commission. At this time the accused, Vene, makes a special plea and requests that the commission grant a severance from the accused, Briguchi, on the ground that Briguchi has testified against Vene and the defense of Vene is greatly antagonistic to that of the defendant, Briguchi. Not to grant this prayer for severance would be prejudicial to Vene. The accused, Vene prays that the charges and specifications be quashed against him.

The judge advocate replied.

The commission announced that the plea of the accused was denied.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

270

1080

24. Q. What did you do after you received this order?

A. I disliked very much to kill a person but I could do nothing against superior orders. At this time this was the first unit in which I was dispatched to take up duties. I had only been attached to this unit for a short time. I absolutely could do nothing against superior orders so I went to get my sword at the officers' quarters of the sick bay.

25. Q. When you were about to behead the prisoner did anyone show you how to behead the prisoner?

A. No. In my statement which I submitted at Sugamo I stated that the head Corporal, Kobayashi, taught me this. I stated this because of the questions of the investigator at Sugamo. I was asked when I beheaded did someone tell you how to behead. As I recall someone in back of me saying something to me at that time that is how I wrote it. I was not told how to behead the prisoner and this is not true.

26. Q. You testified that someone in back of you said something. What did he say?

A. I do not have a distinct recollection at this time but someone in back of me said, "It would be dangerous unless you put your right foot a little more forward." As my right foot, due to the swamp, was very slippery.

27. Q. When you beheaded the prisoner what was the condition of the prisoner as you saw him?

A. The prisoner could not sit up by himself, his head was weakly bowed down. He had both of his hands clasped on his abdomen and his whole body was limp.

28. Q. Tell us what were your feelings when you beheaded the prisoner?

A. I disliked very much cutting the prisoner. As it was the orders of the superior officers, praying to the prisoner, "I regret this very much" and my feelings at the time of the beheading was that both myself and the prisoner became like a God and beheaded him feeling please forgive me.

29. Q. You testified that you beheaded the prisoner upon orders. Did you ever learn swordsmanship?

A. No.

30. Q. Have you ever used a sword before?

A. No.

31. Q. Were you ever taught by anyone before the beheading that this was how you were supposed to do it?

A. According to my recollection I recall faintly learning from Yoshinuma.

32. Q. Where was it that you were taught this?

A. My recollection is not very clear on this but as I recall it was by the officers' quarters at the sick bay.

33. Q. You testified that you wrote a statement. Was that the statement that was introduced as evidence in this court?

A. Yes.

DEFINITE TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

271

1081

34. Q. Do you remember writing in that statement that an American prisoner was brought to sick bay about one o'clock in the afternoon on the sixth of August?

A. Yes.

35. Q. Did you actually see a prisoner this day at the sick bay?

A. Actually I did not see a prisoner.

36. Q. Do you remember writing in that statement that the head medical officer, Vono, immediately ordered the head corpsman, Kobayashi, to make preparations for an operation in the air raid shelter by the sick bay?

A. Yes.

37. Q. Did you actually hear Vono give Kobayashi these orders?

A. No.

38. Q. It was written in this statement that you submitted that when I entered the air raid shelter there was an incision in the abdomen and the small and large intestines and there was a moist gauze on them?

A. I actually did not see the large and small intestines which were showing but I did see the gauze over the abdomen.

The commission then, at 10:27 a. m., took a recess until 10:45 a. 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.

An accused, Higuchi, Takechi, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

39. Q. Do you remember writing in your statement that one testicle was removed?

A. Yes, I remember writing this.

40. Q. Did you actually see it?

A. I did not see it removed.

41. Q. Did you see it removed and placed on a plate?

A. Actually I heard rumors to this effect afterwards in the sick bay. I did not have a recollection of having seen it but as I heard of these rumors that is how I wrote it.

MAILED 20 25 A TRUE COPY
J. P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

272

1082

42. Q. You wrote in your statement that, "While I was at the toilet, under the direction of Head Corporal Kobayashi the prisoner was carried out of the battle dressing station." Did you actually see this?

A. Looking back all my recollections of the scene before the prisoner was carried out I recall leaving the air raid shelter. I do not know what happened after I left but I wrote what I presumed happened.

43. Q. It is written in your statement that a simple bandage was placed on the abdomen of the prisoner. Do you remember this?

A. This I remember clearly.

44. Q. Then did you actually see this?

A. Yes.

45. Q. Then in your statement it is written that, "The head corporal, Kobayashi, placed the prisoner on a board." Did you actually see this?

A. As I recall the enlisted men who were in that neighborhood placed the prisoner on the board. This I recall clearly now and it was a mistake in my recollection.

46. Q. Do you remember writing in your statement that Head Corporal Kobayashi said, "This is how you do it," and showed you how to bandage the prisoner?

A. Yes, I remember writing that.

47. Q. Previously you testified that you were shown by no one at the scene how to bandage the prisoner. Do you mean you wish to change your statement?

A. Yes.

48. Q. Do you remember writing that the prisoner was conscious?

A. Yes.

49. Q. How could you tell that the prisoner was conscious?

A. Whether the prisoner was actually conscious or not at the scene I can not actually say. I stated this because when the bandage was applied to the abdomen of the prisoner in the battle dressing station he was alive.

50. Q. Do you remember writing in your statement that Head Corporal Kobayashi placed the prisoner in the hole and had the men place dirt over him?

A. Yes.

51. Q. Did you actually see this?

A. As I immediately returned to the sick bay I do not know but I presumed this and wrote it.

52. Q. Do you remember writing in that statement that the commanding officer, Amos, the executive officer, Sakase, the head medical officer, Uno, Lieutenant Kinoshita, Lieutenant Kano, Ensign Yoshimura and about half of the guard unit were there watching?

A. Yes.

CERTIFIED TRUE & TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

273

1083

53. Q. Did you actually see these persons?

A. The ones I remember clearly are the head medical officer, Ueno, Surgeon Lieutenant Kinoshita, Surgeon Lieutenant Hano, the head carpenter, Kobayashi, and Ensign Yoshizawa. I do not remember clearly where Asano and the executive officer were.

54. Q. When you say you do not remember clearly where they were, do you mean you do not remember clearly the place that they were standing?

A. I am also not sure whether they were at the scene or not.

55. Q. Do you remember writing the commanding officer, Asano, said, "For a beginner you did very well?"

A. Yes.

56. Q. Did you actually hear this?

A. Thinking back quietly on this I was not told this on my way back from the scene but I think I was told this in the officers' quarters later.

Commander Martin E. Carlson, a counsel for the accused, moved to strike out this answer on behalf of the accused, Asano, on the ground that it was prejudicial to the rights of the defendant and that one accused was testifying against a codefendant.

The judge advocate replied.

The commission announced that the motion to strike was denied.

57. Q. Do you remember writing on the same day that an American prisoner was stabbed by four or five men?

A. Yes.

58. Q. Were you at the scene?

A. I heard about it later from someone else. And when I said the same day and the same time I was mistaken.

59. Q. Do you remember writing, "My mind was filled thinking about what I had done. I do not remember who was there but the persons who were at the stabbing were the same persons who were at the beheading?"

A. I remember writing this.

60. Q. How can you say that the same persons who were at the scene of the beheading were at the scene of the stabbing?

A. When I went to the scene there were many men already assembled there. The relation and time between the stabbing and the beheading I thought was not very much difference in time there. That is how I wrote it.

61. Q. According to your testimony and this statement that you wrote, you wrote many presumptions and opinions. How did you come to write these presumptions and opinions?

A. After I was confined in Sugamo Prison I was questioned for the first time by an investigator in Sugamo. The investigator seemed to have investigated the incident pretty well and knew the contents of the incident very well. As I was questioned for the first time I was unmoved to the questions of the investigator. I answered even though my recollection was faint and also to things that were not even in my recollection. To this I had many

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

274

1084

presumptions and replied with them. Immediately after this I was told to write this in a statement so I wrote it and some time afterwards during the several months that I was confined in Sugamo I thought back on the incident and I was able to define things that I did not clearly know and what I had presumed came to my memory that was not true. My presumptions were different from the facts. I was tormented by my conscience and today before this commission I want to point out my presumptions and my mistakes with one feeling which is to point out my mistakes and my presumptions. And that is why on this day I have requested to take the stand.

62. Q. Are there other points which you wish to correct in your statement other to the points which have been directed to your attention?

A. There is one place which I would like to change.

63. Q. What is this one point?

A. I stated in my statement that the place where I received the order from the head medical officer, Ueno, for executing the prisoner was at the battle dressing station after the operation, but my recollection that I received the order at the scene of the execution is stronger. The relation in time between this I am not sure about and as it was about something which occurred three years before my recollection is not clear on this.

64. Q. Did you know that when you submitted that statement, it would be brought against you in court?

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 11:25 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 R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Higuchi, Takashi, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

65. Q. I believe that you testified that it was only a short time after you were commissioned that this incident happened. Can you fix the date of the incident more definitely by telling more accurately how long after you were commissioned that this incident did take place?

A. I think it was the second or third of July.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

275

1085

66. Q. You testified that you reported at Truk on June 7, 1944. Then it was almost a month after you had been on Truk that this happened?

A. Yes.

67. Q. I believe that you stated that you helped to treat the wounded. Why did you, a dentist, have to do this work that ordinarily a surgeon would do?

A. Usually I would have nothing to do with operations but would just maybe watch the operation. At times of an air raid when over ten wounded patients were brought to the sick bay they would be sent to the Fourth Hospital. Therefore I would assist the doctors.

68. Q. Were you then as a dentist under the control of the senior Medical Officer at the guard unit and subject to his orders?

A. Yes.

69. Q. And that is why you went to attend this operation then, is it?

A. Yes.

70. Q. You said that you went and got your sword. Did you, a dentist, have a sword of your own?

A. Even though you were a dentist, a doctor, or a paymaster officer, anyone who is an officer in the Japanese Navy, it is regulations to carry a sword.

71. Q. At the scene of this beheading, isn't it true that you were very clumsy with this sword and that many people shouted such things as directions to you, such as to be careful that you did not cut yourself?

This question was objected to by the judge advocate on the ground that it was leading.

The accused replied.

The commission announced that the objection was sustained.

72. Q. How old were you at the time of the incident?

A. I was twenty-four years old, that is in the Japanese way of counting.

73. Q. Now, when you cut at this prisoner, did you wear your glasses at that time?

A. As I recall I was wearing my glasses.

74. Q. Why was this?

A. From the time I was about sixteen years old I became slightly nearsighted. Ever since then I wore glasses and it has become a habit.

75. Q. Now, you said you faintly recalled that it was Yoshimura that instructed you about this. Aren't you pretty sure about this?

A. Yes, I am pretty sure.

76. Q. Did you ask him to?

A. No.

ENLARGED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

276

1086

77. Q. Then why did he give you these instructions?

A. When I received this order from the head medical officer, Wano, I was uncertain as to what to do and at this time when I was hesitating because I did not like to do this, Koshinuma saw me hesitating and I think he showed me by trying to help me, thinking that I did not know how to swing the sword and was hesitating.

78. Q. Now you said you took the stand in your own behalf to explain your statement. Now will you think very carefully and tell us if that is the real reason you took the stand?

A. That was also one of my motives in taking the stand but the most important reason why I took the stand was to explain that my actions were not on my own initiative but that they were the orders of a superior officer and I had no other way but to carry these orders out and I wish the members of the commission to understand this.

Cross-examined by the judge advocate:

79. Q. I show you "Exhibit 7" and ask you if this is in your own handwriting?

(Showing "Exhibit 7" to the witness.)

A. Yes.

80. Q. Isn't it true that in this statement which you wrote out you not only said that Yoshinuma showed you how to behead but also that the head corpman, Kobayashi, showed you how to behead the prisoner at the scene of the execution?

A. It is correct that I was shown by Koshinuma but it is not true that I was shown how to cut at the scene of the execution. This is a mistake, there was no such fact.

81. Q. Will you tell the commission why then that you wrote down that Kobayashi had shown you how to behead the prisoner at the scene of the execution?

A. The head corpman, Kobayashi, was about three or four meters away from me at the scene and I remember this fact clearly. At the scene someone in back of me said, "Unless you put your right foot a little forward, it is slippery, and you will cut your left foot when you cut if you do not put the right foot forward." Whether it was Kobayashi I do not remember exactly but as I remembered Kobayashi that is how I wrote this. When I said I was taught this is what I meant.

82. Q. Since your recollection of the scene is so vivid, isn't it a fact that not only Kobayashi told you how to do it but he actually showed you how to do it?

This question was objected to by the accused on the ground that the witness had not testified that his memory was vivid.

The judge advocate replied.

The commission announced that the objection was not sustained.

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

277

1087

A. There is no such fact.

83. Q. Do you remember writing down in your statement, "I swear by God that this is all I actually saw, heard and did."

A. Yes.

84. Q. When did you write that down?

A. I think it was the latter part of March of this year.

Examined by the accused:

85. Q. Isn't it true that the investigator gave you the idea that Kobayashi showed you how to cut and that you agreed because you were in confinement and under duress?

This question was objected to by the judge advocate on the ground that it was leading.

The accused replied.

The commission announced that the objection was sustained.

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 would like to state a little concerning the head medical officer at the time I was given the order to execute the prisoner and also my feeling at this time. The head medical officer, Ueno, had just recovered from sickness at this time. His face was very pale, his eyes sharp and he was very short-tempered. He was usually a gentle person but his face when he gave me this order was desperate. When I looked into his eyes I was like a three year old child and was overpowered. When I received the orders all my nerves became centered and shook from fright because of his eyes and because of the frightful order. I had a rate of enigma. It had only been half a year since I entered the navy. I hardly knew the life of the navy. I obeyed the orders of the superior officers blindly just the same as a raw recruit. I could do nothing else but to obey those orders. During this time I performed my duties under the feeling that if it were the orders of the head medical officer I would even forfeit my life. While going out to the sick bay to get my sword I kept saying to myself that this prisoner will die anyway even though I do not believe him and kept wishing he would die before I had to do so. When I went to the scene the men were waiting the prisoner and I thought at this time I cannot get away from it, I would have to go through with it. At this time I became unmoved. My only feeling was that of asking for forgiveness from the prisoner.

The witness resumed his status as an accused.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY
Lieutenant, USN,
Judge Advocate.

An accused, Vano, Chiato, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you an accused in this case?
A. Yes.

Examined by the accused:

2. Q. Were you demobilized?
A. Yes.
3. Q. When were you demobilized?
A. In the middle of July of 1946.

4. Q. What were you doing since then?

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.

5. Q. What school were you graduated from?
A. I graduated from the Jikeikai Medical College.

6. Q. When did you graduate?
A. In 1932.

7. Q. Did you enter the navy immediately after you graduated from medical college?
A. I graduated from medical school in April and remained at the school until September in the surgical room. At this time I was to be conscripted into the army but to get away from this I volunteered for two years in the navy.

8. Q. Then it was not your wish to become a naval doctor. Is this correct?
A. If I served in the army I would have to serve as a private. I used the system in which the navy would permit me to become a naval doctor.

9. Q. What is your specialty?
A. I am a surgeon.

10. Q. Have you ever served at Truk?
A. Yes.

11. Q. When was it that you served at Truk?
A. I arrived at Truk on 16 May 1944 and served there until the end of the war.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12. Q. To what unit were you attached and what were your duties during this period?

A. I was ordered to Truk attached to the headquarters of the Fourth Fleet but by the order of the Commander-in-Chief of the Fourth Fleet I was ordered under the command of the Commanding Officer of the Forty-first Naval Guards. The Commanding Officer of the Forty-first Naval Guards after I arrived there to take up duties ordered me as acting head medical officer.

13. Q. You testified that you were ordered to act as acting head medical officer. Was there a head medical officer?

A. There was a position of head medical officer, but as orders for my being the head medical officer did not come from the general headquarters I was appointed the acting head medical officer, but actually I performed the duties of the head medical officer.

14. Q. While you were serving at Truk did you see any prisoners?

A. I did.

15. Q. When and how did you come to see them?

A. Do you mean the prisoners only concerned with this incident?

16. Q. Any prisoners that you have seen.

A. I have seen seven prisoners.

17. Q. Tell us briefly how you came to see these prisoners.

A. About fifteen days after I arrived to take up my duties at the guard unit I saw two prisoners who were taken into custody at the guard unit. About the end of May or the beginning of June as they had burns I treated them at the sick bay. The next prisoners that I saw was about the twentieth of June when the place of confinement where five prisoners were being confined was bombed and three died of the bombing and two survived. I saw the two survivors. Next month which was July, I saw two more prisoners who were taken into custody and about the end of January of 1945 I saw one prisoner.

18. Q. The place of confinement where the five prisoners were kept was bombed about June 20. When was it that you saw the two survivors?

A. I think the bombing was about the seventeenth or eighteenth of June. On the day of the bombing I saw the two surviving prisoners.

19. Q. Where did the bomb drop when the place of confinement where the five prisoners were confined was damaged?

A. By the side of the entrance of the guard unit was the guard room and the place of confinement was close to this guard room and the bomb fell about five meters parallel to the guard room and the place of confinement, just in back of a dirt air raid shelter in which provisions were stored.

20. Q. Then is it correct that the three who died of the bombing did not die from a direct bomb hit?

A. Yes.

21. Q. Were all five in the same building?

A. It was a small building and it was separated into two sections and I think they were separated in the two sections.

CERTIFIED TO BE TRUE COPY

James P. Lenny
JAMES P. LENNY,
Lieutenant, USN,
Judge Advocate.

8
270

1090

22. Q. What was the condition of the two survivors when you saw them?
A. When I went there and saw them they were lying on the deck of a building which was practically destroyed.

23. Q. What was the condition of their wounds?

This question was objected to by the judge advocate on the ground that it was leading.

The accused withdrew the question.

24. Q. Were the two prisoners wounded?

A. They both had been exposed to a shock by the blast of the bomb. There were some bruises on their bodies but no major external wounds could be seen.

25. Q. What external wounds did the prisoners who died by the bombing have?

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. I will have to state about the bombing and the persons who died by the bombing or else this would not be clear. This bomb was a close hit and at the same time there was a Japanese sailor also killed. I went as soon as it was over but the three prisoners were already looked after by Surgeon Ensign Yamada. This was done while I was looking after the sailor who had been killed and I did not directly examine the three prisoners. All I know is through the report I received.

The commission then, at 3:21 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocate, 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.

An accused, Ueno, Okazaki, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

26. Q. Tell us what you know through the report about the cause of the death of the three prisoners?

A. As I recall I heard that the major cause of their death was the blast of the bombing. As I recall two of the prisoners had broken arms and legs. One had wounds on his face. Other to this there were no major external wounds.

27. Q. Did you treat the two surviving prisoners?

A. After examining the sailor who had been killed by the bombing I went and wrote down my notes. Returning to the scene from my medicine case I gave each of the prisoners an injection of camphor.

28. Q. Did you examine the two prisoners after this?

A. The next day I examined them and as I recall the day after I did not examine them.

29. Q. What was their condition?

A. At first the two of them were in a daze and there were no external wounds and no major disturbances in the body. As my English conversation is not good and it was also hard for them to hear, all I did was to say a lot of simple words. I could not get the meaning and I could not gather their symptoms clearly. I could not say for sure but both of them were weakened by shock. This I perceived in my first day of examination. On the second day one of the prisoners was showing a slight swelling and was still in a daze but showed more reaction than the previous day because the prisoner could notice me when I went there. The other one of the two prisoners had recovered and I thought I would not have to worry about him.

30. Q. Did you see what was the reason for the slight swelling of one of the prisoners?

A. I thought probably it was due to some trouble in the inner organs, probably the inflammation of the urinal organs.

31. Q. Did you take any measures against this?

A. It is difficult to determine the trouble when it was caused by shock through bombing especially since I was a surgeon and not an internal physician. There were many things I wished to examine and as there were few instruments and this could not be done very well. Also as this was a fighting unit this installation was not completed. There were many things that would have to have been looked into but all I could do was to examine the patient through feeling, listening to the sounds of his organs and through looking at the patient. These were the conditions that prevailed at that time. And also it was against my belief to give patients medicine which had no effect at all. So all I did was to tell the persons guarding the prisoner to watch out for this prisoner and to give the prisoner more blankets and to keep him warm and I watched the progress of his condition.

32. Q. What did you do as a result of watching the progress of the condition?

A. As I recall it was a day after the bombing. After the evening meal I had some matters which I had to talk about to the commanding officer and I went to talk to him about them. During our conversation I was asked about

74
CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

the condition of the prisoners and told him what had happened. In the case of such patients there are cases in which acute changes in their conditions occur. And in some cases they would come out lightly like this case when two of the five survivors and only three died but at this time you can not tell when it may be necessary to operate on them. The commanding officer said, "Any steps you determine are necessary - you go take them."

33. Q. Then what did you do?

A. As for myself I went to watch the condition of the prisoner further and had not determined to take any definite steps at this time.

34. Q. Did the condition of the prisoner progress well?

A. The one that I thought was a little serious kept becoming weaker but the other became better every day.

35. Q. Did you take any steps concerning the prisoner who became weaker?

A. Just four days after the bomb dropped I performed an operation on the prisoner who became weaker.

36. Q. What were your reasons for performing this operation?

A. The reason for the operation was to make a definite diagnosis.

37. Q. What method did you take in the operation to determine this?

A. The method of operation was based on that of treatment during battle along the same lines of a usual operation.

38. Q. Where did you perform this operation?

A. In the battle dressing station of the sick bay.

39. Q. Is the battle dressing station inside of the hospital?

A. The battle dressing station was built about thirty meters toward the east of the sick bay.

40. Q. Was there any reason for you performing the operation outside of the sick bay and not inside of the sick bay?

A. Before I arrived to take up duties as the head medical officer, the head medical officer at the guard unit was a specialist in plague prevention. There was no room in the sick bay which was suited for surgery. About the time of the carrier task force raid in May, an air raid shelter which was built and used was the most complete and most suitable, that is why it was used. It was also the best, the most suitable and the safest.

41. Q. What do you mean when you say "safest"?

A. During this time there was bombing in the morning, afternoon and night and several times a day. There was no safe shelter at this time at the guard unit and at times we would have to go outside of the battle dressing station. There was no way of protecting the patients and this reinforced concrete air raid shelter was the safest place.

42. Q. Did you give any orders to make preparations concerning this operation?

CERTIFIED TO BE A TRUE COPY

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

283

1093

A. I recall giving orders to Lieutenant Kinoshita to bring the prisoners and to make the preparations for the operation at the same time.

43. Q. Did you ever order ^H ^C head ~~sergeant~~ ^{sergeant} Kobayashi to make preparations?
A. No.

44. Q. Who brought the patients?

A. I remember seeing Lieutenant, junior grade, Kinoshita wearing his operating gown leaving with the ~~sergeant~~.

45. Q. Did you see the patient being brought to the battle dressing station?

A. No.

46. Q. What time was it that you went to the battle dressing station?

A. I think it was one-thirty in the afternoon.

47. Q. What did you see in the battle dressing station when you arrived there that afternoon?

A. As a ~~sergeant~~ came to my room which was the head medical officer's room and replied that the preparations had been completed I went to the battle dressing station. When I entered I saw one prisoner on the operating table. I think he was on a stretcher. Other to this, persons who were present there were Lieutenant, junior grade, Kinoshita and three or four ~~sergeants~~ and I think there was one or two other persons there but I do not remember them.

48. Q. Did you examine this patient?

A. I did.

49. Q. What kind of an examination did you perform?

A. This prisoner was the one with swelling on his body. As I recall his clothes had been removed and he was lying naked. I made a detailed examination through feeling, hearing and looking at the patient. I also examined the chest and listened to the sound by tapping his chest.

50. Q. What did you find as a result of this examination?

A. Up to this time I had not seen many foreigners so I could not tell about his physique but according to what I learned later this person was bigger than the usual person. Over his whole body there was a slight swelling which was the same as I had stated previously. I can not say exactly in what parts but on his arms, legs and his breast there were purple bruises on various parts of the skin. There was a change on the right big toe of his foot. And according to my diagnosis by feeling the various parts of his body I could only discern one testicle. His pulse was stronger. His breathing as I recall was a little weak. The swelling in the abdomen was evident on the lower part of his stomach. There was a tight feeling in the lower part of his abdomen.

The commission then, at 4:30 p.m., adjourned until tomorrow, 9 a.m., Friday, October 19, 1947.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

284

1094

SEVENTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Friday, October 17, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Reese, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradford 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 sixteenth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An accused, Vano, Chianto, the witness under examination when the
adjournment was taken, resumed his seat as a witness in his own behalf. He
was warned that the oath previously taken was still binding, and continued
his testimony.

(Examination continued.)

Q. Yesterday you testified that you made a detailed examination of the
prisoner's body. What conclusions did you reach as a result of this detailed
examination?

A. The conclusions I drew from the condition of the prisoner. The first
thing I thought I had to do was an incision in the abdomen for diagnosing
purposes. Next I searched closely but I could only feel one testicle on
this prisoner. My feeling at this time was that this prisoner had been
exposed to a bomb blast or else due to the pressure released outside or
inside the body the one testicle may have become ruptured or the testicle
had been blown into the body and I thought to discover where it had gone.
The big toe of his right foot was black and blue and the area around it
was inflamed. This was clearly a result of the bombing and showed symptoms
of peronychia. In such cases the most simple and best treatment is to re-
move the nail. In case of infection in the lower parts of the leg the
most and most effective way of treatment was to inject sulfa drugs into
the femoral artery as I determined to reveal the femoral artery. Above
the sixth rib on the right part of the chest there was a swelling and the
color of the skin was changed. Because of this I thought there was something
wrong with the bone or symptoms of something wrong in the breast. Because

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

285

1095

I was afraid something may be wrong to determine this I made a small incision of two centimeters in that portion of the chest. This was not a part that I had determined to look into from the very beginning.

52. Q. You testified about an abdominal incision for diagnosing purposes. What is an abdominal incision for diagnosing purposes?

A. The purpose of an abdominal incision for diagnosing purposes is to make an incision in the abdomen and see and feel the contents inside directly and to take out any dangerous material, any dangerous substances, which might be in it. From a standpoint of a surgeon when it is difficult to determine externally what it is and for seeing certain damages internally an incision would be made in the abdomen to discern this. In general cases such as cancer of the stomach, ulcers, this is done. In cases of surgery in internal medicine when it is difficult to discern from the outside an incision is made and the inside of the abdomen is looked into. From my experience this is a very simple operation and it is not dangerous and it is the best means of diagnosis.

53. Q. Have you had frequent experience in making this diagnosis by abdominal incision?

A. I have.

54. Q. Are such abdominal incisions dangerous to life?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused withdrew the question.

55. Q. When you performed this abdominal incision on the prisoner, did you feel that this incision would be dangerous to the life of the prisoner?

A. Absolutely not.

56. Q. In your previous experience has a patient of yours ever died by such incisions?

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.

57. Q. How many operations have you performed as a surgeon?

A. It is difficult to determine this, but among us Japanese naval medical officers the number of operations were counted by the number of appendicitis operations that a doctor had made. Up to this time I had made approximately one thousand appendicitis operations.

58. Q. Did you have any special reason for becoming a surgeon?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

The accused replied.

The commission announced that the objection was sustained.

59. Q. Tell us concretely the facts of your various operations on this prisoner.

A. At first the prisoner was administered a general anesthetic. Waiting until the prisoner had completely come under the influence of the anesthetic I began the operation. The kinds of anesthetic that were administered were chloroform ether and later I had ether administered to the prisoner. As a general assistant I ordered Lieutenant Kinoshita to be the assistant. At first Kinoshita administered the anesthetic. After the operation had been progressing for over ten minutes he started to help me as an assistant. Kinoshita was administering the ether. I ordered the senior petty officer, Uchikura, to take over and continue to administer. The persons handling the instruments were Hoshino and Kodama who were corporals. I began the operation by making an incision around the toenail of the big toe on the right foot. After I removed the nail I saw pus collected beneath the nail. As the nail was loose as I recall it was easily removed. I next made an incision three centimeters long on the inner side of the right leg. After I made the incision I parted the muscles with the handle of the scalpel until the artery was revealed. I placed a piece of gauze there to indicate its position. Next I made a two centimeter incision on the upper left part of the scrotum and made a detailed examination of its contents. Next I made an incision from the lower part of the stomach to about one centimeter below the navel, an incision of about twelve centimeters. Next after I had examined the inside of the abdomen I made a two centimeter incision parallel above the sixth rib of the right part on the right chest. I cut down to where the membrane covering the bone was revealed and stopped the operation there.

60. Q. You testified that you recognized the symptoms on the big toe of the right foot as paronychia and removed the toenail and that when you removed the toenail you saw pus collected between the toenail and the toe. What connection does this pus have with paronychia?

A. Examining the big toe externally I determined it as paronychia and I saw these symptoms. The fact that I found pus collected between the toenail and the toe revealed as a fact that it was the beginning of the symptoms of paronychia and if it is permitted I would like to explain about the principles of paronychia. Surgically paronychia is said to be the point of infection any place on the fingers. Some people call paronychia points of infection on the palm of the hand and also the back of the hand some people would call paronychia.

61. Q. As a result of the operation on the big toe what did you find the progress of the paronychia there to be?

A. The symptoms were not at its worst but considering the time under which it had been progressing I instantly perceived that it was turning to the worse.

The commission then, at 10:35 a.m., took a recess until 10:40 a.m., at which time it resumed.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

Presents: 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.

An accused, Vene, Chinato, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

62. Q. You testified concerning the progress of paronychia. What steps did you judge were necessary?

A. In such cases when there is infection, from my experience and belief I thought there would be a lot of good done by injecting a thick solution of sulpha drugs into the femoral artery.

63. Q. Did this incision in the inner part of the thigh have any relation with this?

A. While the injection of the femoral artery can be made without removing it, in case of a thick solution of sulpha drugs being injected when this thick solution of sulpha drugs leaks into the area of the artery the thicker the solution is the more pain would remain in that area. As a surgeon it is always a custom to reveal the artery and make the injection because this method was the simplest and safest, and the injection of the drugs could be performed without any danger.

64. Q. Which is easiest and which is safest to do - to make an injection without revealing the femoral artery from the outside or to make the incision and reveal the femoral artery and make the injection?

A. To reveal the femoral artery and to make the injection is much simpler and much safer. Even among physicians it is revealed and injections made. Another reason for this is that it is not only revealed to make one injection but many times the wound is kept open and cleaned and injections continued to be made.

65. Q. Did you make an injection of sulpha solution at this time?

A. I lost my chance to make an injection at this time.

66. Q. Why was this?

A. This solution of sulpha drugs was a special solution which I had gone to the fourth hospital pharmacist's department many times to get and I had had experience in its use. I thought it was handy and made a proper-story incision but I found it was not available so I placed a piece of gauze on the wound and left it as it was.

67. Q. In treating paronychia is there a treatment for this by removing the nail and removing the pus beneath it without using medicine?

CERTIFIED TRUE & TRUE COPY

James P. Lenny
JAMES P. LENNY,
Lieutenant, USN,
Judge Advocate.

A. Concerning its treatment there are many different methods and different ways doctors do it, but I thought the best way was to remove the nail and the pus and disinfect the wound and place gauze on it.

66. Q. You testified that you could only discern one testicle and that you thought that this was due to the blast of the bombing. What did you find out as a result of this operation?

A. I found that my diagnosis had been mistaken and this was an unusual case of one inherited testicle.

69. Q. When you say "a case of one inherited testicle," does it mean medically that he was born with one testicle or with another testicle in a different position than its usual position?

A. The first thing which occurs when a child is born is the testicle would move down from the body into the scrotum. In some cases the testicle would remain in the abdomen and in some cases he would only be born with one. In this case one may have remained in the abdomen but I judged it as a case where there was one testicle.

70. Q. Two prosecution witnesses have testified to two different stories concerning the operation on the scrotum. Tell the commission exactly what happened in this operation?

A. To examine the contents of the scrotum an incision was made and the testicle nerves and arteries were revealed and examined. Every time there is an operation and I have a chance I was in the habit of explaining the operation. In case of changes in sicknesses of tuberculosis and an operation is necessary on the testicle you have to watch out for bleeding. You would have to be careful not to disrupt the veins, the nerves and not leave them so they would incur danger later. After I had made a thorough examination of the revealed testicle, holding the part in my left hand I investigated to see if there was any passage between the lower abdomen and the scrotum. After I had investigated this I returned the testicle to its former position in the scrotum. This is what actually happened in this operation. Concerning these facts before I was served the charges and specifications I was told by the judge advocate that there were two witnesses who stated differently from what I have stated. I sincerely wish to explain my acts from the special characteristics of this person I was sure they would have come to light and could be explained and previously I asked them sincerely to look into this.

71. Q. You just testified that you liked to explain it. What do you mean by this?

A. According to the special characteristics that I remember about this prisoner and through my recollection of these peculiarities of the prisoner. This is a generally difficult to determine, but persons of his immediate family or persons that were very close to him would know about this person's peculiar characteristics and maybe he could be identified by this. I asked that this be done.

72. Q. Then are you sure that you did not remove the testicle?

A. Yes.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

73. Q. At this time did you make an explanation concerning castration?
A. I did not make an explanation concerning castration.

74. Q. Did you discern any effects due to the blast of the bomb through this operation?

A. When I examined the passageway to the lower part of the abdomen, as a result of this I could see no special effects of the blast. Through these effects he showed symptoms of swelling and the way he slept as if he were dead, I came to the conclusion that this did not result from the abdomen but from the chest.

75. Q. When you made an incision in the abdomen and examined the insides, did you see any symptoms of the blast?

This question was objected to by the judge advocate on the ground that it was repetitious.

The accused withdrew the question.

76. Q. When you made the incision in the abdomen did you see the appendix?
A. I did.

77. Q. Was there anything wrong with the appendix?
A. I could see no symptoms of sickness in the appendix.

78. Q. A prosecution witness testified that you removed the appendix. Did you remove the appendix?

A. I absolutely did not cut and remove the appendix.

79. Q. What steps did you take concerning the operation after the operation?
A. After the operation I simply sewed the wounds to keep them in position.

80. Q. Who sewed these wounds?
A. I did.

81. Q. What was the condition of the patient after you had made these sewings?

A. I am convinced that the prisoner had not become weakened as a result of the operation. But this prisoner was not a strong person from the beginning. It was also the effects of the bombing. This person was a person who I had under observation for several days previous to the operation. Under this the person himself had not completely recovered from the effects of the anesthesia. Even though the operation was over he was still in a daze. The only way to say concerning the condition of his health at this time was to say that he was weak.

82. Q. You testified that you examined the abdomen and you found no effects of the bombing and you thought maybe it was a result of something in his chest. Did you have a chance to examine further concerning this?

A. I can not get the meaning of the question.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

290

1100

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 R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Ueno, Chicago, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

83. Q. This morning you testified that as a result of an operation on the abdomen you thought the reason for the sickness to be in the chest. Did you have a chance to discover the cause of this sickness in the breast?
A. I could not.

84. Q. Why is it that you could not discover this?
A. One was because a complete diagnosis of the chest could not be made through surgical operations. Second there was the condition of the prisoner which did not permit this. Moreover, on the day just before the bombing which damaged the guard unit, several days ago I had just recovered from my sickness and started to take up my duties. During the operation I, myself, felt very weak and to take further steps was impossible.

85. Q. And then was the operation over with the operations you testified to this morning?
A. I cannot state that all I did was sufficient.

86. Q. In the operations that you performed what points did you think were not sufficient?
A. For instance the injection in the artery which I could not do, also the sewing of the wounds, the wounds were not completely sewed but just to keep the parts in place and also the gauze that was placed on the wounds and the bandages that were placed on the wounds. The operation had to be stopped.

87. Q. What was the reason for this?
A. I will have to explain my position on this. On this day about 10:30 in the morning I was relayed a severe and unexplainable order from the executive officer, Nakase. While I was operating in the operating room I was tormented by the words of these orders. All I have in my recollection was my feeling that kept tormenting me because of my position. I think it was during the operation on the abdomen, the outside of the battle dressing station became very noisy and I saw many people assembling there. Suddenly I heard an order for a general assembly. I was surprised and

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

stopped work. The voice came from between the sick bay and the battle dressing station and the words said, "All people not on duty assemble by the side of the sick bay." Persons who were at the front of the battle dressing station went toward this place and the other prisoner who was waiting outside was carried away by these persons.

Commander Martin B. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion to strike out that portion of this answer which referred to the accused Nakase on the ground that one codefendant was testifying against another codefendant.

The judge advocate replied,

The commission announced that the motion to strike was denied.

88. Q. Then what did you do?

A. From the outside a voice said, "I am going to take the other one away. Bring that one later." From these two facts I had to stop what I was doing and I came to think that I would have to stop what I was doing.

89. Q. You testified that they took away the other prisoner who was waiting outside. Why was the other prisoner waiting outside?

A. When I ordered Lieutenant Kinoshita to bring the prisoner to the battle dressing station as I stated before, one of the prisoners was in good condition. He was high spirited and there was no need for an operation and when I told Lieutenant Kinoshita to bring the prisoner I remember clearly that I did not say the number of prisoners, therefore the outside of the battle dressing station became noisy and he brought both of them. Outside of the battle dressing station it became noisy and I heard from the persons in the battle dressing station that the other prisoner was outside.

90. Q. On the day of the operation did you see the other prisoner?

A. No.

91. Q. I think it was Kinoshita who testified that during the operation you went outside. Did you go outside?

A. There is no such thing that I went outside during the operation.

92. Q. You testified that a voice said to you, "I am taking the other prisoner, bring the other one later." Do you remember whose voice it was?

A. I think it was the voice of enlisted men who were running outside of the air raid shelter to the east.

93. Q. Did you hear anyone cough outside?

A. I do not remember.

94. Q. I think it was Kinoshita who testified that a voice said, "The other one we are going to do you," and he testified that he recognized it as the voice of the executive officer, Nakase. Do you remember hearing this voice?

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

A. Other to this voice which said, "I am taking the other, bring the other later," which I heard without recognizing as whose it was, I remember hearing no other voices.

95. Q. Then do you mean that you heard no voice which you recognized as being Nakase's?

A. Yes.

96. Q. From the time you started to operate on the prisoner until the time you had to stop the operation on the prisoner, what was your feeling while you operated on the prisoner?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused withdrew the question.

97. Q. What was your intent from the time you started the operation on the prisoner till the time you had to stop the operation on the prisoner?

A. My position according to the steps which I took and the result which occurred would be very difficult to explain and understand my intent. Once I took the scalpel in my hand I do not think that my feeling was separated from my feeling as a doctor due to the long life that I have led as a doctor. On this day two days before I heard these words relayed to me by the executive officer, Nakase, in the morning and when I went to the commanding officer, Asano's room, as I have testified he asked about the prisoners and I thought the words of the commanding officer were very kind. In my way of thinking as a doctor I thought these were very kind words and if I had done the same thing the next day how different the results would have been. It was impossible for me to do as I was told by the executive officer. My feeling as a doctor objected to this and recalling the words of the commanding officer I understood clearly that I was to do as a doctor should.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out the portions of this answer that referred to the executive officer, Nakase, on the ground that one codefendant was testifying against another codefendant.

The commission announced that the motion to strike was denied.

98. Q. What eventually became of the prisoner?

A. This uneasy feeling that I had while I worked took shape with the order for general assembly and when the other prisoner was taken away and the end of the one that I was operating on became clear with a feeling that the words that I was told this morning had been put into action I stopped what I was doing and with the persons around the prisoner was standing forlornly and as I recall were talking among each other asking, "I wonder which side of the sick bay it was that the people were ordered to assemble."

99. Q. Then do you mean that you took the prisoner to the place that was called out in the order?

A. As I recall, yes.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

293

1103

150. Q. Do you remember what persons were around the prisoner?

A. As I recall the persons who were standing around me were Kinoshita, Wakihara and the carpenter Nakama and Nakima. There were several others standing there but I cannot distinctly recall their names.

151. Q. Do you have a distinct recollection if the head carpenter, Nakaguchi, was present?

A. I am not sure.

152. Q. When you say you are not sure which do you mean, he was there or he was not there?

A. My recollection that he was there I am not sure of.

153. Q. In this case who was the person who took charge and took the prisoner to the scene?

A. As I recall I was the one who had then take the prisoner to the scene.

154. Q. What did you see at the scene?

A. As I recall I tagged along after the stretcher. As I did not know where the scene was we went along toward the side of the sick bay. On the way we met two or three enlisted men who were coming back from the scene. The scene was down a small path which led between the sick bay and a water tank which was by the sick bay. The width of the path was about one or two meters and we went along about forty meters to the north and we came to a place where some weeds were growing in a place that was used for a garden. The stretcher was placed on the ground for a moment. From this place looking toward the scene in front of us toward the west of the scene about twenty meters sideways from the scene as I recall there was a round hole. Further toward the north in front of us a small path continued. When we arrived the persons who I recall being there were Nakaguchi, the head carpenter, Nakaguchi, and Nakima. As I recall Kinoshita went together with me. Other to this there were four or five carpenters on the small path in front of us. I remember there were people but I do not remember their faces or their names.

155. Q. Then what did you do?

A. When I got to the scene I anticipated that the fate of the prisoner was hopeless. Naturally I thought that the persons who had taken the prisoner on board would stay but as I recall I saw the people there but the other prisoner was gone. The people were just standing there. At this time, I think I gave an order to Nakaguchi to the meaning of, put the prisoner at ease, because I did not know what to do with the prisoner.

156. Q. Did Nakaguchi obey your order?

A. Then according to my recollection Nakaguchi said, "All right, I will do," and went to get his sword in the officers' quarters.

157. Q. Then what did Nakaguchi do?

A. Shortly Nakaguchi returned and about twenty meters to the north of us he drew the sword and was swinging it.

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

294

1104

108. Q. At this time was there anyone who instructed or taught Higashi anything?

A. I cannot say exactly about when I saw Higashi using this sword and I cannot state explicitly because I may be mistaken but I think Yoshizawa was instructing him as to the position of his feet.

109. Q. Do you have any recollection of the head carpenter, Kobayashi, saying anything?

A. I have no recollection as to what Kobayashi may have done or said.

110. Q. Did you see the commanding officer, Aono, at the court?

A. I remember officers being present but I have no recollection of seeing the commanding officer, Aono.

111. Q. Do you remember the executive officer, Nakase, being there?

A. I do not remember his being there.

112. Q. Then did Higashi carry out your orders?

A. Yes, he beheaded the prisoner.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out this answer on the ground that one defendant was testifying against another defendant.

The commission announced that the motion to strike was denied.

113. Q. Did you hear the statement of Nagakima which the judge advocate introduced in this court?

A. Yes, I did.

The commission then, at 3:23 p.m., took a recess until 3:40 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

An accused, Tan, Chinato, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

114. Q. According to Nagakima's statement, it states that you ordered him to dispose of the other prisoner. Is this correct?

A. There is no basis for that statement.

115. Q. You testified that the other prisoner was taken away. Did you see them take the prisoner away?

A. I thought this because of the voices I heard and the feet of many people hurrying away.

DECLARED TO BE A TRUE COPY

James P. Arney
JAMES P. ARNEY,
Lieutenant, USN,
Judge Advocate.

295

1105

116. Q. Before this incident do you know or recall of any of the defendants in this case being sick?

A. I do.

117. Q. Who is he?

A. I think it was the defendant, Tanaka.

118. Q. Through what periods of time was Tanaka sick?

A. Tanaka was sick in the Fourth Hospital before I arrived to take up duties at the guard unit and before this incident he returned to the guard unit. According to the examination by the doctor at the sick bay he was ordered to rest at the barracks.

119. Q. Is it a fact that due to an epidemic the hospital became full and Tanaka had not fully recovered and Tanaka had been released from the hospital?

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.

Commander Martin E. Carlson, a defense counsel, made a plea in abatement on behalf of Sakase, Shichichi, on the ground of misjoinder of parties, appended marked "JJ."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Carlson, a defense counsel, made a plea in abatement on behalf of Uno, Chisato, on the ground of misjoinder of parties, appended marked "KK."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Carlson, a defense counsel, made a plea in abatement on behalf of Suguchi, Takashi, on the ground of misjoinder of parties, appended marked "LL."

The judge advocate replied.

The commission announced that the motion was denied.

(Examination continued.)

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

296

1106

120. Q. What do you, a surgeon, understand by the term "surgical explorations?"

A. I understand it as striving to get a correct diagnosis through operation or to obtain material for it.

121. Q. How would you, as a surgeon doctor, in medical language explain the operation that you performed?

A. I am convinced that I can say part of the operation was for treatment - the other part for diagnosis.

122. Q. Could you have clearly diagnosed this prisoner by any other means but a surgical operation that day?

A. Before the operation I examined him through the usual three methods of examining a person which are (1) hearing, (2) feeling, and (3) sounding.

The question was repeated.

A. (Cont.) I could not.

123. Q. You testified that you performed more than a thousand appendectomy operations. Would you say these appendectomies that you performed could be termed "surgical explorations?"

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

124. Q. Have you ever been charged with having done any previous operations inhumanely and without justifiable cause?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

125. Q. Has anyone ever charged you with having tortured a patient because you made diagnosis through operations upon the live body other than this instance here in which you are charged, in this present case, upon an American prisoner patient?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused made no reply.

The commission announced that the objection was sustained.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

126. Q. What is a "subcutaneous cut"?

A. According to my knowledge I understand this to mean to cut the skin and cut through the layer beneath the skin to reach the organs and in Japanese it is stated not this way but it is called "hikotou" and I do not believe that it is the words "subcutaneous cut."

127. Q. Do you know whether it is against the criminal laws of Japan to make "subcutaneous cuts" on a patient by a licensed physician in the course of an operation?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

128. Q. Is it against the criminal laws of Japan to make a diagnosis on the body of a live patient - by a licensed physician?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused made no reply.

The commission announced that the objection was sustained.

129. Q. Are you a licensed physician of Japan?

A. Yes.

130. Q. Do you know if it is against the laws of any civilized country in the world, including the United States of America, for a surgeon to make a diagnosis of a patient by surgical operations?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

131. Q. Who was the best judge as to whether or not a surgical operation is necessary in order to diagnose a patient?

A. It is a doctor.

132. Q. Now as the doctor and the person present at the scene of the operation that you performed upon this prisoner-patient, were you by reason of your position as acting head medical officer at the Forty-first Guard Unit in a better position than anyone else to determine if the operation was necessary?

A. Yes.

133. Q. Did your position as the acting head medical officer of the Forty-first Naval Guards require you to use your own judgment and determine your

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

298

1108

needs for an operation on this prisoner-patient?

A. When an operation is to be performed I would have to make judgments on this.

134. Q. Did you determine or did someone else determine when operations were necessary at the Forty-first Naval Guards on patients?

A. In case of minor operations, the doctor in charge would decide. In major operations or important operations I would have to determine this.

135. Q. Did you determine whether or not an operation was necessary on this prisoner-patient?

A. I did.

136. Q. Do you know of any customs of war or law of war which forbids a surgical operation upon a prisoner-patient by duly accredited surgeons, commissioned medical officers in the Imperial Japanese Navy?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

137. Q. When you were commissioned a medical officer in the Imperial Japanese Navy, what oath of office did you take?

A. We did not take an oath when we were commissioned. When we entered the navy we went to the Emperor's palace when we were commissioned, and also the head of the department made a special speech before us and by this I thought it was the same as pledging allegiance to the country and swearing that you would perform this duty as a soldier.

138. Q. When you were licensed as a physician in Japan what oath of office did you take then?

A. I think I took the usual oath to perform my duties according to laws governing doctors.

139. Q. This operation that you performed that day on the prisoner-patient. Did you perform it according to your oath of office as an officer in the Japanese Navy and as a licensed physician of Japan?

A. I am convinced of this.

140. Q. Did you have any knowledge that the operation that you performed that day was unlawful?

A. No.

141. Q. Did you have any knowledge that the operation that you performed that day was contrary to the law and the customs of war?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

299

1109

The accused replied.

The commission announced that the objection was sustained.

Cross-examined by the judge advocate:

142. Q. Now, what were those severe words that Nakase spoke to you about ten-thirty on the morning of the operation?

Commander Carlson, a defense counsel, objected to this question on behalf of the accused Nakase on the ground that it would be prejudicial to his rights.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The words of Nakase to me, understanding it was the words from the commanding officer, said, "Dispose of the two prisoners over at the sick bay."

Commander Carlson, a counsel for the accused, moved to strike out this answer on the ground that one codefendant was testifying against two of his codefendants and that it was prejudicial to the rights of the accused Nakase and Asano.

The judge advocate replied.

The commission announced that the motion was denied.

143. Q. When you ordered Lieutenant Kinoshita to get the two prisoners you were carrying out the orders of Nakase to dispose of them. Were you not?

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. Having received the orders from the executive officer I came back to the sick bay and what I stated to Lieutenant Kinoshita is the same words that I was told by the executive officer and also I stated, "As for myself I have not yet determined what to do. Anyway bring the prisoners to the battle dressing station."

144. Q. And you specifically told him to bring "two" prisoners to the battle dressing station. Did you not?

A. As I stated before my feeling was that one of the prisoners was in no need for treatment or diagnosis, therefore, I can remember where I watched the progress of the prisoner, and I told Kinoshita to bring the prisoner.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

300

1110

145. Q. I show you "Exhibit 9" and ask you if that statement isn't in your handwriting?

A. Yes.

146. Q. Didn't you write in the second paragraph of that statement, "When I arrived at the dispensary I went to the officers' quarters and said, 'I was told to dispose of two prisoners. Anyhow, take them to the battle dressing station'?"

A. I said I was told to dispose of two prisoners, but anyway have them brought - take them to the battle dressing station.

147. Q. Was taking them to the battle dressing station one of the steps prior to disposing of them?

A. That was not my intention but as it came out from the facts that followed that they were disposed of, it is difficult to explain what I mean by my intentions.

148. Q. Just what did you tell Lieutenant Kinoshita when you sent him to get the prisoner?

A. What I said to Kinoshita was, "I don't know what I'm going to do now, but anyway take the prisoner (s) to the battle dressing station."

Interpreter's notes: The Japanese word for "prisoner" and "prisoners" is the same.

149. Q. And when you got to the battle dressing station one of the prisoners was already inside on the table. Was he not?

A. He was on the operating table.

150. Q. How did Kinoshita know which one of these prisoners you wanted to operate on?

A. I do not know.

151. Q. As a matter of fact you intended to operate on both prisoners, didn't you, doctor?

A. My intentions were to examine them and if there was something wrong with them to operate on them.

152. Q. In this conversation that you had with Amme, in which you said you reported the conditions of the prisoners, isn't it a fact that you asked for permission to perform dissections on both prisoners?

A. No.

153. Q. Well, as you know that both prisoners were going to be disposed of, why were you operating on them?

A. Before I heard this order in the morning I had had these two prisoners under observation, watching the health of these two prisoners. I was convinced of my ability as a doctor. About two days before this order was relayed to me I talked to the commanding officer and during this conversation questions came up concerning the prisoners and I replied regarding this and at this time he said to take whatever steps were necessary. Suddenly I was called and ordered to dispose of them. I do not know what

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

happened between the time of the conversation and this order but I was ordered to carry out this order and I was the one who was ordered to do this directly. I did not have the intent to carry it out just as I was ordered and did not have the intent to kill them, and also it was against my belief and I did not feel that I could do so. If I had objected at this time when I had received the order I may have been able to get away from this. But up to this time the prisoners were under my observation. During this time when they were under my observation I diagnosed them and according to my judgment could operate on them if necessary. This was the best judgment that I could get at that time and even now I think that was the best that I could have done.

154. Q. Before you went to operate on the prisoner you knew that he was going to be disposed of that day. Did you not?

A. The fact was clear to me according to orders that I had heard.

155. Q. And you thought that that would be a good opportunity for you to experiment and display your skill to your junior officers. Isn't that right?

A. No.

156. Q. You weren't interested in building this patient up so that you could chop his head off after that. Were you doctor?

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. That is not true.

The commission then, at 4:35 p.m., adjourned until tomorrow, 9 a.m., Saturday, October 18, 1947.

CERTIFIED TO BE A TRUE COPY

James P. Renny
JAMES P. RENNY,
Lieutenant, USN,
Judge Advocate.

302

1112

EIGHTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, October 18, 1947.

The commission met at 9 a.m.

Presents:

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 A. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

An accused, Uno, Okinawa, the witness under examination when the ad-
journment was taken, resumed his seat as a witness in his own behalf. He
was warned that the oath previously taken was still binding, and continued
his testimony.

(Cross-examination continued.)

157. Q. Doctor, you have testified on direct examination that the reason
for performing the surgery on this prisoner was to arrive at a diagnosis.
Is that correct?

A. Yes.

158. Q. If that is an honest statement by you doctor, will you tell us
of what use this diagnosis was going to be to the prisoner?

A. To determine the diagnosis this is the first step in which to recover
the health of the prisoner.

159. Q. But you knew at the time that you were operating that you were
going to dispose of him after the operation. What possible good to the
prisoner could your diagnosis be?

A. In the morning that I received this order I received the order as a
soldier and also as a doctor. If I state my beliefs at this time just as
they were, I thought I had to obey the superior orders because of the long
life that I had led in the military service and because I had been trained
in it and also the strict atmosphere which required obedience to orders.
It is a fact that once I received this order I thought what shall I do,

DEPOT TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

how should I go about it, what shall I do about it and when I went to the sick bay I was still thinking on this and I said to bring them to the battle dressing station.

The judge advocate requested the commission to direct the witness to answer the question.

The commission directed that the question be repeated in Japanese and directed the witness to answer the question as his answer was not responsive.

The question was repeated in Japanese.

A. (Cont.) I did not have a definite thought that the prisoner would definitely have to be disposed of. I was the one who was ordered to carry this out. The person giving the order had to determine this. I had to determine whether to dispose of him myself or have someone else dispose of him. At this time I did not have a definite thought that the prisoner would have to be disposed of.

160. Q. Then you mean to tell us doctor that you had an intention not to carry out the order and dispose of the prisoner?

A. At the very last until I had the prisoner carried out I did not have the intent to dispose of him.

161. Q. You would have operated on either of these prisoners that you found in the battle dressing station when you got there. Would you not doctor?

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. When I determined to operate on the prisoner, as I testified yesterday, I vaguely ordered Kinoshita to bring the two prisoners to the battle dressing station. At this time the prisoner was placed on the operating table and immediately on my arrival at the battle dressing station I examined the prisoner and operated on him. Then I was asked how Kinoshita knew what prisoner to bring and place on the operating table and I replied that I did not know this. I answered this saying that I did not know if Kinoshita knew what prisoner to place on the operating table or not. When I arrived there the prisoner was already on the table. I thought this was a coincidence and thought nothing more about it because this was the right prisoner.

162. Q. When Nakase told you to dispose of these two prisoners, did he tell you the method to be used in disposing of them?

This question was objected to by the accused on the ground that if the answer an accused would be testifying against a codefendant.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I received no detailed instructions.

163. Q. Were you then to decide the method of disposition?

A. It was my fate that I had to think about it.

164. Q. Were you to decide that about the two prisoners?

A. I had not thought upon the method of disposing of them up to this time.

165. Q. Doctor, you had made a pre-operative diagnosis of shock on this one prisoner, had you not?

A. In the battle dressing station I made a thorough examination.

166. Q. Were you under the impression that this prisoner upon whom you operated was suffering from shock before the operation?

A. At the beginning both were suffering from shock due to the bombing.

167. Q. Had this prisoner then recovered from the shock?

A. Outwardly one of them was well, the other I thought at this time would have to be examined more thoroughly in order to retain his health.

168. Q. You were going to operate on him no matter what your findings were in the battle dressing station. Were you not?

A. Before this as a doctor I thought an operation would have to be performed on this prisoner but on this day I thought to reexamine him and if there are no major changes I would not operate on him.

169. Q. If you had decided an operation was necessary doctor you must have had some feelings as to what was wrong with him. In your opinion what was the matter with this man?

A. From the signs that I saw at the beginning and the results there was a difference. This difference was due to my experience as a doctor. Cases of shock due to blasts of bombs come in many different forms and when I directly made an incision and looked into the organs I found that I was wrong and I thought the main cause of the sickness may have been in the chest.

170. Q. From that doctor all I am able to make out is that this man was suffering from shock from that bombing. Is that true?

A. Shock and also bruises from flying debris.

171. Q. You were not going to perform surgery to correct bruises were you doctor?

A. In part that was the reason. Also I wanted to determine the cause of the general symptoms of the whole body also I judged this from my previous experience.

172. Q. Couldn't you have determined these things from a little laboratory work on your part?

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

305

1115

A. There are some which could be determined and there are some which could not be determined immediately. If there was such internal bleeding this could be discerned and an operation performed earlier and in the confused circumstances right after the raid of a task force it was impossible to make detailed laboratory work. All of the examination was done by my eyes, hands and experience.

173. Q. Do you mean under the circumstances you only had time to get this over with before you disposed of the prisoner?

A. No.

174. Q. If your examination had been negative in that battle dressing station, what would you have done with that prisoner?

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. I think I would have told my superiors that I cannot carry out your orders.

175. Q. Why didn't you tell them that after you got through with the operation?

A. I have stated my feelings during the operation previously. When the operation was over there was an order for general assembly outside and many persons took away the other prisoner who was waiting outside and I was to bring the other prisoner along. My feeling that I had toward my prisoner was that he was my patient. Because of this I tormented myself time and time again. I had heard this strict order to dispose of the prisoners. I was under the influence of war psychology and gave it up as fate and determined therefore to have him carried to the scene.

176. Q. So that even though you knew you had the right to refuse to carry out these illegal orders you went ahead and had the prisoner beheaded. Is that not true?

A. I am not replying in order to escape my responsibility but trying to explain that while I was operating there it was as a doctor and the conscience of a doctor never left me. Due to the long period I have served in the forces it may be fate but there was one side of my character was as a soldier and one as a doctor. I alternated between these two characters. Because of this and up to this time my attitude and feeling while I performed diagnosis I am not ashamed of as a doctor. As I have stated before, there were the orders. All I recall is that I naturally thought I had to be obedient to my fate and this thing occurred.

177. Q. Did you do anything before the operation doctor to determine the degree of shock of this prisoner?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

306

1116

The judge advocate replied.

The commission announced that the objection was not sustained.

A. From the time that the prisoner had been exposed to the blast of the bomb I had this prisoner continuously under my observation. On the day the prisoners were exposed to the blasts I went to the scene and gave both of them injections of camphor and ordered the guards to keep close watch on their condition. All I did was to diagnose them through feeling, sounding and hearing.

178. Q. Isn't there a simple blood test to determine the degree of shock a person is in?

A. I know of many detailed tests but as for myself at that time I thought that I was doing the best diagnosis and treatment for them.

179. Q. Did you ever hear of a hematocrit test?

A. I have heard of it.

180. Q. By this simple test couldn't you have determined definitely the degree of shock of this prisoner?

A. This could have been done.

181. Q. Why didn't you do it?

A. From the time that I became the head medical officer of the Forty-first Naval Guards I looked up the various test equipment that were there. At this time there were hardly any instruments or drugs. Under the conditions even such a simple test could not have been done. I may not have even thought of performing this test. If there had been internal bleeding in the intestines this could have determined through the faeces and if the prisoner had coughed up blood, internal bleeding could have immediately been determined and diagnosed immediately, but there were no such symptoms.

182. Q. You did have a graduated glass container at the Forty-first Naval Guards didn't you doctor?

A. There was.

183. Q. And that is all that you needed to perform this simple test, isn't it doctor?

A. Maybe I should have made that test but all I can say is that I did not make the test.

184. Q. Then if this prisoner was as you thought in shock, wasn't it the worst thing you could do to have him subjected to surgery?

A. I thought it was the time that an operation should be performed so I performed the operation.

185. Q. Doesn't surgery cause shock to the human system, doctor?

A. In different cases it would bring about different symptoms on the body.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

307

1117

186. Q. Will you please answer my question, doctor. Doesn't surgery cause shock in all cases?

A. Shock can be recognized in every instance.

187. Q. So that this prisoner who was already in shock was going to be subjected to more shock in order to find a diagnosis. Is that right doctor?

A. I think this can be said.

188. Q. This paronychia that you said he had on his right toe doctor, isn't that a local infection?

A. Yes, it was a local infection.

189. Q. And if he had a paronychia as you say, you could have cleared it up by just removing the nail. Couldn't you, doctor?

A. By just removing the toenail good results may have been obtained.

190. Q. You say good results may have been obtained. Did you do anything to that toe doctor other than remove the nail?

A. All I did was to clean out the wound and place gauze on it.

191. Q. And as far as the paronychia was concerned that would have been sufficient. Wouldn't it doctor?

A. I saw inflammation of the area around the wound and also there was a fever so I thought it was better to have an injection in the femoral artery.

192. Q. An inflammation around the toe would not indicate that the infection had spread anywhere but locally. Would it, doctor?

A. I did not see it as having spread too much.

193. Q. So that even though you admit there was no sign of the spreading of this infection, you went and cut down on the femoral artery in the right thigh. Is that right doctor?

A. I was afraid of it spreading and recalled that there was a method of stopping it spreading in one blow so I continued this operation.

The commission then, at 10:14 a.m., took a recess until 10:40 a.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.

An accused, Vane, Chicago, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

308

1118

194. Q. When you exposed the femoral artery of this prisoner, doctor, you gave an explanation to your assistants to the effect that when there is a bad infection this is how you do it. Did you not?

A. I think I may have made such an explanation.

195. Q. And that is the only reason that you did cut down on that artery? Is it not?

A. I made this explanation because it was my habit to do so, but my real feeling was that I wanted to make an injection.

196. Q. If you had any intentions of injecting sulpha drugs into the artery would you have made sure that the sulpha drugs were present and handy before you even started to incise that thigh?

A. I thought there were sulpha drugs handy.

197. Q. In "Exhibit 9," which is your statement and which has been admitted into evidence, you made no mention that you intended to inject any sulpha into that prisoner. Did you?

This question was objected to by the accused on the ground that it was argumentative.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Because I actually did not inject any sulpha drug into the femoral artery I did not write about it.

198. Q. Isn't the best method of injecting sulpha solution into a patient, is to inject it into the veins of the patient's arm?

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. To inject the sulpha drug into the veins is the most effective and easiest method, but the injection into the femoral artery in a different sense is the best and easiest.

199. Q. In what sense is it best, doctor?

A. In treating infections on the legs this is the best method to inject sulpha drugs and stop the progress of the infection immediately. This method of injection was stated to be good by Japanese doctors about a year before I made this operation, which I had performed many times.

200. Q. Isn't it true, doctor, that no matter where the injection was made on the body it would get to the feet almost immediately?

A. If an injection is made in the vein, it is true that it would go to every part of the body.

CONTINUED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

201. Q. So there is no advantage of cutting down on a man's artery unnecessarily. Is there, doctor?

A. As the injection in the femoral artery had special effectiveness and even though it meant cutting through the thigh I did this.

202. Q. It also meant subjecting the patient to the threat of thrombosis when you injected into the femoral artery?

A. When you say "thrombosis," do you mean closing an artery?

203. Q. Yes.

A. I did not think of this.

204. Q. Well, doctor, think of it now. Isn't it a fact that that is why the artery isn't used for an injection?

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. According to my common knowledge I have not heard of this.

205. Q. When you were performing this surgery on the scrotum you also gave a dissection to your assistants about castration. Did you not?

A. No.

206. Q. This "Exhibit 9" is in your own handwriting. Isn't it, doctor?

A. Yes.

207. Q. In a section in that, numbered three, didn't you state as follows: "Then I explained in detail the operation of removing the testicles"?

A. Yes.

208. Q. Wasn't that true when you wrote it?

A. The way I wrote it was wrong.

209. Q. Do you deny the truth of that now?

A. I would like to explain it in other words.

210. Q. What is your explanation?

A. I explained that in case of infection by tuberculosis, in removing the testicle you have to be very careful of stopping the bleeding, the veins and the nerves and from the very beginning I did not explain about castration. In order to put it down in simple words that would be understandable I wrote it as it is in the statement.

211. Q. You didn't think this patient had tuberculosis. Did you, doctor?

A. No.

212. Q. So that this was just another part of your demonstration to your assistants. Is that right?

A. I did not have any feeling at all to demonstrate my skill to my assistants.

CERTIFIED TO BE A TRUE COPY

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

310

1120

213. Q. The reason that this prisoner only had one testicle was because you, as a matter of fact, had already cut one off. Isn't that true?
A. I did not cut and remove a testicle.

214. Q. You admit you cut one of the testicles. Don't you, doctor?
A. No.

215. Q. Well, just how did you get this one that you cut in your hand? What did you do with that?
A. This person only had one testicle. I was holding this one testicle in my left hand and in my right hand examined the passage leading up to the abdomen.

216. Q. You have stated that you took the testicle and replaced it. In order to get that testicle didn't you have to cut the scrotum and remove it?
A. No.

217. Q. Well, how did you examine the inguinal canal to find out about the other testicle?
A. An incision was made on the scrotum and the testicle brought out but it was not cut off, and through the same incision I examined the inguinal passage with one finger.

218. Q. So that now you do admit that you cut the scrotum. Don't you, doctor?
A. Yes.

219. Q. What good was it going to do this prisoner or what help was it going to be in arriving at a diagnosis to do all this?
A. For instance, the testicle from the blast - one of the testicles may have returned back into the abdomen or else in case of hernia it had come along and had returned into the abdomen and if this was the case and it could be returned, I thought it was necessary to do this.

220. Q. Was that for the purpose of diagnosis, doctor?
A. It was an operation to determine the effects of the bomb blast and to return the other testicle which was not found.

221. Q. Doctor, you state that after you opened up the abdomen and found nothing, you decided to look for the disease some place else. What disease were you looking for?
A. I made this incision in order to diagnose as there were many adhesive symptoms in the stomach, for instance, any large major symptoms in the esophagus or inflammation which causes such trouble. One of the main sicknesses which I could not determine was caused by shock. Up to this time I did not think that the intestines had been ruptured because I could not determine any internal bleeding. There were some sicknesses which would develop due to exposure to shock or the blast of a bombing.

CERTIFIED TO BE A TRUE COPY

- 21 -

James P. Lenny
JAMES P. LENNY,
Lieutenant, USN,
Judge-Advocate.
Lieutenant, USN,
Judge-Advocate.

1121

222. Q. You examined the prisoner's chest before you started to operate. Didn't you, doctor?

A. I did.

223. Q. Was it all right?

A. The breathing was very weak as I recall.

224. Q. What did you expect to do by cutting into the rib?

A. On the place where I made the incision in the rib there was a slight swelling above the rib and in order to determine what this was and it was in the membrane covering the bone, I made this incision as it could be done easily. I made this incision and also a general one. I did this to see what was the matter and did not make an incision into the rib to see the internal organs of the chest.

225. Q. Could you not ascertain by feeling just what was the matter?

A. I could tell by feeling that it was a slight swelling of the membrane covering the bone but there might be infections there. Therefore, to determine this I performed this operation. They may be other causes too.

226. Q. As a matter of fact, doctor, didn't you make that incision to demonstrate how a rib could be removed?

A. No.

227. Q. Yet, you took a prisoner who was already in a state of shock and not only had him submit to one operation but a series of operations, every one of which would cause more shock to his system. Isn't that right, doctor?

A. I think this can be said.

228. Q. Isn't it remarkable that that man survived all your surgery?

A. I do not think it was remarkable.

229. Q. If you had the interest of that prisoner at heart, doctor, you wouldn't have performed all that surgery at once, would you?

A. I would have done it.

230. Q. Now, these two prisoners had been brought to the air raid shelter by Lieutenant Kinoshita on your orders, and you say that you heard a voice on the outside stating for everybody to assemble and to take the other prisoner away. Do you mean to tell us that was the voice of an enlisted man?

A. When I looked outside I may have stated to you before I recall all the persons outside were wearing patterns which the enlisted men would wear. Therefore, I thought it was the enlisted man; but the fact is I do not know who it was, so I may be mistaken when I say the enlisted man.

231. Q. That prisoner had been brought there on your orders, doctor. What officers on that station had the right to go over your head and take that prisoner away?

This question was objected to by the accused on the ground that it was immaterial and irrelevant.

CERTIFIED TO BE A TRUE COPY

James P. Henry - 312 -
JAMES P. HENRY,
Lieutenant, JEN,
Judge Advocate.

1122

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Thinking on this problem - thinking back at that time as a matter of fact it would be the commanding officer of the guards or the commanding officer, Asano, but I knew the meaning of the general assembly at this time and I did not know whose voice it was who called this general assembly out.

Commander Carlson, a counsel for the accused, made a motion to strike out the portion of the answer regarding the commanding officer, Asano, on the ground that one codefendant was testifying against another codefendant.

The commission announced that the motion to strike was denied.

232. Q. You say you understood what the general assembly meant at this time. Had you been told beforehand about these preparations?

A. When I say "meaning," I mean the meaning of the words "general assembly" which means the general assembly would come from a member of the military service.

233. Q. You know what the general assembly was for. Don't you, doctor?

A. Concerning the fact that one of the prisoners was taken away and also what I had been told that morning, I thought directly they were going to actually carry out the disposition of the prisoners.

234. Q. Was it on the authority of this voice that you discontinued the operation on this prisoner?

A. As a matter of fact to discontinue the operation was mentioned before this time, because I had shown that I wanted to stop the operation.

235. Q. Why did you want to stop the operation?

A. Because I thought that I had to look into certain parts but then it came known while I was working I was too tired physically and mentally to continue.

236. Q. Who gave the order to take the prisoner out of the battle dressing station?

A. I ordered it.

237. Q. Where did you order him taken?

A. I told them to carry the prisoner out toward the side of the sick bay.

238. Q. Why did you want him taken down there?

A. Because I felt that I could not get away from the execution.

239. Q. Wasn't it Kobayashi who gave the final directions about taking the prisoner out of the battle dressing station and down to the scene of the execution?

This question was objected to by the accused on the ground that in answering it one codefendant would be testifying against another codefendant.

CERTIFIED TO BE A TRUE COPY

313

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1123

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. No, I did not know of this.

240. Q. In your statement, "Exhibit 9," which is in evidence, didn't you state that it was Kobayashi who gave the final directions?

A. There is something I would like to state concerning this.

The commission directed the witness to answer the question.

The question was repeated.

A. (Cont.) I think this is not true.

241. Q. Well, here is your statement. I ask you to look at it, then answer whether it is true or not?

A. I wrote this.

242. Q. Did you also write in that statement that Kobayashi showed Briguchi how to do the beheading by advising him as to the position of his feet?

A. I did not write it that way.

243. Q. Look at the statement and answer whether or not you wrote that in there?

This question was objected to by the accused on the ground that it was argumentative.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not write there that Kobayashi taught Briguchi the method of cutting by mentioning him as to the position of his feet.

244. Q. What did you write?

A. That Briguchi was cautioned by Kobayashi as to the position of his feet.

245. Q. Didn't you write in your statement, "being advised as to the position of his feet by Head Sergeant Kobayashi, Hasegawa Briguchi sat the prisoner down and cut off his head"?

A. I did.

Commander Carlson, a defense counsel, moved to strike out this answer on the ground that one codefendant was testifying against another defendant.

The commission announced that the motion to strike was denied.

The commission then, at 11:30 a.m., adjourned until 9 a.m., Monday, October 20, 1947.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

314

1124

EXHIBIT D-1

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, October 20, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry W. Neece, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor A. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradford 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. Henry, U. S. Navy, judge advocates.
Robert Clifham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

An accused, Uno, Chineto, the witness under examination when the adjourn-
ment was taken, resumed his seat as a witness in his own behalf. He was
warned that the oath previously taken was still binding, and continued his
testimony.

Commander Carlson, a counsel for the accused, read a written plea in
abatement on behalf of the accused Asano, Shimpai, on the ground of misjoinder
of parties, appended marked "XX."

The judge advocates replied.

The commission announced that the motion was denied.

Commander Carlson, a counsel for the accused, read a written plea in
abatement on behalf of the accused Kobayashi, Kazumi, on the ground of
misjoinder of parties, appended marked "XX."

The judge advocates replied.

The commission announced that the motion was denied.

Examined by the accused:

246. Q. Isn't it true that when you told Kinoshita to get the prisoner or
prisoners you had no intent to dispose of this prisoner or prisoners?

CERTIFIED TO BE A TRUE COPY

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

315

1125

This question was objected to by the judge advocate on the ground that it was leading.

The accused replied.

The commission announced that the objection was sustained.

247. Q. When you told Kinoshita to get this prisoner or prisoners, did you have plans to dispose of them?

This question was objected to by the judge advocate on the ground that it was leading.

The accused refrained the question.

248. Q. What was your intent when you sent Kinoshita to get the prisoner or the prisoners?

A. I just said, "I want them to be brought because I wish to make a detailed examination," and all I said was this. As for myself I was not clear on my intent as to what to do with them.

249. Q. Did you have any reason for sending for these prisoners at this time?

A. I wanted to examine him and make a definite diagnosis.

250. Q. Isn't it true that in some instances surgeons and doctors make an honest mistake in their judgment as to what is wrong with a patient?

A. This is true.

251. Q. Now, when you diagnosed this patient did you limit yourself as to the reason for the diagnosis by what you yourself knew about the bomb explosion?

A. I think I did.

252. Q. That was the only basis for the diagnosis that you made then?

A. Yes.

253. Q. In the Japanese Navy is there any such idea that superior orders may be disobeyed?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused refrained the question.

254. Q. Did you, at the time of this incident, have any idea that you could disobey superior orders?

A. Ordinarily I have never thought of this.

255. Q. What was your idea about obedience to superior orders?

A. It was common knowledge that no matter what - you would have to obey the orders.

256. Q. Is that the way you felt about it at that time?

This question was objected to by the judge advocate on the ground that it was leading.

CEP:JTB: 50 55 1 13-11 CRYX

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

316

1126

The accused replied,

The commission announced that the objection was not sustained.

A. At this time I thought, I was under a weak impression, that if I passed the time away by carrying out what I was thinking something would come up.

257. Q. Then you mean that that was one of the reasons that you took the two prisoners into your custody as a medical officer?

A. Yes, I think so.

258. Q. Do you know what the penalty is for disobedience of orders in the Japanese Navy under battle conditions?

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.

259. Q. Under the conditions which you received these orders as you have testified, do you know what the penalty is for disobeying the orders that you received if you had disobeyed them?

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.

260. Q. You were asked on cross-examination about the blood test. Isn't it true that a blood test is only one step in a surgical diagnosis?

A. It is just one method which is used in diagnosing.

261. Q. In your opinion was a blood test necessary for you to make in order to determine what to do in case of that right hip test?

A. No.

262. Q. So then it wasn't necessary for you, as a surgeon, to make a blood test in order to determine what to do in case of that test?

A. Yes.

263. Q. Would you say that any ordinary prudent surgeon could have told what was wrong with that toe without making a blood test on it?

A. I think it is possible.

264. Q. Now, this equipment which you had for making a blood test. What kind of equipment was it, in your opinion, as to the quality?

A. It is glass instruments which come in a set.

265. Q. Were they Japanese instruments?

A. Almost all of the equipment we had was Japanese made.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

317

1127

266. Q. How did this equipment compare with that of German or English equipment in your opinion?

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.

267. Q. Do you know if there is any difference in shock reaction between Japanese and Americans?

A. I do not know.

268. Q. Aren't there varying degrees of shock to a patient caused by an operation performed upon him?

A. Yes.

269. Q. And before you operated didn't you yourself consider the question of shock upon the prisoner-patient which would be caused by the operation?

A. Yes.

270. Q. And in your experience as a surgeon you still considered that this operation was necessary. Is that right?

A. I did.

271. Q. Now, do you know if there are any laws of war or customs of war as to malpractice as to the practicing of surgeons?

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.

272. Q. Isn't it true that all skillful surgeons often explain what they are doing when other less experienced surgeons are present at an operation?

A. Yes, this is usual.

273. Q. Do you know whether there is a malpractice statute in Japan?

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.

274. Q. Isn't it true that any officer, who was eligible to succeed to the command of the Forty-first Naval Guard Unit could in the exercise of his rights of the military command, order one or both of the prisoners to be removed from the sick bay at this time?

A. That is what I think.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

275. Q. Will you explain under what conditions physically and mentally you were when you wrote the statement in Sugamo Prison which the prosecution has questioned you upon and which has been admitted into evidence?

A. I think I was suffering from a great spiritual blow to my spirits.

276. Q. Now, you mention both Briguchi and Kobayashi in your statement. As this statement was read into evidence is that what you really meant to say about Briguchi and Kobayashi, or did you mean to say something different than was actually written in the statement?

This question was objected to by the judge advocate on the ground that it was double and leading.

The accused reframed the question.

277. Q. What did you actually mean to say as regards to Briguchi?

A. I just wrote what I had in my recollection.

278. Q. And what you wrote is what you want to say at this time as regards Briguchi?

A. Later in Sugamo I made a request that I would like to add something to my statement which I did not state sufficiently concerning Briguchi.

The question was repeated.

A. (Cont.) There are points which I did not state sufficiently.

279. Q. Will you state them at this time?

A. After I arrived at the scene concerning the prisoner I ordered Briguchi concerning the disposal of the prisoner as follows: "Put them at ease" and I wanted to add this to my statement.

280. Q. Is there anything that you wanted to say as regards Kobayashi which you didn't say in your statement which you want to say at this time?

A. There is.

281. Q. Will you state it?

A. What actions Kobayashi took as my subordinate were all under my orders as the head medical officer. There were things he did whether he liked to or not in order to obey my orders, therefore, the responsibility is naturally mine. And also I stated in my first statement concerning Kobayashi on the points concerning the carrying of the prisoner and that he showed Briguchi about the position of his feet. At the time of the beheading my recollection on this is vague and I would like to withdraw these statements.

282. Q. Now, you said that you told Briguchi to put the prisoner at ease. What was your intent as regards the patient at the time you told Briguchi to put the patient at ease?

A. I meant to dispose of the prisoner.

283. Q. Did you have any malice against the prisoner?

A. I think I had no particular malice against the prisoner.

DEPOTED TO THE WITNESS COPY

James P. Renny

JAMES P. RENNY,
Lieutenant, USN,
Judge Advocate.

319

1129

284. Q. Why did you order Briguchi to dispose of him?

A. I had been ordered to dispose - I had heard the order previously and also I had heard the order for general assembly and I heard a voice say to bring the other prisoner later. I took him to the scene and at the scene I did not know what to do and all I did was to relate the order that I had received to dispose of the prisoner.

285. Q. You testified that all the actions of Kobayashi were done "on my orders, naturally I was responsible." As I recall you did not state anything in your statement concerning the actions of Kobayashi. When you say the actions that Kobayashi took "under my orders," what actions did he take?

This question was objected to by the judge advocate on the ground that the counsel was misquoting the statement of the accused.

The accused reframed the question.

286. Q. Tell us what actions Kobayashi took under your orders?

A. What I meant was that I wished to withdraw the statements concerning Kobayashi in my statement because they were vague and also if Kobayashi had done anything other to this, in which he would be indicted, everything that Kobayashi did that day, if he had done anything, he must have done because he wished to obey my orders.

The question was repeated.

A. (Cont.) I have no recollection.

287. Q. You testified that you wrote that there was an adhesive wound on the nymantary and that you operated. When there are symptoms, is it sufficient to determine this only by making a blood test?

A. I think it would be difficult.

288. Q. When you took the prisoner to the scene, were the persons who had disposed of the prisoner who had been taken on before still there?

A. I have no distinct recollection of them.

289. Q. You testified that you heard a voice saying, "bring the other prisoner." Did you think from the very beginning that you would have to order Briguchi to dispose of the other prisoner?

A. No, I had never thought of this.

290. Q. Then what were you thinking as you went toward the scene?

A. I was thinking that there were other persons assembled there.

291. Q. Were there persons there you thought would be there?

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.

CERTIFIED TO BE A TRUE COPY

320

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate, etc.

1130

292. Q. Was it because the persons you thought would be at the scene were not there that you ordered Higurashi to dispose of the prisoner?
A. Yes.

293. Q. You testified that in the morning you received a troublesome order from the executive officer, Nakase, and that before you had received the kind permission of Asano to take steps necessary concerning the operation you thought was necessary. What did you think of the relation of this order from Nakase and this permission of the commanding officer?
A. I thought it was a very sudden change.

294. Q. What did you say to Nakase when you received this order from him?
A. All I said to him was, "Is this what was determined?"

295. Q. To make yourself clear on this order did you confirm this through the commanding officer, Asano?
A. No.

296. Q. Didn't you have any doubts as to this order when at first you received it considering that you had been given a definite permission on the previous day and also that the permission that you received from the commanding officer was different from what was from the executive officer, Nakase?

A. As the executive officer was standing in front of the commanding officer's room when I was told this I did not have any special thoughts.

297. Q. Who is senior - yourself or Nakase?

A. At this time as I had only arrived at the guard unit to take up my duties a short time before I did not think about this and I stayed junior to him. But later when I became full commander I was senior to him.

298. Q. Weren't you actually senior to him at this time?

A. Even now I do not know exactly.

299. Q. Does Nakase have any authority over matters which come under your authority as the head medical officer?

A. On all matters other to determining the name of the sickness the executive officer would have the authority to give no orders.

The commission then, at 10:20 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Uno, Chisato, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

CERTIFIED TO BE A TRUE COPY

321

James P. Leamy
JAMES P. LEAMY,
Lieutenant, USN,
Judge Advocate.

1131

(Reexamination continued.)

300. Q. When you are performing an operation on your authority does the executive officer have the authority to interfere with your operation?

A. Usually when the head medical officer is performing an operation I do not think in ordinary circumstances that he can interfere with the operation.

301. Q. According to regulations does he have the authority to interfere with your operation?

A. I do not know.

Recross-examined by the judge advocate:

302. Q. Doctor, isn't it true that when you sent Kinoshita for those prisoners you merely said that, "I have been ordered to dispose of the two prisoners, go and get them"?

A. As I recall other to this I remember expressing my feeling that I did not know what to do.

303. Q. Didn't know what to do about what?

A. I was undecided as to how to carry out this order to dispose of the prisoners.

304. Q. You have stated on redirect examination that you determined before you started to operate the degree of shock that this would cause the prisoners. Did you decide it would cause a very great shock to him?

A. I cannot state in one word as to the degree of shock that he would be able to bear but I thought he would be able to bear the shock of the operation.

305. Q. You didn't know what he could bear because you did not determine what degree of shock he was already in. Did you?

A. It is difficult to put down exactly in words the exact degree of shock but it is a fact that I determined the extent of shock through my experience as a doctor and the condition of this prisoner at this time.

306. Q. Doctor, you know as a medical man that it was impossible for you to determine the degree of shock that prisoner was in without your taking a blood test. Don't you?

A. I did not think so.

307. Q. You testified that any officer could have ordered the removal of this prisoner who was outside of the battle dressing station. Do you mean that doctor?

A. I think this is possible if it was a person who had received an order from an authority to give it.

308. Q. That person would have to receive that order from someone on that station who was superior to you. Would he not doctor?

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.

OFFICE OF THE JUDGE ADVOCATE

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

322

1132

A. Yes.

309. Q. And there were only two people on the station superior to you, the executive officer and the commanding officer. Isn't that correct?

A. Yes.

310. Q. And you would not have stopped that operation and taken that prisoner down to execute him unless those orders had come from someone superior to you, would you?

A. Yes.

311. Q. When you wrote this statement of yours that is in evidence as "Exhibit 9," everything in there was the truth to the best of your recollection on March 24, 1947, was it not?

A. I wrote wanting to write the truth.

312. Q. In this conversation that you have spoken about with Nakase outside the commanding officer's room you stated that you said to him, "Is this what was determined?" What did he say to you in answer to that?

A. After I said this to him I turned around and went toward the sick bay. That is all the conversation we had.

313. Q. Do you mean to say he did not answer your question?

A. There was no answer.

314. Q. Doctor, at the Forty-first Naval Guards when a general assembly was called, who had to originate the order for that assembly?

This question was objected to by the accused on the ground that it was irrelevant and immaterial and 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 understand it the executive officer would relay it to the officer-of-the-day, but in case the commanding officer is present at the guard unit it would have to be through the understanding of the commanding officer.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as an accused.

An accused, Nakase, Shokichi, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you an accused in this case?

A. Yes.

CERTIFIED TO BE A TRUE COPY

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

323

1133

Examined by the accused:

2. Q. When did you enter the navy?
A. I entered the navy on June 1, 1920.
3. Q. What was your rate when the first entered the navy?
A. I was a seaman fifth class.
4. Q. Then you did not graduate from the naval academy. Is this correct?
A. No.
5. Q. Have you ever had duty at Truk?
A. Yes.
6. Q. Through what periods of time did you have duty at Truk?
A. From 7 November 1943 till 25 August 1946.
7. Q. Were you demobilized?
A. Yes.
8. Q. When did you arrive on Guam?

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.

9. Q. Were you investigated while you were in Japan?

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.

10. Q. What was your position at Truk in 1944?
A. Up to the third of May of 1944 I was the acting executive officer, head of the land patrol, division officer and also head of the guards. On the third of May Commander Ohtagawa arrived to take up duties as executive officer so I was relieved of my duties as acting executive officer. In the beginning of June Commander Ohtagawa, the executive officer, had a nervous breakdown and entered the hospital and was repatriated to Japan in July. At the same time he was repatriated to Japan I was ordered again as the acting executive officer. From the third of May till the latter part of July I was acting at the guard unit as the senior officer.

11. Q. What unit were you attached to?
A. Forty-first Naval Guards.

12. Q. Were there any officers senior to you at the guard unit about July of 1944?
A. There were.

CEASED TO BE A TRUE COPY

James P. Kenney

JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

324

1134

13. Q. Who were they?

A. The commanding officer and the head medical officer were the only two.

14. Q. Tell us their names.

A. Asano, Shimpel and Ueno, Chisato.

15. Q. Was the head medical officer, Ueno, your senior?

A. Yes.

16. Q. Do you know of prisoners being at the guard unit at this time?

A. When you say "at this time," when do you mean?

17. Q. I mean about June.

A. There were.

18. Q. How many were there?

A. There were five.

19. Q. Do you know what happened to these prisoners?

A. I do.

20. Q. Tell us about what happened to the prisoners.

A. There was an air raid on the twenty-ninth of June and by this bombing three died and two were wounded.

21. Q. Tell us briefly about what happened at this time.

A. Bombings were frequent about this time. There were always two air raids, night and day, every day. It was on the twenty-ninth about 10:50 in the morning. It was during the noon meal that I heard the air raid alarm. The raider at this time was not very efficient and the period of warning was very short. Just about the same time we could hear the sound of the bombers. The order to take shelter was hurriedly given, there were clouds over the guard unit, bugles were sounded for the people to take shelter. The target was mainly the road and along the side of the mountain. There were about forty or fifty bombs that fell at this time. One of these bombs dropped about fifteen to sixteen meters away from where the prisoners were confined. As I stated before some of the prisoners died and some of the prisoners were wounded. The guard there, named Saito, also died as a result of the bombing. Other to this there were also other persons there who died as a result of the bombing. Receiving the permission from the commanding officer to call a general assembly, I made an investigation of the damage and received reports on the damage and immediately took steps to reconstruct the damage. As for the disposition of the wounded and killed, I ordered each division to take care of their own dead and wounded personnel. Wounded were to be carried to the sick bay. The persons killed were to be locked into and disposition made. Concerning persons who were not attached to divisions and unattached, such as prisoners, they were to be taken care of by the deck officer of the division and the guards and the rest of the persons I took charge of and worked at reconstructing the damage.

22. Q. What steps were taken concerning the persons who were killed and the prisoners who were wounded?

A. As I was supervising all the things in general I did not arrive at the scenes of the prisoners immediately, but I received a report from the junior-

CERTIFIED TO BE A TRUE COPY

James P. Lenny 325
JAMES P. LENNY,
Lieutenant, USN,
Judge Advocate.

1135

officer-of-the-day and also the deck officer that the three had been buried and that the two wounded had been examined by Doctor Yamada. He had also checked on the three dead prisoners. It was reported that the three prisoners who had died had been buried by the deck petty officer who was under the deck officer and also that the two wounded prisoners had been treated by a doctor and I also heard that the commanding officer, Amato, had seen the prisoners who were killed.

23. Q. Do you remember from when you received these reports?

A. I received these reports from the deck officer and the deputy head of the guards.

24. Q. Then you directly did not see the prisoners who were wounded or were killed. Is this correct?

A. I did not see the prisoners at this time because I was very busy supervising the work and also on the side of the mountain there was a lot of provisions stored and due to bomb hits there, rice and canned foods were badly damaged and also because of a squall coming that day we had a very difficult time of disposing of this. As I was at the side of the mountain supervising the work I did not see this at this time.

The commission then, at 11:30 a.m., took a recess until 2:07 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.

An accused, Nakase, Shohichi, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

25. Q. Was there anyone in charge of the prisoners at the Forty-first Naval Guards?

A. There was no one who had that duty.

26. Q. Who was responsible for the custody of these prisoners?

A. I think it is the commanding officer.

Commander Carlson, a counsel for the accused, moved to strike out this answer on behalf of Amato, on the ground that one defendant was testifying against a codefendant.

The judge advocate replied.

The commission announced that the motion to strike was denied.

27. Q. Do you know how prisoners are to be handled?

A. I do.

28. Q. Prisoners were held in custody at the Forty-first Naval Guards. How were they kept in custody?

A. At the guard unit they were treated as well as possible under the circumstances.

James P. Huxley
JAMES P. HUXLEY,
Lieutenant, USN,
Judge Advocate

326

1136

29. Q. Did you intend to always keep the prisoners in custody?

A. No.

30. Q. What was the policy concerning this?

A. It was the policy of headquarters to send them as speedily as possible to Japan but as there was no transportation they were held in custody at the guard unit temporarily.

31. Q. Did you actually send prisoners back to Japan?

A. Yes.

32. Q. According to your recollection will you tell us actual instances of prisoners being sent back to Japan?

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.

33. Q. Did you know what happened to the prisoners who survived the bombing?

A. I do.

34. Q. Tell us how you came to know about it?

A. On the day after the bombing I think it was the junior-officer-of-the-day or the deputy commanding officer of the guards who said to me, "The prisoners who were wounded yesterday are shivering and have no appetite and are getting weaker."

35. Q. Were any appropriate steps taken against this?

A. At this time I said to have the head medical officer examine them as soon as possible.

36. Q. Did the head medical officer examine them?

A. I think he did.

37. Q. Then what happened?

A. Shortly after this I heard that a prisoner or prisoners had been operated on at the sick bay.

38. Q. What happened as a result of this operation?

A. I heard that the results of the operation were not good and the prisoner or the prisoners had died.

39. Q. From when did you hear this?

A. As this was a rumor I do not remember exactly from when I heard it.

40. Q. Did you hear anything specific other to this rumor?

A. Shortly after this I heard about it from the commanding officer.

41. Q. What did the commanding officer tell you?

A. I heard from the commanding officer that the head medical officer had reported that the two wounded prisoners were not getting along well and that the prisoners had been operated on at the sick bay and that they had died. This is what I had been told by the commanding officer.

DECLINED TO BE A TRUE COPY

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

327

1137

42. Q. Did you believe what you were told?
A. This is what I believed to have happened.

43. Q. When the head medical officer was going to operate on this prisoner or prisoners, was this reported to you?
A. I heard nothing about it.

44. Q. When an operation is to be performed, does the head medical officer have to receive the permission of anyone to perform the operation or can he do it on his own?
A. Concerning the operation I think he can carry them out according to the way he thinks it is necessary.

45. Q. In this case did you hear that he received permission from anyone?
A. No.

46. Q. In case the head medical officer performed an operation and the patient died as a result of the operation, is there such a thing as looking into this operation?
A. The executive officer can not inquire or investigate the head medical officer.

47. Q. Why can't you do that?
A. In the navy there are rules and regulations governing the navy and in these rules and regulations of the navy there is a statement concerning performance of duty aboard ship. On this it is stated in these regulations.

48. Q. According to these rules and regulations what does it state?
A. In these rules and regulations it states in detail but I do not remember all the details at this time. I can only state the general outline or purposes of these regulations. In them it states the head medical officer is directly responsible to the commanding officer and works under the commanding officer in all matters, and is responsible for all matters concerning the medical section. He is responsible for the affairs in the medical section. He is responsible for the training and supervision, the affairs and the personnel of the medical section.

49. Q. Then when the commanding officer orders anything to the head medical officer, do you mean he does not go through the executive officer?
A. Yes.

50. Q. Did you hear the testimony of the head medical officer, Uno, on the witness stand?
A. Yes.

51. Q. According to the testimony of the head medical officer, Uno, he testified that he was given an order by the executive officer saying that it was the order of the commanding officer. How do you explain this?
A. There is absolutely no truth in his testimony. There is no such fact.

Commander Carlson, a counsel for the accused, moved to strike out this answer on behalf of Uno, on the ground that one defendant was testifying against a codefendant.

CERTIFIED TO BE A TRUE COPY
CERTIFICATE TO BE A TRUE COPY

James P. Banny
JAMES P. BANNY,
Lieutenant, USN,
Judge Advocate.

328

1138

The commission announced that the motion to strike was denied.

52. Q. You testified that you ordered a general assembly on the twenty-ninth of June right after the bombing. Did you order any general assembly after this date in the same vicinity?

A. I have never given this order.

53. Q. How is the order for general assembly usually given?

A. The only person who can give the order for general assembly is the commanding officer. In case when there is an instance when general assembly is necessary the commanding officer would tell the executive officer, the executive officer would tell the officer-of-the-day. The officer-of-the-day would call a general assembly fifteen minutes before time and then five minutes before the general assembly another order would be called out. At the time stated for general assembly when everyone was assembled the officer-of-the-day would report to the executive officer and the executive officer would report the general assembly completed to the commanding officer, and the bugle for general assembly would be blown.

54. Q. Then in case of general assembly being called, this call for general assembly would be made known to the whole unit. Is this correct?

A. Yes, and it would be called out so that everyone in the guard unit would know. After it was called out the deck officer would go through all the barracks to see that everyone was out.

55. Q. In case the commanding officer was absent who would be the one to order the general assembly?

A. In the absence of the commanding officer, presuming that there was a necessity to give a call for general assembly, I would give the call.

56. Q. In case there was an officer senior to the executive officer, who would give the order?

A. When you say a person senior to the executive officer, I do not understand what you mean.

57. Q. For instance, you testified that Uno was senior to yourself. In case a call for general assembly, would Uno give the order?

A. The commanding officer being absent and there was a necessity for general assembly being called, Commander Uno would not give the order for general assembly.

58. Q. Is there such a thing as a general assembly for all persons who were not doing anything?

A. There is no such thing in the navy as a general assembly for all persons who are not doing anything. A person who had any experience as the officer-of-the-day would not call out such an order.

59. Q. After the bombing do you remember having called out a general assembly at the side of the sick bay?

A. I know of no such fact.

60. Q. Was there anyone who called out a general assembly for all persons who were not doing anything to assemble?

A. I do not know.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

329

1139

61. Q. Did you hear from anyone that there was an operation being performed at the battle dressing station?

A. I heard nothing about it.

62. Q. Did you ever go near the battle dressing station?

A. No.

63. Q. Do you know a person by the name of Kodama?

A. I do not know Kodama.

64. Q. Were you ever sick in the sick bay about May?

A. No.

65. Q. When was it that you were sick in the sick bay?

A. As the witness Rums stated I was in the sick bay in the latter part of January or the beginning of February. The actual date that I entered the sick bay was the 25th of January.

66. Q. You entered the sick bay on the twenty-fifth of January. How long were you in the sick bay?

A. I was in the sick bay until the fourth of March.

67. Q. While you were entered in the sick bay did you know of a corpsman by the name of Kodama?

A. I know nothing about him.

68. Q. Did you hear that this prisoner or prisoners who were said to have died due to the results of the operation had been disposed of by stabbing or beheading?

A. After the end of the war when this problem about prisoners became an issue, I heard about it and I did not hear about it at the time.

69. Q. Have you ever gone to the scene where a prisoner was beheaded?

A. No.

70. Q. Did you know that Tanaka stabbed a prisoner?

A. I know it now.

71. Q. How do you know it now?

A. When I was taken into custody and just before I was indicted I was asked by the investigator if I knew a person by the name of Tanaka, and I said I knew a Tanaka. The investigator did not tell me at this time that Tanaka had stabbed. When I received the charges I found out for the first time that Tanaka had stabbed the prisoner.

72. Q. Do you know a person by the name of Nagashima?

A. I do.

73. Q. Do you know of how Nagashima came to order Tanaka to do the stabbing?

A. The investigator who was up in Tokyo came down to Guam and questioned me concerning this and I found out for the first time about it.

74. Q. Who was this investigator by whom you were questioned?

A. I asked the three investigators, the persons who questioned me, the investigator who came down from Tokyo, and the investigator who came from Guam and I think the interpreter at that time was Mr. Severy.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

330

1140

75. Q. What was told to you by the investigators 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.

76. Q. Concerning the stabbing did you hear anything about it from Nagashima?

A. No.

77. Q. According to Nagashima's statement he states he was ordered to dispose of the prisoners by the head medical officer, Uno, therefore, he went to the executive officer to confirm this. How do you explain this?

A. There was no such thing.

78. Q. What was Nagashima's position at this time?

A. He was the senior petty officer of the first division and also the head of the gunnery store room - in charge of the gunnery store room.

79. Q. Were you in close contact with him through his everyday duties?

A. No.

80. Q. Where is this gunnery warehouse in which Nagashima worked?

A. About thirty meters south of where the battle dressing station is there are many storerooms. There are the storerooms of the various sections and among them is the gunnery storeroom.

81. Q. Do you know what person was closest to Nagashima?

A. I do.

82. Q. Who is it?

A. It was the head gunnery officer and this person at this time had the rank of a warrant officer. This is not the head gunnery officer but he is the officer in charge of armaments and he is head of the storerooms.

83. Q. Have you ever gone to the scene where Tanaka stabbed the prisoner?

A. No.

84. Q. Do you know when these incidents occurred?

A. No.

85. Q. What kind of work were you doing just before and after this bombing in which the prisoners were wounded?

A. About this time I was in charge of the land battery and also the defenses of Truk. There was a radical change in the defenses of Truk. The change of the positions of the batteries was ordered. There are twenty-five batteries that I had and it was up to me to move them. This was my most important duty. The headquarters had just issued an order to remove the batteries to another site. The staff officer did not pick the actual site so I had to go and pick out the site - the actual site in which the batteries had to be moved to. I had one other important duty. I had to make up the service records of warrant officers and above. This Commander Ohtagawa was supposed to do this work but he was suddenly entered in the hospital and as

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

there was no hope of his complete recovery, I had taken up the service records. As these service records concerned the promotion of these persons it was top secret and using a secret man named Ishii we worked together constantly locked in my personal room and worked there.

86. Q. Then were you always together with this Ishii?

A. As we were working in my personal room I was always working together with Ishii and he was always with me.

87. Q. Then if Nagashima had come to you Ishii would know about it. Is this correct?

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.

88. Q. Do you mean you were in your room making up these service records the day before and the day after the air raid all the way through during this period?

A. What I meant is that mostly I was at the various outlying islands at the batteries but when I was in the unit I was in my personal room at the headquarters making up these service records.

89. Q. Have you ever gone to the swampy area by the sick bay around this time?

A. I have never gone toward the sick bay.

90. Q. Did the commanding officer, Asano, frequently visit the outlying islands?

A. As I stated before the batteries had moved according to orders and the commanding officer would frequently go to these new sites of the batteries and inspect them.

91. Q. Did you kill a prisoner by beheading him on or about June 20, 1944?

A. No.

92. Q. Did you do anything that you are charged with having done in the first specification of the first charge?

A. No.

93. Q. Did you kill a prisoner by stabbing him with a bayonet on or about June 20, 1944?

A. No.

94. Q. Did you do anything that you are charged with having done in the first specification of the second charge?

A. No.

95. Q. Did you mistreat or torture a prisoner by cutting him or doing a surgical operation on him the way you are charged with having done in the first specification of the second charge?

A. No.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

332

1142

96. Q. Did you have anything at all to do with this operation?
A. No.

The commission then, at 3:12 p.m., took a recess until 3:30 p.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Nakase, Shokichi, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the judge advocates:

97. Q. What division were you division officer of?

A. I was the division officer of the first and second division and the various divisions on the outlying islands.

98. Q. And what was this land patrol that you had charge of?

A. It was a department which handled the defense of Truk, the land patrols of Truk, and this is other from the areas which are under the jurisdiction of the army.

99. Q. What was this guards that you were head of?

A. This guards consisted of persons selected from the various divisions for a period of one to two months in which they would do the work of guards. There were six guards with four reliefs, altogether twenty-four men.

100. Q. Was Nagashima a member of this guard unit?

A. As I recall Nagashima was not a member of the guards.

101. Q. Was he a member of the first or second division?

A. He was the senior petty officer of the first division at that time.

102. Q. He was the senior petty officer of the first division and you were the commanding officer of the first division. Is that correct?

A. Yes.

103. Q. Weren't all prisoners at the Forty-first Naval Guards guarded by this unit that you were the head of?

A. The safeguards and the watching of the prisoners was done directly by the officer-of-the-day who did this under the direct orders of the commanding officer and because of this the officer-of-the-day and the junior-officer-of-the-day have messenger orderlies, watch orderlies, and also take charge of the six guards on duty and carry out this duty.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out this answer on the ground that an accused was testifying against a codefendant.

DECLINED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

The judge advocate replied,

The commission announced that the motion to strike was denied.

104. Q. These six guards you are talking about used to guard the prisoners. Did they not?

A. All of the six do not watch the prisoners.

105. Q. Look, Nakase, this guard unit that you were the commanding officer of, wasn't it one of their functions to guard the prisoners?

A. Each of the six persons had various duties and only one of the guards among the six watched the prisoners.

106. Q. The man who watched the prisoners, wasn't he a member of the unit of which you were in charge?

A. He was a member of that unit.

107. Q. The man who guarded the prisoners came from the very special unit of which you were in charge. Is that correct?

A. Yes.

108. Q. And in reality, though Asano was the commanding officer, you were the officer in charge of the prisoners. Were you not?

A. In actuality I was the executive officer and also the officer of the guards. I was away from the guard unit many times and it is impossible for me, as head of the guards, to watch over the prisoners so therefore, the officer-of-the-day who was on duty for twenty-four hours and could not leave his post directly took charge of these guards and was directly responsible for watching over the prisoners. According to regulations the officer-of-the-day cannot leave his post unless he is relieved by someone with the same rank and ability to carry out his duties.

109. Q. The officer-of-the-day takes his orders from you. Does he not?

A. No, the duty of the officer-of-the-day is stated especially in naval regulations. It states that he is directly to come under the direction of the commanding officer and take charge of the guarding and patrolling and supervision of the daily work of that unit and also supervise discipline and morale of that unit.

110. Q. Didn't the officer-of-the-day take his orders from you as the executive officer and direct representative of the commanding officer?

This question was objected to by the counsel on the ground that it was repetitious.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. The executive officer is the assistant to the commanding officer and naturally he would give orders to the officer-of-the-day.

111. Q. Could these prisoners be moved from the brig without your permission?

PERMITTED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

A. Unless there is the permission of the executive officer or the commanding officer the prisoners could not be moved but it was at the time of the commanding officer, Tanaka, that about forty-two prisoners from a submarine were taken into custody. Many were wounded and a doctor was permitted to go to the place of confinement to treat the light cases and permitted to bring prisoners to the sick bay in order to treat the heavier cases. As the wounded were many it was authorized for medical personnel to enter and leave the place of confinement and this custom prevailed till the end of the war.

112. Q. Were medical personnel permitted to go into that brig and remove prisoners when they wished?

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. They were permitted to take the prisoners out to treat them.

113. Q. In this particular case who gave the orders for the removal of these two prisoners from the brig?

A. No one put out such an order.

114. Q. Then how did the prisoners get from the brig to the sick bay?

A. I do not know.

115. Q. You say that you heard about this operation from the commanding officer. When was this?

A. I think it was one week after the bombing on the twenty-ninth of June. I do not think it was over a week but I do not remember the exact date.

116. Q. What did you say to the commanding officer and what did he say to you?

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. The commanding officer said, "I was told by the head medical officer that the two prisoners were not getting along well and they were operated on and as a result of that they died."

117. Q. Did you at any other time have a conversation with Aceno concerning these prisoners?

A. After the end of the war I have talked with Aceno about the prisoners before he was taken into custody. Other to this I have not talked to him.

118. Q. You were asked, "In this case did you hear he had received permission from anyone?" and you said, "No." Didn't you know when Aceno had received permission from to perform this operation?

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

335

1145

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. I do not know.

119. Q. Do you mean to say that you never heard where Uno got permission to carry out this operation?

This question was objected to by the accused on the ground that it was repetitious.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I do not know.

120. Q. Do you recall on June 6, 1947 making this statement?

(Showing statement to witness.)

A. I remember.

121. Q. Is that statement in your own handwriting?

A. Yes.

122. Q. Do you recall writing in this statement as follows: "The commandant said the chief surgeon, Uno, asked him for the two remaining prisoners for an educational operation for the benefit of the younger surgeon officers, and that he gave him permission."?

This question was objected to by the accused on the ground that it called for an answer that would be prejudicial to the rights of the defendant Asano and an accused would be testifying against a codefendant.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember this.

123. Q. Then in reality you did know where the permission came from for this operation, didn't you?

A. I heard those words from the commanding officer after the end of the war and I believed them. After I was placed in the stockade I found out that what I believed was wrong and that Uno, the head medical officer, had performed an operation and the operation did not go well. After the end of the war I did not hear from the commanding officer that what I believed was wrong but I felt that they were wrong.

CERTIFIED TO BE A TRUE COPY

James P. Kenny 336
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.
Lieut. Col.,
Judge Adv.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out this answer on the ground that it was hearsay and that it was irrelevant and immaterial.

The judge advocate concurred but moved that it be stricken on the ground that it was not responsive.

The commission directed that the answer be stricken out on the ground that it was not responsive.

124. Q. Now, you have said that when the commanding officer ordered anything concerning the head medical officer it did not go through you, the executive officer. Do you remember making that answer?

A. I remember.

125. Q. In reality, wasn't Uno just another head of a department of the naval guards?

A. He is a department head.

126. Q. And were you not the second senior line officer at the naval guards?

A. As a line officer I was next in seniority.

127. Q. And as a line officer you had the right to give Uno orders from the commanding officer did you not?

A. No, I do not have the authority. This is stated explicitly in the rules and regulations.

128. Q. You have not the authority to tell Uno how to conduct an operation but you have the authority to tell him anything else. Is that not right?

This question was objected to by the accused on the ground that it was vague.

The judge advocate withdrew the question.

129. Q. You testified that you only heard of the disposition of the prisoners after the end of the war. Is that correct?

A. No, I heard about one week after the bombing that the prisoners had been operated on at the sick bay and that the operation had not gone well and that he had died.

130. Q. When did you hear that one of the prisoners had been killed by a bayonet?

A. This was after the end of the war.

131. Q. Did you hear the witness Kanai testify that you were present in the line of spectators when Tanaka killed the prisoner with a bayonet?

A. I did.

132. Q. Was Kanai telling the truth?

A. He was stating something that had no basis at all of truth.

133. Q. Can you give the commission any reason why Kanai should tell such a falsehood about you?

A. I do not know Kanai at all and even when he was on the witness stand I did not know what department he belonged to.

CERTIFIED TO BE A TRUE COPY

James P. Emery

337

JAMES P. EMERY,
Lieutenant, JAGC,
Judge-Advocate.

134. Q. Do you know Lieutenant Kinoshita?

A. I do. I would like to explain further about Kanai. As I recall the witness Kanai in answering a question by the judge advocate stated that at the scene there were about thirty persons and there were as I recall about three officers. He was quiet for a short while and then he suddenly said that Commander Nakase was standing among the spectators and then after that no questions were asked him concerning this.

135. Q. Did you hear Lieutenant Kinoshita say that he heard your voice outside the battle dressing station while the operation was in progress?

A. I did.

136. Q. Can you give this commission any reason why Kinoshita should tell a falsehood about you?

A. I think that Kinoshita is a quiet person but according to his testimony he was involved to a certain extent in this incident and as he himself was involved in this incident I believe that all the persons in the sick bay talked about this and for some reason wished to involve the executive officer in it.

137. Q. Was Nagashima a member of the sick bay personnel?

A. No.

138. Q. Can you give this commission any reason why Nagashima, the senior petty officer of the division which you commanded, would tell a falsehood about you?

A. Nagashima was good in office work but as I did not use him directly I did not work directly with him but according to what I am told by persons who had used him such as the junior officer in charge of the guards and the officer in charge of the gunnery storeroom, it was stated that Nagashima could not be relied upon. This came up on the appointment for the senior petty officer of the guard. The duties of this person was to stand between the warrant officer, the officers and the enlisted men and to liaison between them and therefore I stated specifically that a person who was reliable be selected and Nagashima was named and he was too unreliable to place in such an important position. Through this it could be seen what sort of person Nagashima was. There was also the case of the gunnery storeroom, a report is sent in at the end of the month.....

The commission announced that the answer was not responsive and directed that the question be repeated to the witness and directed the witness to answer the question.

A. (Cont.) There is no reason for his lying, but according to his character he is a person who lied and I was just giving an example.

139. Q. Since Nagashima wasn't a member of the hospital personnel, did he have to obey Vane's orders to dispose of a prisoner?

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.

CERTIFIED TO BE A TRUE COPY

James P. Lemmy
JAMES P. LEMMY,
Lieutenant, USN,
Judge Advocate.

338

1148

A. According to regulations he did not have to obey the orders unless it was his direct superior.

140. Q. And were you not Hagashina's direct superior?

A. I was his division officer.

Reexamined by the accused:

141. Q. Were the two prisoners removed from the guard house without your permission?

A. I was told nothing about it.

142. Q. Where did you make this statement that the judge advocate questioned you upon?

A. I wrote this at the stockade.

143. Q. The stockade at Guam?

A. Yes.

144. Q. Were you in solitary confinement at the 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.

Commander Carlson, a counsel for the accused, read a written plea in abatement on behalf of the accused Ueno, Chinato, on the ground of the misjoinder of parties, appended marked "80."

Commander Carlson, a counsel for the accused, read a written plea in abatement on behalf of the accused Imano, Shimpel, on the ground of the misjoinder of parties, appended marked "77."

The judge advocate made no reply.

The commission announced that the pleas were denied.

145. Q. You were asked by the judge advocate: "Did Hagashina who was not a member of the sick bay have to obey the order of Ueno to dispose of the prisoner?" You replied, "According to regulations he did not have to obey the order unless it was from his direct superior." But in the military service, especially in a place like Truk where it was in the front line and under the circumstances when a person was ordered by a high ranking officer, could he have rejected that order?

A. The enlisted men know very little about rules and regulations. They are not trained that way and if it is an order from a warrant officer and above they would just carry those orders out blindly.

Neither the judge advocate nor the accused desired further to examine this witness.

CERTIFIED TO BE A TRUE COPY

James P. Ensey

339

JAMES P. ENSEY,
Lieutenant, USN,
Judge Advocate.

1149

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as an accused.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, October 21, 1947.

CERTIFIED TO BE A TRUE COPY

340

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

1150

INTERVIEW

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, October 21, 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. Ryan, U. S. Navy, and
Lieutenant James P. Kenry, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name and former rank.
A. Former Vice Admiral Arima, Navy.
2. Q. If you recognize any of the accused, state their names and former ranks.
A. Rear Admiral Asano, Shimpai. The person next to him is Lieutenant
Commander Nakase. The rest I do not know.

Examined by the accused:

3. Q. Do you know the defendant Asano?
A. I do.
4. Q. How do you know him?
A. In 1940 we were in the same fleet together. I was the commanding officer
of the cruiser Kumano and Asano was the executive officer of the cruiser
Susuga. In February 1944 for two months he was my subordinate as I was the
commanding officer of the Fourth Base Force and he was the commanding officer
of the Forty-first Naval Guards. Three months after this I worked together
with him as I became the Chief of Staff of the Fourth Fleet.
5. Q. What was Asano's general reputation?

CERTIFIED TO BE A TRUE COPY

James P. Kenry
JAMES P. KENRY,
Lieutenant, USN,
Judge Advocate.

341

1151

A. While I was on the Kumano, the commanding officer of Captain Asano's ship once said to me that "Asano brings everybody on the ship together and he is very good, he knows his rules and regulations well so I can go about my duties without any worries." The staff officer of the headquarters stated that the commanding officer, Asano, was a very fair person and in case of conferences if he was present would be able to get together and the conference would go smoothly. Asano's reputation was very good even among the army and I was told many times by the chief of staff of the army that commanding officer Asano helped us very much, and whenever I went and inspected the outlying islands I found that the natives liked Asano very much. His reputation among them was good. Also he was always saying, "Look after the natives properly and personally." The commander in chief was always asking for Asano's opinion on things. He was considered a very reliable person.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

An accused, Asano, Shinsai, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you an accused in this case?
A. Yes, I am.

Examined by the accused:

2. Q. Have you ever had duty on Truk?
A. Yes.
3. Q. During what periods of time did you have duty on Truk?
A. From the 21st of February 1944 till the 31st of July 1944.
4. Q. Where was your place of duty and what was your position there?
A. I was the commanding officer of the Forty-first Naval Guards whose duty was to defend Truk and its headquarters were on Dulon.
5. Q. Tell us briefly under what conditions Truk was 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 not sustained.

- A. Do you mean at the time of the incident?

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

342

1152

6. Q. Tell us briefly the conditions at the time of the incident.

A. The battle conditions at this time at Truk were the continuous night and day bombings by the American forces. Especially night bombing. B-24's which presumably were based on Eniwetok Island came one plane at a time at intervals of thirty minutes to one hour from sunset until sunrise. During the day B-24's presumed to have come from the Admiralties bombed Truk in formation of thirty to forty planes.

7. Q. Did you have any prisoners in custody at the Forty-first Naval Guards at this time?

A. There were prisoners in custody.

8. Q. How did these prisoners come to be held in custody at the Forty-first Naval Guards?

A. At the time I came to take up duties at the guard unit on Truk, there was the Fourth Fleet Headquarters, and there was the Fourth Base Force. I was the direct subordinate commanding officer to this Fourth Base Force. The first prisoner that was captured after I arrived to take up my duties there was captured under the orders of the Fourth Base Force Headquarters. At the end of April when the Fourth Base Force Headquarters dissolved, then I came directly under the Fourth Fleet Headquarters. Still receiving orders to the same effect and prisoners captured by other units were held in custody at the guard unit according to the orders of the Fourth Fleet Headquarters.

9. Q. What measures did you take concerning the prisoners that were held in custody at the Forty-first Naval Guards?

A. While the prisoners were held in custody, according to orders at the Forty-first Naval Guards I gave instructions that no mistakes be made concerning the handling of the prisoners. And also I contacted the headquarters and tried to get them sent back to Japan as soon as possible.

10. Q. Are there any prisoners who were sent back to Japan while you were commanding officer?

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. The first prisoner that was captured after I came to take up duties was a prisoner of a task force in February. This prisoner was sent back to Japan in the beginning of March by plane. Other to this six prisoners were taken into custody on the way back to Rabaul. These six prisoners at this time arrived before I took up duties as the commanding officer of the guard unit and were sent back to Japan by plane together with an interpreter and a guard and it is a fact that they arrived safely in Japan.

11. Q. Were there any prisoners held in custody at the Forty-first Naval Guards about the twentieth of June 1944?

A. There were.

12. Q. How many were there?

A. There were two prisoners who had survived the bombing.

COPIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

343

1153

13. Q. How many prisoners were there that died of bombing?

A. Three.

14. Q. Then there were five prisoners altogether. Is this correct?

A. Yes.

15. Q. Tell us what became of these prisoners.

A. It was about the 19th of June 1944. As I recall several formations of B-24's dropped bombs on our unit. I am not sure of the time but it was near noon or the early afternoon. As a result of this bombing there was considerable damage and unfortunately three of the five prisoners confined died instantly and two survived. It is also a fact that one of my men, a seaman, also died of this bombing. At this time I had taken shelter in an air raid shelter on the side of the mountain in front of the entrance of the guard unit. I felt a great vibration and as soon as the air raid was over I left the air raid shelter and went to inspect the damage. At this time I saw that the place of confinement where the prisoners had been confined had been damaged and I went toward the place of confinement. At this time there were several persons already there and I saw this from a considerable distance but I saw the prisoners that had unfortunately been killed. I went a little closer and when I saw these persons - what I felt at this time was that they did not have any large external wounds through bomb fragments of the bombing. The blast seemed to have been a very strong one and the door of the cell had been blown open. The prisoners had been sprayed out from this cell and instantly I thought about the other prisoners and a person nearby said to me, "The other prisoners did not die. There is nothing to worry about." At this time I ought to have confirmed as to the condition of these prisoners who had survived and I regret this very much. Also I had to find out to what extent the damage had been done. Also I had to take emergency measures. I received this report that the prisoners were all right and I thought I could rely upon that report and also I had to go about my other duties. Persons who had taken shelter from the air raid were all going back to their barracks and there was a lot of confusion, but I am sure there was one of my subordinates who was near me, I forget who he was, I ordered all the necessary measures to be taken. I went to see the main points of damage. At the same time the executive officer made all the necessary arrangements and I had then started to work. About one hour later I made the regular report to the Fourth Fleet Headquarters as to the main damage and its conditions.

16. Q. Tell us about the two remaining prisoners.

A. I did not see the two prisoners personally. It was two or three days after the bombing I think it was Nakase who came to me and said the two prisoners were shivering and had no appetite and will not eat anything they are given and I think it may have been Uno who said this to me but I remembered ordering that the prisoners be taken care of and that they be kept under observation. I immediately did not receive any reports as to the conditions, and I thought they had gotten over their symptoms of sickness after the bombing and that they were getting better and that they were getting well. This was my impression.

17. Q. Then what happened?

A. Several days after the bombing I think it was in the evening because as I recall the lights were all on, the head medical officer, Uno suddenly came to my room and said the following about the two prisoners: Uno said it is

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

344

1154

about the two prisoners - the condition is not well and the symptoms and causes are not clear, and that they are weak. I said, "Can't they be sent back to Japan? There should be planes or submarines and if transportation is available can't they be sent back?" Uno said, "Especially in their present status it would be dangerous to send them back on planes or in submarines. They might die on the way and I will not take the responsibility for this." I asked, "What do you think should be done?" Uno said as I said before: "As I can not determine the causes of sickness and I have no definite way of treating them. I would like to find the cause and an operational diagnosis may be the only way to do so." I stated, "If there is no other way and this is the best and only way left I have no objections to your proposal." Uno said, "It is dangerous to leave them as they are. I would like to perform an operational diagnosis on them." My impression, as he was the head medical officer and had directly seen the prisoners and as Uno was a doctor, I did not know the cause of the sickness. Also Uno looked like a gentle person who had just arrived a short time before to take up his duties. As he looked like a gentle person I think he had a respectable way of speaking and his actions were respectable. Concerning medical section affairs he had just come to take up duties and he had placed his opinions as to sending doctors to outlying islands. I did not think of him as an unusual person or have any doubts about him but just in case I stated to him, "The prisoners are weak, if they die by the operation mistaken conclusions may be drawn," and then I stated to him to be careful and Commander Uno understood this feeling well.

18. Q. Do you know international law and how prisoners ought to be handled?

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 10:15 a.m., took a recess until 10:31 a.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Isano, Shimpai, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

19. Q. Then what happened to the two prisoners?

A. It was three days after I had this conversation with Uno that Uno came to me and said, "The result of the operation talked about the other day was not good, it failed."

CERTIFIED TO BE A TRUE COPY

James P. Benny
JAMES P. BENNY,
Lieutenant, USN,
Judge Advocate.

345

1155

20. Q. What did he mean when he said the results were not good and it had failed?

A. When Veno stated that the results were not good and it failed, it was vague and not clear and I asked him if it was because he had performed an unreasonable operation. At first he started out in order to treat and diagnose the prisoner but as it went along there was no hope for his recovery and as this operation had gone on he thought there was no chance and that he had ordered the prisoner put at ease. This he stated clearly to me.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out this answer on the ground that an accused was testifying against a codefendant.

The commission announced that the motion to strike was denied.

21. Q. Veno stated that before the operation he received an order from the executive officer, Nakase, saying that it was from the commanding officer to dispose of the prisoner. Is there such a fact?

A. There is absolutely no such fact.

22. Q. Did you talk about anything before this with Nakase?

A. No.

23. Q. What measures did you take when you talked with Veno and Veno said that the operation did not go well and he had ordered the prisoner disposed of?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused withdrew the question.

24. Q. Do you know of the fact that Tanaka stabbed a prisoner back of the sick bay?

A. At this time I knew nothing about it.

25. Q. Have you ever ordered this before?

A. Absolutely no.

26. Q. Did you hear about this from anyone or through rumors?

A. I heard nothing about it but there is this incident at the end of March of this year I was questioned about this incident for the first time at the stockade. At this time the investigator said, "The two prisoners who survived the bombing, one was operated on by Veno and his subordinates and was beheaded by a sword, the other was stabbed to death by sick bay personnel and the sick bay personnel have confessed this. Do you know anything about the other prisoner who was stabbed?" I had heard after the end of the war that Briguchi had beheaded the prisoner but up to this time had not heard about the other prisoner who had been stabbed.

27. Q. Did you go to the scene when Briguchi beheaded the prisoner?

A. No, there is no truth in such a fact.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

346

1156

28. Q. You testified that you were not at the scene but Kinoshita testified that he saw you at the scene. Are you sure that you were not at the scene?
A. I am sure of this.

29. Q. In Brigushi's statement it stated that on the way back from the scene he was told by the commanding officer that as a beginner he did well and Brigushi took the stand and testified that this was not true and that he had been told this at the wardroom. Do you know of such an incident?
A. There is no such incident.

30. Q. Does Brigushi sit near you at the wardroom?
A. No, it is usual for me to eat alone in the commanding officer's room. Unless this was a special occasion I would not eat together with the other officers in the wardroom.

31. Q. It is stated in charge one, specification one, that you cut a prisoner with a sword. Did you kill or cut a prisoner with a sword?
A. Absolutely not.

32. Q. It is alleged in specification two of charge one that you bayoneted and killed a prisoner. Did you bayonet and kill a prisoner as alleged?
A. Absolutely not.

33. Q. In specification one of charge two it is alleged that you performed operations on the chest, abdomen, scrotum, thigh and toe of a prisoner, therefore abusing, torturing and mistreating a prisoner. Did you do these things that are alleged in these charges and specifications?
A. No.

34. Q. In specification two of charge two it states that you permitted Veno, Chisato, Nakase, Shohichi and Kobayashi, Kazumi to cut, inflict wounds on a prisoner without justifiable cause and also that Veno, Chisato, Nakase, Shohichi, Brigushi, Takeshi and Kobayashi, Kazumi were permitted by you to behead a prisoner with a sword. In specification three of the same charge it is alleged that you permitted Veno, Chisato, Nakase, Shohichi, Nagashima, Mitsuo and Tanaka, Sada to bayonet a prisoner and that you permitted this and therefore you did not carry out your duties. Did you disregard your duty and permit this?

This question was objected to by the judge advocate on the ground that it invaded the province of the commission.

The accused replied.

The commission announced that the objection was sustained.

35. Q. In specification three of charge two did you give silent consent or permit other to the persons I have stated before to kill, mistreat or wound a prisoner?

This question was objected to by the judge advocate on the ground that it invaded the province of the commission.

The accused made no reply.

The commission announced that the objection was sustained.

TESTIFIED TO BY A TRUE COPY
James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

Cross-examined by the judge advocate:

36. Q. Who was in charge of the prisoners at the Forty-first Naval Guards?

A. I can state clearly that the executive officer, Rahner, as the commanding officer of the guards and also as the senior member of my subordinates, was in charge.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, moved to strike out this answer on the ground that an accused was testifying against a codefendant.

The judge advocate replied,

The commission announced that the motion to strike was denied.

37. Q. Were you in charge of the prisoners at the Forty-first Naval Guards?

A. Naturally, yes.

38. Q. Did you receive daily reports concerning these prisoners?

This question was objected to by the accused on the ground that it went beyond the scope of the direct examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Unless there is something up I would receive no reports. I received no daily reports and I did not request any daily reports but before curfew the executive officer and the officer-of-the-day would make an inspection of the guard unit and report to me and if it is reported that everything is all right I thought it was all right.

39. Q. Were you advised each time that the Forty-first Naval Guards got prisoners while you were in charge of the Forty-first Naval Guards?

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. Naturally there was a report.

40. Q. Then you know that you had five prisoners in your custody in June of 1944. Is that correct?

A. Yes.

41. Q. Why was it necessary to give instructions not to make mistakes with relation to prisoners?

A. When I first came to take up duties at the guard unit there was the one prisoner who I testified about before who was the first prisoner to be caught there and as they had been caught there there may have been some persons who may mistreat prisoners, so I gave these instructions.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

348

1158

42. Q. You gave these instructions because you were afraid that prisoners would be mistreated at your guard unit. Is this correct?

A. I did not give these instructions as stated.

43. Q. What do you mean by that answer? Did you or did you not give instructions not to make mistakes with relation to prisoners?

This question was objected to by the accused on the ground that it was vague and the judge advocate was misquoting the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. In what instance do you mean?

44. Q. I am asking you about the testimony that you gave on direct examination. Do you remember testifying a few minutes ago that you said not to make mistakes with relation to prisoners?

A. Wasn't this concerning Ueno?

45. Q. Who had the responsibility for making the arrangements for the transportation of prisoners to Japan?

A. Concerning the sending of prisoners back to Japan it is up to the headquarters and when at the guard unit it is thought this is a good chance to send prisoners back, an opinion would be expressed to headquarters and I do not have the responsibility for sending the prisoners back to Japan.

46. Q. In this first conversation that you had with Ueno concerning these prisoners, will you tell us exactly what you said to him and what he said to you?

A. Ueno said, "It is about the two prisoners, the condition is not good, the cause and symptoms of their sickness is not clear and I am troubled," and I said, "The war conditions are getting worse and the transportation to Japan can be thought to be difficult. I think our submarines and planes go to Japan. In case of such transportation is it possible to send them to Japan?" Ueno said, "In their present condition I will not take the responsibility for sending them. If this is forcefully undertaken they may die on the way."

47. Q. Is that all you said to him and all he said to you?

A. There is some more.

48. Q. Tell us.

A. I said, "What can be done for them?" Ueno stated, "I would like to discover a definite way of treating them, they cannot be left as they are. I would like to operate on them to find the cause and also to treat them." Answer: "Do you think this is the best way?" Ueno: "At present I think there is no other way." Answer: "Do you mean you want to go through with the operation?" Ueno: "Yes." Answer: "Be careful and take special care. If they should die mistaken conclusions may be taken." Ueno: "I understand your intention well." That is all.

49. Q. Did Ueno give you any other reason why he wanted to operate on these prisoners in that conversation?

A. He gave no other reason other to the one I have mentioned.

CERTIFIED TO BE A TRUE COPY

349

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1159

50. Q. In this conversation that you had with Ueno did he use the words, "experiment" or "dissection"?

A. I have no recollection of such words being used.

The commission then, at 11:28 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.

An accused, Asano, Shinsai, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

51. Q. Do you recall on June 6, 1947 having given a different reason why Ueno wanted to perform this operation?

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. I do not remember.

52. Q. Is this statement in your own handwriting? (Witness shown statement.)

A. Yes.

53. Q. Do you recall writing in that statement: "Ueno: I think it will be a good experiment, especially it will be a good study for the younger ones; furthermore, in preparing for our future battle, this will be very effective." Do you remember having written this down?

This question was objected to by the accused on the ground the judge advocate was not testing the credibility of the witness but only having one defendant testify against a codefendant.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember writing this.

54. Q. That was your recollection of the conversation at that time. Is that correct?

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

350

1160

This question was objected to by the accused on the ground that it was repetitious.

The judge advocate withdrew the question.

55. Q. Do you recall writing down in that statement: "Veno: The cause being what it is right now there is no dependable treatment, but in the event the prisoners' condition do get worse, I am planning to make a suitable operation. Furthermore, if there is no hope left, I hope to perform a dissection; therefore I would like to have your consent." Do you remember writing that down?

This question was objected to by the accused on the ground that it called for one defendant to testify against a codefendant and furthermore, it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

56. Q. Was Veno in the habit of consulting you when he performed an operation?
A. As the head medical officer he is a subordinate under my responsibility. In case of an operation it is not necessary for him to get my permission everytime an operation is to be performed. But in case of an operation on a warrant officer or above or persons of high rank or important persons he has to report the condition of their health, what steps he means to take and how they are getting along to me. In the case how would it be in the case of the prisoners? These prisoners were held under my custody under my responsibility and therefore, the sickness of the prisoners is important. For the same reason that I have stated above the head medical officer would have to report to me the condition of their health, what steps he would take and how they were getting along, and also the steps that he was taking. Also in the case of prisoners it involved the moving of them from the place of confinement or their permanent places where they are staying, therefore, it is necessary to receive the permission of the person responsible beforehand.

57. Q. Did you give Veno permission to perform this operation?
A. I do not remember giving him any permission.

58. Q. In reality didn't Veno ask you for permission to perform a dissection on these people?

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. No. In my opinion he was trying to feel me out and if he had stated this he would have had to come to me and say, "I am planning to do so and so" and would have to ask for this permission.

DECLARED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

351

1161

59. Q. Did you give him permission to perform this operation?
A. I was not opposed to the opinion of the head medical officer but I did not give him the permission to perform this immediately.

60. Q. Do you recall writing down in that statement in your own handwriting: "Umno: I do not mean to do it right away; I will think it over, but I would like for you to keep in mind that I have hopes to carry out the dissection if worse comes to worse. Apans: If you want to do it that bad, I think you may do it, but please think it over once more." Do you remember writing that?

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. I remember writing this.

61. Q. When did you first learn that the prisoner who had been operated on had been beheaded by Briguchi?

A. The beginning of September after the end of the war.

62. Q. In September of 1944?

A. 1945.

63. Q. When did you first learn that the other prisoner had been bayoneted to death?

A. It was in March of this year, the first time I was questioned by the investigators about this incident.

64. Q. Although this incident happened in June of 1944, you didn't learn of it until March of 1947. Is that what you want us to believe?

A. Yes.

65. Q. With the exception of yourself who else at the Forty-first Naval Guards could call a general assembly?

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. Other to myself it is the executive officer.

66. Q. Does any medical officer, or any officer for that matter, junior to you and Nakase have authority to call a general assembly at the Forty-first Naval Guards?

A. They could not call a general assembly.

67. Q. Who was the commanding officer of the Forty-first Naval Guards in June of 1944?

A. It was I.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

352

1162

68. Q. And you wish us to believe a lieutenant commander took two prisoners out of the brig and murdered both of them solely on his own orders?

A. I am convinced that these murders were done without any permission whatsoever from myself.

69. Q. You wish this commission to believe that a general assembly was called at the Forty-first Naval Guards in June of 1944 and that approximately twenty to forty persons were present at the beheading and that twenty to forty persons were present at the bayoneting and you never heard of that until the dates you gave us?

A. I knew nothing about it at the time of the incident.

70. Q. In reality didn't you yourself give orders to Ueno through Nakase to dispose of these prisoners?

A. It is preposterous. I have never dreamed of such a thing.

71. Q. After this conversation with Ueno what were you advised as to what had become of these prisoners?

A. As I testified this morning other to Ueno who reported this to me I heard from no one about them.

72. Q. When did Ueno report this to you?

A. I remember that the conversation I had with Ueno was held several days after the bombing and when Ueno reported to me about the prisoners again was about ten days after the bombing.

73. Q. What did he report to you?

This question was objected to by the accused on the ground that it called for an answer where one defendant would be testifying against a codefendant and that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was before the noon meal as I had gone out to inspect the anti-tank obstructions. It was when I was about to return Ueno reported this to me on the steps of the administration building. He said, "It is about the prisoners - I had to operate on them but it did not go well." I asked him, "Did they die? Did both of them die?" He reported, "It did not go well and the condition of the prisoner was not so well in the first place and as for myself at this time I thought that they had no chance for recovery and it became troublesome so I killed them." He stated this specifically. I stated to him the difference from what I was told. I asked, "Why did you go so far?" Ueno said, "I did not intend to go so far but as I thought they did not have a chance anyway I did it. I apologize for it."

The accused moved to strike this answer out on the ground that one defendant was testifying against a codefendant.

The commission announced that the motion to strike was denied.

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

353

1163

74. Q. And you expect this commission to believe that the medical officer of your detachment killed two prisoners and you knew nothing about it other than what you told us?

A. Yes.

Reexamined by the accused:

75. Q. Were you present at the operation which Commander Ueno is charged with having performed?

A. No.

76. Q. What do you understand by the word "dissection"?

A. What we understand as "dissection" means a cutting operation is performed on a dead body from a medical standpoint.

77. Q. Did Ueno ever ask your permission to perform such an operation that it is alleged he performed in specification one of charge two?

A. I never knew even once that it was such an operation.

78. Q. Did you in any way approve either by innuendo or silence or positive declaration what is alleged in specification one of charge two?

A. No.

79. Q. Did you in any way aid and abet in such an operation?

This question was objected to by the judge advocate on the ground that it was for the commission to decide this question and not the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. No.

80. Q. Did you in any way aid and abet in the beheading and the killing and stabbing of these two prisoners that you are actually charged with having done in charge one?

A. No.

81. Q. What is a general assembly?

A. General assembly means in case it became necessary to assemble all the persons in the unit.

82. Q. Now in case, at the time of this incident, you had been absent from the command and Nakase had been absent from the command, who then would have ordered the general assembly?

A. If both of us were absent in a case such as this incident no one possibly could have made such an order.

83. Q. For a general assembly?

A. Yes.

84. Q. Suppose both you and Nakase had been killed in action and a general assembly would have been necessary. Who would have ordered it?

A. The next senior line officer.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

354

1164

85. Q. Then it would be possible for another person other to yourself and Nakase to order a general assembly?

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.

Recross-examined by the judge advocate:

86. Q. If your understanding of the word "dissection" is as you have stated, in giving permission to Ueno to operate was it also your understanding that there were going to be two dead bodies?

A. I absolutely have no recollection of such.

87. Q. Well, how could you have given him permission to perform a dissection unless you believed that there were actually going to be two dead bodies?

This question was objected to by the accused on the ground that the judge advocate was misquoting the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Concerning this incident I did not know that the prisoners had been experimented and dissected upon by Ueno. In March of this year, when I was questioned by the judge advocate for the first time, I was told that Ueno confessed as follows: That he experimented on the prisoners, that he dissected the prisoners, ordered them beheaded. I wondered greatly at the time, whether he had confessed this or the story was made up by the judge advocate as a leading question to draw me out. I may have stated at this time such a thing thinking back on it because if he had been dissected he would have had to be beheaded first and then the dissection performed. I was not sure if Ueno had said this and would like to have some means of definite recollection. If I had said this and wrote this in the statement I would like to expunge it at this time.

88. Q. Do you deny at this time that in a conversation with Ueno you discussed the question of the dissection of the prisoners?

A. I deny this.

89. Q. Yet you have admitted that you wrote this statement. Is that correct?

A. It is correct.

90. Q. And not only did you write this in your own handwriting but after it was written by you it was translated into English and then it was read back to you and you signed the English copy. Isn't that true?

CERTIFIED TO BE A TRUE COPY.

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

355

1165

This question was objected to by the accused on the ground that the document had not been admitted into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

Examined by the commission:

91. Q. This commission understands from your testimony that Uno reported to you that the operation had gone badly, that the condition of the prisoners became hopeless and therefore he killed them and that he apologized for this. Is that correct.

A. It is correct.

92. Q. Please tell the commission what actions, if any, did you take after you received this report.

A. It was the same day or the day after that I went to headquarters and I stated at headquarters as I have stated before that such a regrettable incident had occurred and that the doctor at the incident on his own had killed two prisoners. I remember reporting this to the Chief of Staff, Arima. As for Uno if he had done something otherwise opposed to what I reported to him. As this was done contrary to the orders of his superior officer on his own he would be punished severely but according to the conditions at that time and as he showed he was regretful for what he had done I had determined to let him off.

Recross-examined by the judge advocate:

93. Q. By this last statement do you mean to say that you told the chief of staff that Uno had killed these two prisoners during the operation?

This question was objected to by the accused on the ground that it was improper.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Yes.

94. Q. You led Arima to believe that they had died during the operation. Is that correct?

A. I stated at this time that Commander Uno had according to his own judgment done something that he ought not to have done, during the operation his way of thinking changed and that he had done such a thing.

95. Q. Did you tell Arima that Uno had murdered these prisoners?

A. I remember telling him.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

356

1166

Neither the judge advocate, the accused, nor the commission desired further to examine this witness.

The witness stated as follows:

There is one thing I would like to state. When he was being repatriated to Japan in February of last year, Wane came to me and his last greeting as he left, he said, "I would like to apologize for this incident which I brought about for the actions are my own responsibility."

The accused moved to strike out this statement on the ground that one defendant was testifying against a codefendant.

The commission announced that the motion to strike was denied.

The commission then, at 3:10 p.m., took a recess until 3:25 p.m., at which time it reconvened.

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

Robert L. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Commander Carlson, a counsel for the accused, made a plea in abatement for the accused Wane, Chinato, on the ground of misjoinder of parties, appended marked "QJ."

Commander Carlson, a counsel for the accused, made a plea in abatement for the accused Nakano, Shokichi, on the ground of misjoinder of parties, appended marked "QK."

The judge advocate made no reply.

The commission announced that the pleas were denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion for a directed verdict of acquittal in behalf of Asano, Shinsui, appended marked "QJ."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion for a directed verdict of acquittal in behalf of Nakano, Shokichi, appended marked "QK."

The judge advocate replied.

The commission announced that the motion was denied.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

357

1167

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion for a directed verdict of acquittal in behalf of Kobayashi, Kasumi, appended marked "UU."

The judge advocate made no reply.

The commission announced that the motion was denied.

The defense rested.

Mr. Kusata, Hideo, a counsel for the accused, made the following statement:

At this time I would like to say a few words in behalf of the defendants. The defendants have testified under oath on the witness stand and as the commission does not understand Japanese we would like to have the statements of the accused read in English and waive the reading in Japanese.

The commission announced that the request was granted.

The statements of the accused, the reading of which in Japanese was waived, are appended as follows: Tanaka, Susa, marked "VV," Kobayashi, Kasumi, marked "XX," Higuchi, Takechi, marked "ZZ," Ueno, Chisato, marked "BBB," Nakase, Shunichi, marked "DDD," Asano, Shimpai, marked, "FFF."

An interpreter read an English translation of the statement of the accused, Tanaka, Susa, appended marked "UU."

An interpreter read an English translation of the statement of the accused, Kobayashi, Kasumi, appended marked "XX."

An interpreter read an English translation of the statement of the accused, Higuchi, Takechi, appended marked "AAA."

An interpreter read an English translation of the statement of the accused, Ueno, Chisato, appended marked "CCC."

The commission then, at 4:07 p.m., took a recess until 4:20 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.

An interpreter read an English translation of the statement of the accused, Nakase, Shunichi, appended marked "EEE."

An interpreter read an English translation of the statement of the accused, Asano, Shimpai, appended marked "GGG."

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Wednesday, October 22, 1947.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

358

1168

THIRTY-FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, October 22, 1947.

The commission met at 9:15 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry E. Rescoe, 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. Hogan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written opening argument, appended marked "III."

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

Mr. Kawanaka, Tahara, a counsel for the accused began reading a written argument, appended marked "III."

The commission then, at 10:25 a.m., took a recess until 10:45 a.m., at which time it reconvened.

Presents: All the members, the judge advocate, the accused, their counsel, and the interpreters.

Robert E. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Kawanaka, Tahara, a counsel for the accused continued reading a written argument, appended marked "III."

An interpreter read the English translation of that portion of Mr. Kawanaka's argument, which had been read, appended marked "III."

The commission then, at 11:27 a.m., took a recess until 2 p.m., at which time it reconvened.

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

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.

Mr. Karasawa, Takami, a counsel for the accused, concluded reading a written argument, appended marked "III."

An interpreter read an English translation of that portion of Mr. Karasawa's argument, which had been read, appended marked "JJJ."

Mr. Kuzuta, Hideo, a counsel for the accused, began reading a written argument, appended marked "III."

An interpreter read an English translation of that portion of Mr. Kuzuta's argument, which had been read, appended marked "III."

Mr. Kuzuta, Hideo, a counsel for the accused, continued reading a written argument, appended marked "III."

An interpreter read an English translation of that portion of Mr. Kuzuta's argument, which had been read, appended marked "III."

The commission then, at 3:33 p.m., took a recess until 3:45 p.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Kuzuta's argument, which had been read, appended marked "III."

Mr. Kuzuta, Hideo, a counsel for the accused, continued reading a written argument, appended marked "III."

An interpreter read an English translation of that portion of Mr. Kuzuta's argument, which had been read, appended marked "III."

Mr. Kuzuta, Hideo, a counsel for the accused, waived the reading in Japanese of the final portion of his argument, appended marked "III."

An interpreter read an English translation of the final portion of Mr. Kuzuta's argument, appended marked "III."

The commission then, at 4:55 p.m., adjourned until tomorrow, 8:30 a.m., Thursday, October 23, 1947.

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

360

1170

THIRTY-SECOND DAY

United States Pacific Fleet,
Commander Marianne,
Guam, Marianas Islands.
Thursday, October 23, 1947.

The commission met at 8:35 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry E. Rascoe, 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. Hogan, U. S. Navy, and
Lieutenant James P. Korry, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Tsuchiro, a counsel for the accused began reading a written
argument, appended marked "XXX."

An interpreter read the English translation of that portion of Mr.
Akimoto's argument, which had been read, appended marked "XXX."

Mr. Akimoto, Tsuchiro, a counsel for the accused continued reading a
written argument, appended marked "XXX."

An interpreter read the English translation of that portion of Mr.
Akimoto's argument, which had been read, appended marked "XXX."

The commission then, at 10:12 a.m., took a recess until 10:45 a.m., at
which time it reconvened.

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

Robert E. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Tsuchiro, a counsel for the accused, continued reading a
written argument, appended marked "XXX."

An interpreter read the English translation of that portion of Mr.
Akimoto's argument, which had been read, appended marked "XXX."

CERTIFIED TO BE A TRUE COPY

361

James P. Korry
JAMES P. KORRY

CERTIFIED TO BE A TRUE COPY

JAMES P. KORRY
Lieutenant, USN,
Judge Advocate

1171

Mr. Akimoto, Ichiro, a counsel for the accused, waived the reading of the final portion of his argument pertaining to the accused Iano, Shimpai in Japanese due to the fact that the accused Iano can understand English.

An interpreter read the English translation of that portion of Mr. Akimoto's argument of which the reading in Japanese had been waived, appended marked "HHH."

The commission then, at 11:45 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.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused read a written argument, appended marked "GGG."

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused waived the reading of his argument in Japanese, in open court at this time.

The commission then, at 3:25 p.m., took a recess until 3:45 p.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Lieutenant Commander Joseph A. Ryan, U. S. Navy, a judge advocate, read a written closing argument, appended marked "FFF."

The accused waived the reading of the final argument of the judge advocate in Japanese in open court at this time.

The trial was finished.

The commission was cleared.

The judge advocates were recalled and directed to record the following findings:

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

The first specification of the second charge proved in part, proved except the words "WAKABE, Shikida, then a lieutenant commander, IAN, and acting executive officer of the 1st Naval Guard, HIRAYASHI, Kamei, then a yeoman warrant officer, IAN, attached to the 1st Naval Guard," which words are not proved.

CERTIFIED TO BE A TRUE COPY

362

Lieutenant, USN,
Judge Advocate.

JAMES P. EMERY,
Lieutenant, USN,
Judge Advocate.

1172

The second specification of the second charge proved.
The third specification of the second charge proved.
And that the accused, Asano, Shinsai, 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, Kasumi, 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, Kasumi:
The first specification of the first charge proved.
And that the accused, Kobayashi, Kasumi, is of the first charge guilty.

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

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

The commission was opened. All parties to the trial entered.

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

The commission then, at 5:50 p.m., adjourned until 8:30 a.m., tomorrow, Friday, October 24, 1947.

CERTIFIED TO BE A TRUE COPY

Jane R. Kasey Lt. USN

TWENTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, October 24, 1947.

The commission met at 8:35 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 Oldham, yeoman third class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the twenty-second day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the
accused, made a motion on behalf of Asano, Shinsai, in arrest of judgment,
appended marked "QQQ."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the
accused, made a motion on behalf of Wano, Chisato, in arrest of judgment,
appended marked "RRR."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the
accused, made a motion on behalf of Nakase, Shohichi, in arrest of judgment,
appended marked "SSS."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the
accused, made a motion on behalf of Higuchi, Takeaki, in arrest of judgment,
appended marked "TTT."

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

364

1174

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion on behalf of Kobayashi, Kazumi, in arrest of judgment, appended marked "UUU."

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made a motion on behalf of Tanaka, Suetu, in arrest of judgment, appended marked "VVV."

The judge advocate replied.

The commission announced that the motion was denied.

Mr. Karasawa, Takami, a counsel for the accused, was called as a witness for the defense as to matters in mitigation, and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name?
- A. Karasawa, Takami.

Examined by the accused:

2. Q. Are you a defense counsel in this trial?
- A. Yes.
3. Q. Do you have documents in your possession which you wish to introduce into evidence as to matters in mitigation?
- A. Yes.
4. Q. Have these documents been translated into English?
- A. Yes.
5. Q. Do you wish to introduce these documents as evidence in mitigation for these defendants?
- A. Yes.
6. Q. For what defendants do you wish to introduce these documents in mitigation?
- A. I wish to introduce them on behalf of each of the accused.
7. Q. Have you read these documents?
- A. Yes.
8. Q. As a result of reading these documents what did you find?
- A. As a result of reading these documents I have discovered that these documents were written by relatives, friends, former teachers and persons who know well the character of each of the defendants and have found that they have been well written concerning the character of each of the defendants.

DECLARED TO BE A TRUE COPY

James P. Lenny
JAMES P. LENNY,
Lieutenant, USN,
Judge Advocate.

365

1175

9. Q. Have the judge advocates had a chance to look through these documents?

A. Yes.

The witness produced six documents in Japanese in mitigation on behalf of the accused, Tanaka, Sata, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 10" through "Exhibit 15."

The witness produced six documents, the English translations of "Exhibit 10" through "Exhibit 15" in behalf of the accused, Tanaka, Sata, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 10 (a)" through "Exhibit 15 (a)."

The witness produced five documents in Japanese in mitigation on behalf of the accused, Higashi, Takashi, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 16" through "Exhibit 20."

The witness produced five documents, the English translations of "Exhibit 16" through "Exhibit 20" in behalf of the accused, Higashi, Takashi, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 16 (a)" through "Exhibit 20 (a)."

The witness produced four documents in Japanese in mitigation on behalf of the accused, Kobayashi, Kawai, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 21" through "Exhibit 24."

The witness produced four documents, the English translations of "Exhibit 21" through "Exhibit 24" in behalf of the accused, Kobayashi, Kawai, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 21 (a)" through "Exhibit 24 (a)."

The witness produced fourteen documents in Japanese in mitigation on behalf of the accused, Ueno, Okada, and they were submitted to the judge advocate and to the commission and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 25" through "Exhibit 38."

EXHIBIT COPY

James P. Renny
JAMES P. RENNY,
Lieutenant, USN,
Judge Advocate.

366

1176

The witness produced fourteen documents, the English translations of "Exhibit 25" through "Exhibit 38" in behalf of the accused, Uno, Okamoto, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 25 (a)" through "Exhibit 38 (a)."

The witness produced eighteen documents in Japanese in mitigation on behalf of the accused, Nakano, Hashida, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 39" through "Exhibit 56."

The witness produced eighteen documents, the English translations of "Exhibit 57" through "Exhibit 75" in behalf of the accused, Nakano, Hashida, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 57 (a)" through "Exhibit 75 (a)."

The witness produced sixteen documents in Japanese in mitigation on behalf of the accused, Iwano, Shimada, and they were submitted to the judge advocate and to the commission and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 76" through "Exhibit 91."

The witness produced sixteen documents, the English translations of "Exhibit 92" through "Exhibit 107" in behalf of the accused, Iwano, Shimada, in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 92 (a)" through "Exhibit 107 (a)."

The witness produced one document, in English, in mitigation on behalf of the accused, Uno, Okamoto, and it was submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the document was so received and is appended marked "Exhibit 74."

10. Q. Are you going to read all of these documents in open court?
A. I wish to read a portion of these documents in open court.

11. Q. Do you wish to have these documents read in Japanese in open court?
A. I will waive the reading of the documents in Japanese in open court.

12. Q. Will you please give the interpreter the documents which you wish read in open court?
A. I will.

QUALIFIED TO BE A TRUE COPY

James P. Reedy
JAMES P. REEDY,
Lieutenant, JAGC,
Judge Advocate.

An interpreter read the English translation of three documents on behalf of the accused, Tanaka, Sata.

An interpreter read the English translation of two documents on behalf of the accused, Matsuyoshi, Kawanishi.

An interpreter read the English translation of three documents on behalf of the accused, Higuchi, Takashi.

An interpreter read the English translation of seven documents on behalf of the accused, Ueno, Shiroto.

An interpreter read the English translation of five documents on behalf of the accused, Nakase, Shohichi.

The commission then, at 9:55 a.m., took a recess until 10:08 a.m., at which time it reconvened.

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

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Kawanishi, Takashi, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding, and continued his testimony.

An interpreter read the English translation of five documents on behalf of the accused, Amato, Shiroto.

13. Q. Are these all of the documents you wish read in open court?
A. Yes.

14. Q. Have these documents shown the characters of the defendants well?
A. Yes.

Neither the judge advocates nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as a counsel for the accused.

The commission was cleared to consider the sentences.

CERTIFIED TO BE A TRUE COPY

James P. Leahy
JAMES P. LEAHY,
Lieutenant, USN,
Judge Advocate

368

1178

The judge advocates were recalled and directed to record the sentences of the commission 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, Uno, 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, Higuchi, 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, Susta, to be hanged by the neck until dead, two-thirds of the members concurring.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy,
President.

JOSEPH T. SMITH, JUNIOR,
Major, U. S. Marine Corps,
Member.

HENRY K. ROSCOE,
Lieutenant Colonel, Coast Artillery
Corps, United States Army, Member.

JOSEPH A. REGAN,
Lieutenant Commander,
U. S. Navy, Judge Advocate.

VICTOR J. GAMBARENO,
Lieutenant Colonel, Coast Artillery
Corps, United States Army, Member.

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

BRADNER W. LEE, JUNIOR,
Lieutenant Commander,
U. S. Naval Reserve, Member.

CERTIFIED TO BE A TRUE COPY.

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

The commission was opened. All parties to the trial entered.

The commission then read and pronounced the sentences to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

JOSEPH A. REGAN,
Lieutenant Commander, U. S. Navy, Judge Advocate.

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

*Certified to be a true copy:
James P. Kerry Lieut. USN.*

OPENING STATEMENT
BY THE PROSECUTION

DELIVERED BY

LtComdr., Joseph A. Regan.

In June of 1944, the 41st Naval Guards then commanded by Asano had in its possession 5 American Prisoners of War. Truk at that time was occasionally bombed, and as the installations of the Naval Guards locations on Dublon Island, Truk Atoll were a legitimate target, bombs were dropped upon it. One of these bombs shattered the small guard house in which the prisoners were located, with the result that three of the prisoners were killed. It is no part of this case to quarrel with Asano and his subordinates in that the prisoners were not taken to an air raid shelter for the Japanese did have air raid shelters, however, we do quarrel with Asano and his subordinates for their treatment of the two survivors of the bomb blast. The Judge Advocates will prove thru witnesses and also thru the statements of the accused themselves, that the two survivors were wantonly and cruelly murdered.

Asano, at the time of these murders was a captain in the Imperial Japanese Navy, and he was the commandant of the 41st Naval Guards. Nakase was a Lieutenant Commander and acting Executive Officer for Asano and that Unit. He had active charge of the Combat Unit of the 41st Naval Guards and was in actual charge of all prisoners. The accused Ueno was the acting head medical officer of the 41st Naval Guards.

Asano thru Nakase gave orders to Ueno to dispose of the two bomb blast survivors and Ueno, apparently not reestricted by these orders to any particular method of execution decided to vivisect the prisoners. At Ueno's orders, the two prisoners were brought to an air raid shelter which served as a battle dressing station. One of the prisoners was stretched on a table and kindly given an anesthetic (?). That was the only kind thing that was done to him that day. Ueno in the presence of Kobayashi, Enguchi and others proceeded to cut into the live body of the unfortunate prisoner. First his right toe nail was removed, then the femoral artery in his thigh exposed. The sack containing his testicles was sliced and the right testicle cut out. An incision was made in the abdomen and the intestines and appendix exposed. The right breast was cut into and the ribs exposed.

The prosecution will show that none of these acts were performed in the nature of treatment. The prosecution will not however, be able to show why these particular acts were performed on a live prisoner. It would have been so much easier to have merely cut his throat. Loose bandages were applied to the prisoner principally around his stomach to prevent his intestines from falling out. No sutures

"Q (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate

1181

were applied to any of his wounds. Finally, at the order of Ueno, the unfortunate and still living prisoner was removed to a marshy space some thirty yards from the air raid shelter. There the accused Enguchi, after having been shown by Kobeyashi, cut off the head of the prisoner in the presence of Asano, Nakasi, and Ueno.

The other prisoner who had been kept just outside the air raid shelter was removed on Nakasi's order sometime during the vivisection of the first prisoner. This individual was killed more speedily without the preliminary cutting which attended the death of his companion. This prisoner had his arms tied behind his back - a pole was inserted between his bound arms and two Japanese sailors lifted him off the ground. Some unknown number of Japanese headed by the accused Tanaka lined up in front of him and singly plunged a bayonet into his upheld body. At the conclusion of the stabbing which was done in the presence of Nakasi, his body was thrown into a prepared grave then to be soon joined by the decapitated body of his companion.

That the executions were planned and not carried out in hot blood is exemplified by the fact that the grave was prepared before the murders were committed.

At the conclusion of the war, the bones of these Americans were dug up and cremated in order to lessen the possibility of the crime coming to the attention of the American Authorities. The bones were destroyed - but the authorities after long investigation discovered what had been done that day in June 1944, and now the murderers are present here in court.

Their explanations and denials will be many and varried, no doubt, - and the prosecution can throw no light upon their motivation. Let them be judged upon their actions however, which seem to indicate that they were all motivated by a malignant hatred of Americans.

All of the statements made by the Judge Advocate will be proved either thru witnesses who were the co-nationals of these accused or thru the confessions made by the accused themselves.

The chain of circumstances set into motion by the accused by their cruel acts in June of 1944 have resulted in their presence here before this court. We shall prove that their presence before this commission for judgement is justified.

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

"Q (2)"

1182

OBJECTION TO THE STATEMENT OF NAGASHIMA. Etc., HELD BY

MR. NUNATA. Etc.,

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "B."

CERTIFIED TO BE A TRUE COPY

James P. Army
JAMES P. ARMY,
Lieutenant, USN,
Judge Advocate.

1183

OBJECTION TO THE STATEMENT OF NAGASHIMA.

DELIVERED BY DEFENSE COUNSEL
KUWATA, Hideo.

6 October 1947.

According to Section 169 of Naval Courts and Boards it is stated that hearsay evidence is objectionable. First, because it is not original evidence. Second, the real witness is not testifying in court, and thirdly, the accused have no opportunity to be confronted with the witness for cross-examination. The right of cross-examination in the present case. Nagashima after making his statement was afflicted with mental illness, therefore, he is not able to be summoned to court. In self serving cases section 204 of Naval Courts and Boards states under "Private Documents:" "But the original authenticated entries and writings of a person who was in a position to know the facts therein stated, made at about the time such facts occurred, are admissible as evidence of such facts under the following circumstances.....(1) When the entry or writing is against the interest of the maker; and (2) when it was made in due course of business, in a professional capacity, or in the course of the person's ordinary and regular duties."

When we read this statement of Nagashima's, this is clearly not written in due course of business. Nor is it against the interest of the maker, Nagashima. Because written there it is stated in the statement that Nagashima was ordered by chief medical officer and then he went over to Nakase to get acknowledgement and then he had one of the others stab. Accordingly that is a self serving statement, therefore, we object on the grounds that the maker has made this statement on the ground of self serving statement and that it shouldn't be admitted as evidence.

KUWATA, Hideo.

I certify the above to be a true and complete translation of the original objection to the best of my ability.

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

CERTIFIED TO BE A TRUE COPY

"S (1)"

James P. Emery
JAMES P. EMERY,
Lieutenant, USN,
Judge Advocate.

1184

OBJECTION TO THE STATEMENT OF NAGASHIMA, MITSUO.

Delivered by

Commander Martin E. Carlson, U. S. Naval Reserve.

Date: 4 October 1947

Case of:

Rear Admiral ASANO, Shimpei; Commander UENO, Chisato; Lieutenant Commander NAKASE, Shohichi; Lieutenant (junior grade) ERIGUCHI, Takeshi; Surgeon Ensign KOBAYASHI, Kazumi; and Petty Officer First Class TANAKA, Sueta.

The accused object to the document which has been offered as a statement of NAGASHIMA, Mitsuo being introduced as evidence because Section 734 of Naval Courts and Boards was never complied with in the case of NAGASHIMA.

Section 734, Naval Courts and Boards lays down the rule that if the rights of the defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect. This is true in the case of NAGASHIMA.

NAGASHIMA never waived any of the rights of a defendant.

Section 722 of Whartons Criminal Evidence states that admissions after the termination of the conspiracy are not admissible against the defendant as substantive evidence to prove his guilt. NAGASHIMA is charged in Specification 2 of Charge I and is to all intents and purposes a defendant. The judge advocate admits that NAGASHIMA would be a defendant except that NAGASHIMA is insane.

This witness, Lieutenant TREMAYNE testified that he was not the legal custodian of this document or that he was present when NAGASHIMA made this statement, that is when NAGASHIMA wrote this statement or signed it. We object to his competency as a witness regarding this statement.

The burden of proof is on the judge advocate to show (1) that the document was written by NAGASHIMA after he was warned that he might be made a party defendant. (2) That NAGASHIMA was notified of the gist of the evidence that tended to implicate him. (3) That NAGASHIMA was instructed that he would be accorded the rights of an accused before a court martial. (4) That NAGASHIMA had a sufficient understanding to comprehend the objection of an oath and (5) that NAGASHIMA could distinguish between right and wrong (6) has he a sense of moral responsibility. No where in this document does it appear or even indicate that the above conditions that are guaranteed by the Constitution of the United States to all men were ever accorded to NAGASHIMA. To allow this document to be introduced into evidence would be most prejudicial to the rights of those accused here, particularly Commander UENO, Lieutenant Commander NAKASE, Admiral ASANO, and the other accused.

"T (1)"

CERTIFIED TO BE A TRUE COPY

James P. Lenny
JAMES P. LENNY,
Lieutenant, USN,
Judge Advocate.

1185

We call the commissions attention to Court Martial Order #1 of 1940.
Page 72.

In this case the court received in evidence over the objection of the accused extracts from the testimony of the accused before a Board of Investigation. The accused appeared before the Board of Investigation as an interested party. The record did not show that he took the stand at his own request, but did show that he was sworn and allowed to testify at length after it was apparent that he was involved to such an extent that an accusation against him could be implied although he was not made a defendant until he concluded his testimony. It follows therefore, that his testimony before the Board of Investigation could have no evidential value in the instant case, and it should have been excluded by the court.

In this case, NAGASHIMA, was after having been seen by the witness Lieutenant TREMAYNE only one time sufficiently involved so that it was determined that he was to be charged as a war criminal with murder!

NAGASHIMA was incarcerated in Sugame Prison, Tokyo, Japan, and what he underwent there we will never know. We do know he had been on Truk all during the bombardment by the American forces. Lieutenant TREMAYNE having seen NAGASHIMA only once said he was sane.

The wonder is that all Japanese subjected to the American bombardment on Truk did not become mentally deranged. NAGASHIMA became shall shocked, insane, mentally deranged or whatever you call it because he is at present in a hospital for the insane at Tokyo, Japan.

We move that the commission take the necessary legal steps to have NAGASHIMA, Mitsuo, examined by qualified medical experts and the extent of his mental derangement ascertained.

We object to the statement of NAGASHIMA, Mitsuo, said by the witness Lieutenant TREMAYNE, to be the statement of NAGASHIMA, Mitsuo now confined in a Tokyo hospital or asylum for insane.

The statement is not even sworn to. All witnesses must be sworn. Yet here the prosecution are insisting that notwithstanding the fact that NAGASHIMA is insane he still should be allowed to testify in a felony case and by his testimony, an unsworn statement convict persons of murder.

Does the commission rule that the safeguards of the Constitution of the United States of America shall not apply to these six accused.

Does the prosecution admit they cannot convict these six accused except by means of an unsworn statement of a person now insane?

Even under the most liberal tests of the present day, the obligation of the oath and an intelligent comprehension of the facts sought to be developed remain a necessary part of the qualifications of a competent witness." *Ruocco v. Leggoco*, 134 A. 73, 104 Conn. 585, 1590, See 121 Witnesses 70 Corpus Juris.

By their own admission the judge advocate state that NAGASHIMA, Mitsuo, is not competent and that he can not be tried for the very crimes these six are being tried for and yet the judge advocate without any hesitation offer his unsworn statement as evidence against these six accused. Is the duo

"T (2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1186

process of law which the Constitution of the United States of America guarantees to all persons tried in American courts.

Admittedly there must be a statute or some bar to the trial of insane persons by this commission otherwise as the judge advocate says NAGASHIMA, Mitsuo would be one of the accused. By the same token if he is so insane that he cannot be tried he should not be allowed to witness in this a felony case.

I would cite the following cases in footnote 39 Section 123. Witnesses in 70 Corpus Juris, People v. Tyree, 132 P. 784, 21 Cal. App. 701; State v. Simos, 85 P. 914 12 Idaho 310, 9 Am. Cas. 1216.

The document itself does not show that it was made voluntarily, particularly when the person making it, is confined in prison and made it before a naval officer of the country which is occupying the makers NAGASHIMA's own country and is therefore in full control of the country. The very fact that this witness, Lieutenant TREMAYNE took this statement from him as a naval officer of the United States which was occupying Japan at the time creates a presumption that it wasn't made voluntarily by NAGASHIMA.

We particularly object to certain parts of the document. Paragraph one, which NAGASHIMA says: "But I heard a rumor." Particularly object to Paragraph three on the grounds that it is hearsay. We will not get the opportunity to cross-examine NAGASHIMA, although this witness states that NAGASHIMA is still alive and he is in Japan. True, it is that he is in a hospital inflicted with a mental illness. He is available and the question of his sanity or insanity is a judicial question not to be determined by the opinion of this witness. This is a judicial question to be determined by this court and certainly not from hearsay testimony. We request that NAGASHIMA be examined by medical experts to determine his sanity.

We also object because the general rule is that the admission of a defendant is not admissible before his co-defendants. NAGASHIMA which may be seen is charged in Specification 2 of Charge I. Those accused, ASANO, UENO, NAKASE, and TANAKA are said to be acting jointly with NAGASHIMA and in pursuance of a common intent did each and together kill by stabbing with a bayonet.

This rule is laid down in American Jurisprudence. Pages 540 - 541.

I cite: Osborne v. U. S. Bank, 9 Wheat (U.S. 738, 6 L ed 204; Loods v. U.S. Marine Ins. Co. 2 Wheat (US) 380, 4 L ed . 266; Coryell v. Olmstead, 64 Cal. 378; 172 P. 14 A. L. R. 5; Appros v. Campbell - 9 Iowa 213, 74 Am. Dec. 346, Hanover Nat. Bank v. Klein, 64; Miss 141; 18 So 208, 60 Am. Rep. 47.

And in 20 American Jurisprudence, Section 641 evidence the rule is particularly applicable where the interests of the defendant are adverse and the interests of NAGASHIMA are adverse to the interest of those accused.

Section 631, Volume II, Wharton's Criminal Evidence, lays down the rule "It is obvious that if the confession itself is to have any testimonial value it must be shown to have been made under conditions where there was the normal ~~use~~ of all the faculties and that the declarant fully comprehended the effect of his confession.

"T (3)"

CERTIFIED TO BE A TRUE COPY

James P. Henry
JAMES P. HENRY,
Lieutenant, USN,
Judge Advocate.

1187

We object to this document because much of the material is irrelevant and immaterial. Paragraph one, paragraph two, paragraphs four and five of this document is all immaterial and irrelevant. We object because the document is not dated. We feel that the date is most important and without the date it is not a complete document. We object because it is not sworn to.

We call the commissions attention to section 454, of Naval Courts and Boards which provide: "In any case where a deposition is used in evidence by the prosecution by reason of the fact that oral testimony can not be obtained, as authorized by article 68 A.G.N., the maximum punishment which may be imposed shall not extend to death or to imprisonment, or confinement for more than one year."

This section imposes a limitation of one years confinement in any case where a deposition is used in evidence by the prosecution. This limitation applies to all cases.

In CMD 4 - 1931 the court said that the use of depositions in courts martial was covered thoroughly in CMD #1, 1928, page 6 - 9.

The court also said "As court martial orders have full force and effect for guidance of all persons in the naval establishment (art. 74, par. 4. Navy Regulations, 1920), held that where such court martial orders provide precedents in point with cases under consideration by courts martial, members of such courts should refrain from disregarding such precedents. To so disregard established precedents, as was done in this case, not only indicates a dereliction of duty on the part of the members of the court, but also results in a gross miscarriage of justice."

In the case of CMD #7 - 1921, p. 14 the Judge Advocate General hold that in imposing a sentence of seven years confinement and dishonorable discharge "the court therefore, exceeded its authority, one year being the limit of confinement.

Since the prosecution have alleged that NAGASHIMA, Mitsuo, is now insane we call the commissions attention to CMD 12- 1934 p. 7 wherein information was received subsequent to review of the case by the Judge Advocate General which tended to cast doubt upon the mental condition of the prosecutions sole witness. The Judge Advocate General hold: "Ordinarily newly discovered evidence of an important character, insofar, as the accused is concerned, would form the basis of offering the accused an opportunity to request a new trial. However, because of the probable indefinite duration of the mental instability of the prosecution's witness such procedure was impractical. Accordingly the findings and sentence in this case were set aside."

We hold that this is most prejudicial to the rights of these accused. It is most prejudicial since we are not given the privilege to cross-examine NAGASHIMA, the maker of this document. In case the deposition is used by the prosecution a limit of punishment is not more than one years confinement.

Respectfully,

MARTIN E. CARLSON,
Commander,
U. S. Naval Reserve.

CERTIFIED TO BE A TRUE COPY

"T (4)"

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

1188

STATEMENT TO THE INTERPRETING OF STATEMENTS OF THE ACCUSED DELIVERED

BY MR. HIRATA, JUDGE.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "T."

CERTIFIED TO BE A TRUE COPY

JAMES P. LANEY,
Lieutenant, USN,
Judge Advocate

1189

OBJECTION TO THE INTRODUCTION
OF STATEMENTS OF THE ACCUSED.

Delivered by Defense Counsel
Kuwata, Hideo.

6 October 1947.

The statements of the accused which the Judge Advocate intends to introduce are acknowledgements of guilt on the part of the accused. These statements are, in other words, confessions set forth in writing. In view of the hearsay rule, a confession is not ordinarily admissible as evidence; but as an exception to this rule, it is admissible as evidence when made voluntarily. When the confession is induced by hope of release or other benefit or fear of punishment or injury by one in authority, or, more specifically, where it is induced by promises, assurances, threats, harsh treatment, or the like, on the part of an official or other person competent to effectuate, what is promised, or threatened, or at least believed to be thus competent by the party making the confession, such confession is regarded as not to have been made voluntarily.

We, of course, do not believe that the American officials investigating these accused, did inflict apparent threat by words or acts upon the accused, much less extorting confessions by inflicting direct violence upon the bodies of the accused; nor do we believe that the American officials made promises to the accused that they would be immune from punishment, or from prosecution, or that their sentence, would be mitigated if they confessed.

Wharton's Criminal Evidence Vol. II Section 617 says, "And, generally, where the hope is merely the mental hope, or mental belief, of the accused, it is insufficient to render the confession involuntary, because the inducement must come from some extraneous pressure, and be inspired by a third person. The fact that an accused person may conclude that it will be advantageous to him to confess rather than keep silence is immaterial, if conditions or circumstances are not created which tend to make silence some evidence of guilt, and if his mental operations are free from, and uninfluenced by, any external inducement to falsify or invent."

Indeed, it would not be a mistake to apply this principle literally, stating that threat and inducement rendering a confession involuntary must be extraneous and expressed, to the people of America who possess an exuberant spirit of freedom and independence. But, if we were to apply this principle to the Japanese accused, we believe the result will not always be appropriate.

In the history of Japan, we find she experienced more than 700 years of a feudal age. During this period, the ruling class, that is the samurai (warrior class), completely disregarded the character of the common people. They even slighted and trampled over such legal interests as individual life, body, honor, liberty, property, etc., which 400 to 500 years previously had already been protected in the western countries as fundamental rights constituting the individual character. In other words, the ruling class held the right of life and death over the common people. It is evident that the common people possessed a feeling of infinite resentment and hatred toward the arbitrariness and oppression of the ruling class.

"V (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1190

But, during this period, the common people particularly the peasants, were firmly tied to the land and for this reason they were subordinate to the landlords. Therefore, to desert their homes, where from the time of their ancestors they had been accustomed to live, meant immediate selfdestruction. The freedom of residence and migration, which we enjoy today, was totally unknown to them. Moreover, land and sea transportation was as yet undeveloped, and couriers, which were used by the samurai and the rich traders, were the only means of communication, but they were out of the reach of the common people. Thus the common people were firmly tied to their land-lords and deprived of the freedom of residence and migration, could not oppose the ruling class and assert and carry out their will, by uniting their mass power as the workers of the modern day do.

No matter how they gnashed their teeth with vexation towards the oppression of the ruling class, the defenseless common people could not show it outside. If by chance one opposed, he would not only be killed but the consequences would extend to his most distant relatives. It is self-evident in what directions the attitudes of the common people were to be led under such environment. That is, they were obliged to yield to authority and resign themselves to their vain hope. The teaching of Buddhism concerning the next world, helped to foster this attitude of resignation. Such vices as servility, adulation, and deception, grew out of this environment. Such sayings as "You can not beat a crying child and a priest," or "Don't oppose the strong" which are familiar to the public, tersely express this psychology of resignation of the common people during that period.

The sense of servility or implicit submission to power and adulation toward the influential which had penetrated to the core of the Japanese people during this long period of feudalism, was not readily redressed even by the advent of the meiji. Reform when "civilization and enlightenment" were shouted with much zeal. The Meiji Government, based upon the ideology of Prussian authoritarian state which could be clearly discerned through the former Constitution of the Japanese Empire before the recent revision, did not exert efforts to awaken the common people from this state of feudalistic narcotism. Answering as to why the clan beaurocrats who were in charge of the government did not try to teach the common people, to think freely, to speak freely, to write freely; rather why they assumed the attitude of restraining freedom; I must omit at present, for some other proper opportunity in the future. I shall merely state that it was convenient for them arbitrarily to wield their power if they had the common people in the state of a sleeping lion or rather a sleeping dog.

As I have summarized in the foregoing, the Japanese people have not as yet freed themselves from feudalistic servility. Particularly in view of the present state of affairs, I believe, that it is an undeniable fact that the Japanese people as a defeated nation are permeated with an inferiority complex toward their victors. The accused in the present case cannot possibly be free from this weak point which is common to the Japanese people today. Thus, these accused who were investigated under confinement, can readily be imagined from their inbred servility to have been overcome by a feeling of fear, even if there were no physical or expressed threat on the part of the investigator. And, if it is human nature that a person once suspected of a crime is desirous of being cleared

"V (2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1191

and released as soon as possible, and when convicted that he is desirous of a light sentence, then I believe it is not always unreasonable that these accused, on account of that sense of adulation and submission to authority which I have stated above, were compelled to distort, exaggerate or fabricate their statements of the facts. Section 174, Naval Courts and Boards states, "Statements, by way of confession, made by an inferior under charges to a commanding officer, judge advocate, or other superior whom the accused could reasonably believe capable of making good his words upon even a slight assurance of relief or benefit by such superior should not in general be admitted."

Comparing the mental attitudes of the Japanese which I have mentioned above, with this paragraph of Naval Courts and Boards, I believe that the statements of the accused, which include their confessions submitted to the investigator, should not be admitted as evidence without any proof that they were not coerced by silenced suppression or implied inducement even though they are not based upon material threats or expressed promises.

The accused, when they submitted their statements, were not aware that these statements would be used against them. In other words, they did not know the legal effect of their statement. This remark, I believe you will take with doubt and think that it is not possible that the accused who were officers of the Navy should not have known this. But it seems to me that in very few countries has thinking in terms of law been so limited as in Japan. It is true that there are many law colleges, that thousands of students are graduated from these schools every year, that the judicial system of Japan is in good order and that there are more than 6,000 lawyers in Japan. Yet, in this country, the law is known only among these specialists, and it has not become the life and blood of the people, nor has it become embodied in the thoughts of the people. There is sufficient reason for this. In the United States where society is based upon equality of individuals and respectability of personality, there would be no predominant coercive power other than the law. In other words, the law is the only power which has coercive binding power upon each individual. However, in Japan, the factor of coercive power is not so simple. As you may discern from the short description of the feudalistic character of the Japanese which I have stated, there are in the Japanese society many factors which regulate the will of each individual other than the law. As Commander Carlson mentioned in his closing argument in the Iwanami case, there are various factors other than the law in the Japanese society, such as Tenno, Shinto, Bushido, etc. These factors have tied down the lives of the people of Japan in a complicate way, and they have become a stronger power than the law in their daily lives. The norm of the act of the Japanese is based upon the power which has Tenno at its apex, and awe toward the ancestors which derived from Shinto, and loyalty and benevolent feeling toward authority, the successor of feudalism, which are inherited from Bushido. Compared with these factors, the law has only a secondary power. Disputes which occur among the people are suppressed by power, compromised by benevolent feeling, and conceded by obligation, before they are settled by the law. Therefore, for the Japanese, the law is a needless, superfluous thing, if not harmful. I think this is one of the powerful reasons, if not the only one, that there is a tendency to make light of the law among the Japanese. If we consider in such manner, I believe that the accused are not necessarily to be blamed for their ignorance of the legal effect of their statements.

"v (3)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,

1192

It is true that Section 181, Naval Courts and Boards states: "The fact that a voluntary confession was made without the accused having been warned or cautioned that it might be used against him does not affect its admissibility." However, as I have mentioned, these accused know little about the law. Therefore, although it is not illegal to apply this provision as it is, to the accused of this case, it greatly violates the rights of the accused and is unjust and prejudicial. We should notice that Section 181, Naval Courts and Boards continues and says: "The better course, however, where the confession is made to superior officer, is to require proof that he understood the confession was entirely voluntary and was entirely voluntary and was not influenced by promises or threats."

We feel very regretful, as a people living in the 20th century, of the feudalistic servility which lies in the bottom of the minds of the Japanese and the tendencies of making light the law which fundamentally has direct connection with the former, as explained in the foregoing. I would like to say that the numerous unfortunate events such as mistreatment of the prisoners of war which happened during the war, originated from this feudal morality. This feudalistic ideology remained within the Japanese, despite the progress of the age, and I am ashamed to say this, here in this court. This thought should be corrected and swept away as soon as possible. We must take off this old garment without hesitation, follow the ways of America, cultivate the spirit of independence and march toward the completion of our personality. Herein lies the metaphysical problem for rehabilitation of new Japan.

Whatever the problem for our future may be, we should notice that the Japanese of the past were puppets or slaves who gasped under the bonds of feudalism. The ones who judge must know the psychology of the judged. I hope that you will bear in mind the mental and ethical aspects of the Japanese when you rule upon the admissibility of each single piece of evidence, not to speak of the Japanese accused themselves when you give the final verdict. Sincerely desirous of cooperating to realize the highest ideal of this commission -- the realization of justice -- I ventured to cast aside my pride as a Japanese and have disclosed, without hesitation, the feudalistic nature which ruled the Japanese and pervaded the Japanese society of the past, Your Honor, the President and gentlemen of the Commission, I ask your special consideration.

We should notice further that the accused are neither insane nor dead; they are present here in the court day by day. If the Judge Advocate wants to get testimony from these accused, I should advise him to examine them as witnesses. It is entirely unnecessary to take the trouble of introducing such incredible statements as evidence. Of course, the Judge Advocate is no longer able to have the accused take the stand against their will. But we must know that the accused have many points to explain and sufficient grounds to rebut testimony of the witnesses of the prosecution. They will take the stand before long, and the Judge Advocate will get equal or better effect by cross-examining the accused rather than by introducing their statements as evidence.

"V (4)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1193

As I have explained in the foregoing, I object to the introduction of the statements of the accused as evidence as being improper and unnecessary.

KUWATA, Hideo.

I certify the above, consisting of five (5) typewritten pages, to be a true and complete translation of the original objection to the best of my ability.

EUGENE E. KERRICK
Lieutenant, USNR.
Interpreter.

"V (5)"

CERTIFIED TO BE TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1194

OBJECTION TO THE INTRODUCTION INTO EVIDENCE OF AFFIDAVIT OF UENO, CHISATO,
STATEMENT BY ERIGUCHI, TAKESHI, MY HEART BY TANAKA, SUETA.

DELIVERED BY
COMMANDER MARTIN E. CARLSON, U. S. NAVAL RESERVE
AT
GUAM, MARIANAS ISLANDS
MONDAY, OCTOBER 6, 1947

May it please the commission:

All of the accused object to these three documents being received into evidence.

The documents are not dated. The witness Lieutenant Tremayne can only testify by giving hearsay testimony regarding this because he was not present when the documents were written or when they were signed. This witness testifies that he is not even the legal custodian of these documents.

In case of the statement headed "My Heart" by Tanaka, Sueta, Lieutenant Tremayne testified he saw the statement sometime before July 10, 1947. He isn't even sure of that date. Is it possible the statement was made after the charges and specifications were signed by the Convening Authority, July 15, 1947? Remember these accused did not receive a copy of the charges and specifications until July 20, 1947. This statement of Tanaka's might well have been made after July 15, 1947 because Lieutenant Tremayne testified the statement was forwarded to him by Sugamo Prison authorities.

We object because the documents are not sworn to. These three documents contain not only evidence against the other three accused, Asano, Nakase, and Kobayashi.

The three accused whose unsworn statements are sought to be introduced into evidence, Ueno, Eriguchi and Tanaka are witnesses and it is fundamental rule of evidence, and a right guaranteed under the due process clause of the Constitution of the United States of America that all witnesses must be sworn.

In 70 Corpus Juris, Witnesses sec 1 page 34 a witness is defined: "The term 'witness' in its strict legal sense, means one who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips testimony is extracted to be used in any judicial proceeding, and so includes deponents and affidavits as well as persons delivering oral testimony before a court or jury. (See affiant 2 c.J. p. 313.)"

So we have the prosecution proving their case against all six accused by introducing three of the accused as witnesses against their will and by means of unsworn statements extracted from them while held in confinement at Sugamo Prison testifying not only against themselves by incriminating testimony but by unsworn statements testifying against their other co-defendants. This procedure by means of which all six accused are deprived of due process of law guaranteed to all men who are tried in our American courts is something not even the Supreme Commander for the Allied Powers can do. He is not above the Constitution of the United States of America. And when the judge advocates in this case say that Supreme Commander for the Allied Powers can set aside the guarantees of the Constitution of the United States of America we know they do not speak his wishes and desires and speak not in his name or by his

TESTIFIED TO BE A TRUE COPY

"W(1)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1195

authority but are taking his name in vain. We ask by what authority they quote the Supreme Commander Allied Powers for the unheard action they are taking in introducing these three unsworn statements into evidence.

We object to the competency of the witness Lieutenant Tremayne testifying because he was not present when the three documents were written or signed or is the legal custodian of these three documents.

Lieutenant Tremayne has testified that he had no written orders from competent authority to investigate or interrogate any of these three accused, Tanaka, Eriguchi or Ueno and yet he testified that he did interrogate them and after his interrogation the prison authorities at Sugamo Prison, Tokyo, forwarded him these three statements.

We refer the witness, Lieutenant Tremayne and the commission to articles 720 and 721, Naval Courts and Boards. The usual means of investigation in the U. S. Navy is by Courts of Inquiry and investigations. I quote: "Whether or not an investigation shall be by a board of officers or by one officer is entirely within his discretion, but in important cases where the facts are various and complicated, where there appears to be reason for suspecting criminality, or where crime has been committed with uncertainty as to the perpetrator,....., a court of inquiry or a board of investigation affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings." Section 720 N.C.&B.

In Section 721 NC&B we read: "A court of inquiry may be convened in accordance with the articles for the government of the navy. An investigation may be ordered by an officer empowered to convene a court of inquiry by the commander of a division or larger force afloat, and by the senior officer present afloat or ashore."

But Lieutenant Tremayne was never duly appointed to investigate these homicides. Nevertheless he is a naval officer and should know section 723 Naval Courts and Boards, particularly the paragraph which reads:

"If homicide is indicated, the moment suspicion points towards any person, he should be accorded the rights of a defendant."

And Section 734 NC&B makes it the duty of the court or board of investigation to inform any person through official channels who is involved in such a way that an accusation against him may be implied that he is a defendant. This is fundamental in our system of justice. Lieutenant Tremayne did not do so.

Lieutenant Tremayne never notified any of these three persons of the gist of the evidence that tended to implicate them; he never instructed them that they would be accorded the rights of an accused before a court-martial; he never told them they had the right to have counsel; he never told these three witnesses they had the right to refuse to answer incriminating questions.

Lieutenant Tremayne further testified that none of these three persons waived their rights of a defendant including such rights as right to have counsel and right to refuse to answer incriminating questions.

Section 734 Naval Courts and Boards as the judge advocate well knows sets forth one of the most important rules as follows: "If the rights of a

"W(2)"

UNRECORDED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1196

defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect."

If this is true of a legally convened court of inquiry or investigation it is certainly true of an unauthorized investigation. These three statements are of no evidential value and we do object to their admission as evidence.

Since the witness, Lieutenant Tremayne is not competent to testify regarding these documents the judge advocate must prove that the documents were made voluntarily, and are regular and that the three persons were accorded the rights of a defendant. Since Lieutenant Tremayne testified the three persons were not accorded the rights of a defendant by him and since the judge advocate is relying on Lieutenant Tremayne's testimony to get the documents into evidence he has failed and the documents should not be admitted into evidence.

We quote from CMO 1-1940 p. 72: "A general court martial received in evidence, over the objection of the accused extracts from the testimony of the accused before a Board of Investigation. The accused appeared before the Board of Investigation as an interested party. The record did not show that he took the stand at his own request, but did show that he was sworn and allowed to testify at length after it was apparent that he was involved to such an extent that an accusation against him could be implied although he was not made a defendant until he concluded his testimony. It follows therefore that his testimony before the Board of Investigation could have no evidential value in the instant case, and it should have been excluded by the court."

We also object because to allow these documents in evidence is to allow the three accused, Ueno, Higuchi and Tanaka to testify against their co-defendants, Asano, Nakase and Kobayashi.

"As a general rule, the acts and declarations of a co-defendant are inadmissible against defendant, in the absence of express or implied participation therein, or adoption or ratification thereof by defendant or a conspiracy between defendant and co-defendant." 78

p. 1410 Underhill's Criminal Evidence.

Citing:

Federal. *Rome v. United States*, 53 Fed. (2nd) 1007; *Borum v. United States*, 61 App. D.C. 4, 56 Fed. (2nd) 301, cert. den. *Logan v. United States*, 285 U.S. 555, 76 L. ed. 944, 52 Sup. Ct. 459; *Feigenbutz v. United States*, 65 Fed. (2nd) 122.

Alabama. *Morris v. State*, 25 Ala. App. 494, 149 So. 359 (arson)

California. *People v. Goltra*, 115 Cal. App. 539, 252 Pac. (2nd) 35.

Idaho. *State v. Foyte*, 43 Idaho 459, 252 Pac. 673.

Illinois. *People v. Filipek*, 322 Ill. 546, 153 N.E. 673; *People v. Niederhauser*, 258 Ill. App. 564.

Indiana. *Dibloe v. State*, 202 Ind. 571, 177 N.E. 261.

Kentucky. Letter written by co-defendant but not received by defendant held not admissible against defendant. *Irvin v. Commonwealth*, 239 Ky. 767, 40 S.W. (2d) 332.

Mississippi. *Lee v. State*, 160 Miss. 618, 134 So. 185 (murder);

Pickett v. State, 164 Miss. 142, 143 So. 692, 144 So. 552 (robbery).

Missouri. *State v. Hinthorn*, 315 Mo. 203, 285 S.W. 990; *State v. White*, 316 Mo. 576, 292 S.W. 411.

New Jersey. *State v. Cortese (N.J.)*, 134 Atl. 294 (second case)

CERTIFIED TO BE TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

"W(3)"

Oklahoma. Hendricks v. State, 29 Okla. Cr. 236, 233 Pac. 242; Babcock v. State, 34 Okla. Cr. 89, 244 Pac. 824.
Declarations of co-defendant in presence of defendant after commission of crime. Patton v. State, 29 Okla. Cr. 66, 232 Pac. 454.
Texas. Russell v. State, 100 Tex. Cr. 654, 274 S. W. 145; Goodman v. State, 104 Tex. Cr. 589, 285 S. W. 821.
Virginia. Phillips v. Commonwealth, 143 Va. 504, 129 S. E. 259.
Washington. State v. Kelly, 139 Wash. 636, 247 Pac. 939.

In the Ueno statement we particularly object to hearsay wherein the Ueno statement reads referring to Nakase, "He conveyed to me the order of the commanding officer of the 41st Naval Guard Unit, Captain Asano saying, 'as it is a matter of disposing at the dispensary of the two prisoners who survived the recent bombing.'"

Not only is this hearsay once removed in that we can not cross-examine Nakase about this because he is not present on the witness stand but we cannot examine Ueno because he is not on the stand and he, Ueno, is being allowed to testify against two co-defendants without taking the witness stand as a sworn witness. We cannot even cross-examine Lieutenant Tremayne on this matter because he was not present at the time of the conversation between Ueno and Nakase or even when this statement was written by Ueno.

The general rule is that the admissions of a defendant are not admissible against his co-defendants. This rule is laid down in 20 Am. Jurisprudence, Evidence Sec 641 pp. 540-541 where the following cases are cited in footnote 17: Osborne v U. S. Bank; 9 Wheat. (U.S.) 738, 6 L. ed. 204; Leeds v. U. S. Marine Ins Co. 2 Wheat (U.S.) 380, 4 L. ed. 266; Coryell v. Olmstead, 64 Colo 378, 172 P. 144, L.R. 5; Ayres v Campbell, 9 Iowa 213, 74 Am. Dec. 346; Hanover Nat Bank v Klein, 64 Miss. 141, 8 So 208, 60 Am Rep. 47; Holderby v Hagan, 57 W. Va. 341, 50 S.E. 437, 4 Ann. Cas. 401. Annotation: 14 A.L.R. 38, s. 90 A.L.R. 1397; 4 Am Cas. 403.

We continue to read from 20 Am Jurisprudence Sec 64: "The rule is particularly applicable where the interests of the defendants are adverse." citing: Jacksonville, T. & K. W.R. Co v Peninsula Land, Transp. & Mfg. Co. 27 Fla. 1, 9 So. 661, 7 L.R.A. 33. Annotation: 14 A.L.R. 40, s. 90 A.L.R. 1397.

We object to the statement: "Head Corpsman Kobayashi gave the directions and they carried the prisoner out."

We object to: "I think.....Head Corpsman Kobayashi, Ensign Eriguchiwere there."

We object to: "When I went to the scene Ensign Eriguchi called, "Okay, I'll cut off his head," and went to the dispensary to get his own sword."

We object to: "Learning the method of cutting off the head from Ensign Yashinuma and being advised as to the position of his feet by Head Corpsman Kobayashi, Ensign Eriguchi sat the prisoner down and cut off his head."

We object to: "Head Corpsman Kobayashi took care of the final details at the spot."

We object to: "I reported the results to the executive officer. I learned immediately that another prisoner had been stabbed to death. As to who stabbed the prisoner, after the war was over I remember hearing from Head Corpsman Kobayashi that it was the then senior corporal of the guard. (I don't know the

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

"W(4)"

I think he later advanced to Warrant Officer."

We object to: "During the clean-up withing the unit, receiving orders from higher authorities (fleet headquarters - commanding officer.) Head Corpsman Kobayashi dug up the bones and burned them."

The accused Ueno objects to the document said to be his statement being introduced as evidence becruse section 734 NC&B was never complied with in his case.

Section 734c lays down the rule that if the rights of a defendant be not accorded when they should the investigation so far as concerns the person denied his rights will be held of no evidential effect. This is one of the most important rules to be observed.

Ueno never waived any of the rights of a defendant. Section 722 of Wharton's Criminal Evidence states the rule that admission after termination of conspiracy are not admissible against defendants as substantive evidence to prove his guilt.

We object particularly in the Eriguchi statement to; "Inside the air raid shelter Head Medical Officer Ueno was holding the operating knife..... Head Corpsman Kobayashi and.....were watching the operation."

We object to: "I saw the breast region cut open by Head Medical Officer Ueno. An incision was made in the breast about three inches long and about as deep as the ribs."

We object to: "Thereupon Head Medical Officer Ueno ordered me, who was standing right in front of him, to cut off his head.....at the orders of the head medical officer." We object to: "Then Head Corpsman Kobayashi raised the body of the prisoner up and sat him down on the stretcher. Then Head Corpsman Kobayashi showed me how to cut the head off by telling me, 'You do it this way from about here.'.....Immediately after that Head Corpsman Kobayashi put the prisoner in the hole and had the seamen fill it up."

We object to: "Asano, the commanding officer, Lieutenant Commander Nakase, Head Medical Officer Ueno,.....were there and saw it.....When it was time to return, Asano, the commanding officer said to me, 'For your first time you did fine!'"

We object to: "On the same day about the same time one American prisoner was stabbed with bayonets by four or five seamen. As my head was filled with my own trouble the people who stabbed and the people who were standing around did not stick in my memory. However, I think the same people were there as were present when I cut the head off."

We object to: "I swear by God that this is all I saw, heard and did." There is no showing at all that Eriguchi took an oath to tell the truth or that Lieutenant Tremayne or anyone else ever administered an oath to Eriguchi. The mere statement that I swear by God is not such an oath as is binding on a witness.

In the statement labelled "My Heart" by Tanaka, Suets we object to: "I have just received an order from the executive officer and commanding officer. The order is to execute one prisoner right away."

CERTIFIED TO BE A TRUE COPY

"R(5)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

We object to: "Do you say that you will not obey the orders of the commanding officer and the executive officer?"

These specific objections are made on the grounds that the witnesses are testifying without being sworn and are being allowed to testify against co-defendants and to testify as to hearsay and rumors and to testify as to opinions and conclusion not facts as to what they saw or heard.

The documents do not show or has it been proved the admissions were given voluntarily. In fact Lieutenant Tremayne testified all statements were made and signed while these persons were held in confinement at Sugamo Prison.

The documents do not show rights of a defendant were waived, and Lieutenant Tremayne testified that the Ueno, Eriguchi, and Tanaka did not waive their rights as a defendant.

The judge advocate did not prove that the guaranties of the fifth and sixth amendment of the Constitution had been given these persons but quite to the contrary Lieutenant Tremayne testified that he did not instruct Ueno, Eriguchi or Tanaka that they did not have to answer incriminating questions. In other words by the testimony of Lieutenant Tremayne these three persons Ueno, Eriguchi, and Tanaka have not been given the protection of the Constitution of the United States and to admit their statements into evidence against them and against their co-defendants will be to deny to all the accused the due process of law guaranteed by the Constitution and particularly the fifth and sixth Amendments of the Constitution of the United States of America.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

"W(6)"

CERTIFIED TO BE A TRUE COPY

James P. Benny
JAMES P. BENNY,
Lieutenant, USN,
Judge Advocate.

1200

PLEA FOR THE IMMEDIATE ACQUITTAL OF THE ACCUSED ASANO, Shimpoi;
NAKASE, Shohichi, and KOBAYASHI, Kazumi.

Delivered by Commander Martin E. CARLSON, U. S. Naval Reserve.

Date: 6 October 1947.

The accused move that the commission direct an acquittal of ASANO, Shimpoi of Specifications 1 and 2 of Charge I and Specifications 1, 2, and 3 of Charge II.

Under ASANO's plea of not guilty no admission of a cause of action can be implied. This plea puts in issue the credibility of the prosecutions evidence because of the presumption of innocence. See Underhill Criminal Evidence page 992.

We hold that the corpus delicti has not been proved as to ASANO, Shimpoi; NAKASE, Shohichi; and KOBAYASHI, Kazumi.

The statement of NAGASHIMA, Mitsuo, who it is admitted by the prosecution to be now insane, otherwise he too would be joined and be tried with these six accused, is incompetent. Proof of his insanity must be made beyond a reasonable doubt. This was not done by the prosecution. (See Ibid See 1262.)

We call the commission's attention to Whartons Criminal Evidence Volume II, Section 631 page 1056, on the subject of Mentality of Confessor. The rule is regard to the mental capacity of confessor: insanity is:

"It is obvious that if the confession itself is to have any testimonial value, it must be shown to have been made under conditions where there was the normal exercise of all the faculties, and that the declarant fully comprehended the effect of his confession..... The court should look to the circumstances under which the confession is alleged to have been made, and consider whether or not the accused realized the full import of his act, and also the age, character, and situation of the accused, as well as all other circumstances bearing upon the question of whether or not there existed a condition or inducement that might lead to a false confession.

Footnote 9 cites: People v. Lohow, 209 Cal. 336, 287, P. 337; State v. Feltos, 51 Iowa 495, 129 755; People v. Joyce, 233 N. Y. 61, 134 N.E. 836; Taylor v. State, 27 Okl. Crim. Rep. 165, 225, P. 988; Maynard v. State, 106, Tex Crim Rep. 558, 293, SW. 1804.

Footnote 12: U.S. - U.S. v. Cooper (DC) Fed. Cas. No. 14864.
Michigan - People v. Howes 81 Mich. 396, 45 NW 961; New Hampshire - State v. Squires, 48 N.H. 364; Penn - Conn v. Shoots, 197, Pa. 69, 46A 753;
West Va. - State v. Parsons 108, W.VA. 705, 152 S.E. 745.

Wharton also says in Section 631, Ibid, if the person making the confession is completely insane, his confession is excluded on the theory that it is only just that a person completely deprived of his reason should not be held to have committed the rational act of waiving his constitutional privilege against self-incrimination. Citing People v. Wreden 99 Cal. 392; People v. Shroyer, 336 Ill. 324, 168 N.E. 336; State v. Campbell, 301, Mo. 618, 257, S.W. 131.

"X (1)"

OFFICERED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1201

Therefore, if the commission does not consider such evidence as was contained in NAGASHIMA's statement there is no proving of the Charges and Specifications as to the accused ASANO, Shimpei.

Lacking competent evidence a verdict should be directed for the accused ASANO, Shimpei. Citing footnote 93, on page 993: Underhills Criminal Evidence, Jackson v. State. 178 Ala 76, 60 So. 97, and Martin v. State, 17 Ala App. 310, 85 So. 42.

From Underhill Criminal Evidence, Section 464, we have the rule regarding absent witnesses.

The criminal courts always hesitate in the absence of a permissive or mandatory statute to admit testimony of an absent witness where it is not shown that the witness is dead, incapacitated or can not be found. Citing, Barr v. State, 99 Ark. 629, 139 S.W. 641 (Perjury); Tuggle v. State, 24 Ga. App. 655, 101 S.E. 767; State v. Britton, 131 La. 877, 60 So. 379; Hobbs v. State 53 Tex Cr. 71. 112 S.W. 308; Wyatt v. State 58 Tex Cr. 115, 124 S.W. 929, 137 Am St. 926; Green v. State 69 Tex Cr. 485, 154 S.W. 1003; Gamboa v. State, 69 Tex Cr. 635, 155 S.W. 249; Echols v. State, 75 Tex Cr. 369, 170 S.W. 786.

Where the only evidence against the accused is incompetent, a directed verdict for him should be given. Cobb v. State 17 Ala. App. 479, 85 So. 370, People v. Bosold, 154 Cal. 363, 97 Pac 871.

The prosecution have not proved the case against ASANO, Shimpei, beyond a reasonable doubt. At the most the evidence against ASANO, Shimpei; merely raises a surmise or conjecture or a suspicion of guilt. The case should not be left to the jury, in this case the commission should at this time direct a verdict of acquittal as to the accused ASANO, Shimpei See Saylor v. Commonwealth, 158 Ky. 768, 166 S.W. 254; People v. Scharf, 217 N.Y. 204, 111 N.E. 758; State v. Clark, 173, N. Car. 739, 91 S.E. 372, Mass Commonwealth v. Lowroy 158 Mass. 18, 32 N.E. 940; Michigan, People v. Munroy, 155 Michi. 534, 119 N.W. 918.

In 20 Am. Jur. Evidence Section 1235, the rule is laid down:

"Indeed it has long been the custom, both in England and the United States, for the court not only to caution the jury as to the danger of acting upon the unsupported testimony of an accomplice, but to advise them not to convict in the absence of some corroborating evidence"..... The jury cannot find a verdict of guilty upon it alone.

Section 1239 P. 1091 Ibid. It is a general rule that one accomplice is not competent to testify in corroboration of the testimony of another accomplice", "the accomplice cannot corroborate himself by his own words or deeds". Citing State v. Kent (State v. Pancoast) 5. N.D. 516, 67 N.W. 1052, 35, L.R.A. 518; Cudjoe v. State, 12 Okla. Crim Rep. 246, 154 P. 500, L.R.A. 1916, P., 1251; Blakely v. State 24 Tex app. 616, 7 S.W. 233, 5 Am St. Rep. 912; Clark v. State 39 Tex Crim Rep. 179 45 S.W. 576, 73 Am. St. Rep. 918.

"X (2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1202

In People v. Bennett, 49 N.Y. 137 it was held that where evidence was weak and unsatisfactory the court can impress the jury with the benign principles of the common law that the accused is entitled to the benefit of all reasonable doubts and that it is better that many guilty prisoners should escape than that one innocent person should be punished.

Underhills Criminal Evidence on page 993 cites in footnote 94 the case of Duff v. U.S. 185 Fed. 191, and Isbel v. U.S. 227, Fed 788, as authority for the rule that when the evidence is insufficient in the opinion of the court to support a conviction, on a motion for a new trial, it becomes the duty of the court to direct an acquittal.

This case of Reynolds v. State; 14 Arizona 302, 127 Pac. 371 cited in the above footnote 94 lays down the rule: "The court should direct a verdict of acquittal when there is no evidence of the guilt of the def. other than that of an accomplice."

We move for a directed acquittal of ASANO, Shimpai; NAKASE, Shohichi; and KOBAYASHI, Kazumi.

Respectfully,

MARTIN E. CARLSON,
Commander,
U. S. Naval Reserve.

"X (3)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1203

ECLA FOR THE IMMEDIATE ACQUITTAL OF THE ACCUSED ASANO, KAKASHI, & KIRAYASHI.

DELIVERED BY MR. SUWATA, KIKO ON 6 OCTOBER 1947.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "2."

CERTIFIED TO BE A TRUE COPY

JAMES P. DENNY,
Lieutenant, USN,
Judge Advocate.

1204

PLEA FOR THE IMMEDIATE ACQUITTAL OF THE ACCUSED ASANO, NAKASE, & KOBAYASHI,
Delivered by KUWATA, Hidoo..... 6 October 1947.

In order to corroborate the plea of Commander CARLSON concerning the acquittal of the above three accused, I would like to cite the testimony of the witnesses of the prosecution and point out that their testimony is weak and affirm the plea of my co-defense counsel.

The only witness of the prosecution who testified against ASANO was KINOSHITA, Hiroshi who said that Commandant ASANO was, according to his recollection, on the path near the scene of execution of the prisoners. In view of the part which KINOSHITA played in this incident, he is a person who should naturally be accused. Under such situation KINOSHITA was busy on the witness stand defending himself. We can find not a few points where he falsified the facts or stated absolute lies. Therefore, the credibility of his testimony is very doubtful. It should especially be noted that the other eight witnesses of the prosecution testified to nothing about ASANO. Considering these points, I believe that the above mentioned testimony of KINOSHITA is entirely based upon his fabrication and that it is impossible to convict ASANO by such weak evidence. Therefore, we hold that the charges and specifications against ASANO not proved and that ASANO should be acquitted of those charges and specifications.

Concerning the accused, NAKASE, the prosecution's witness KODAMA, Akira, testified that he heard a cough coming from outside of the air raid shelter and that he remembered that it was NAKASE who coughed. KODAMA was then questioned as to why he could recall NAKASE's cough, and the only reply he could give to that question was that NAKASE had been ill in the sick bay for a few months.

Witness KINOSHITA also testified against the accused, NAKASE. He said that Head Medical Officer UENO told KINOSHITA that he (UENO) was told by the executive officer to dispose of the prisoners and that he was going to operate on them. He also testified that while operating on the prisoner he heard a voice coming from outside of the air raid shelter, "We'll do the other one next", and that he thought it was the voice of Executive Officer NAKASE. KINOSHITA was asked if the outside was noisy when he heard NAKASE's voice, and he answered "it was". Then he was asked if he remembered other voices but he said that he did not remember.

It is quite unnatural that KINOSHITA, though he does not remember the voices of other persons, can recall the voice of a specific person, NAKASE. Comparing this with the characteristic of KINOSHITA as a witness to which I referred before, we believe that KINOSHITA was lying on the stand. In order to identify a person by the person's cough or voice, he should be as close to the person as a husband is to his wife or parents are to their children. We can not imagine that KODAMA and KINOSHITA were so close to NAKASE.

The alleged order of NAKASE which witness KINOSHITA stated that he heard from UENO is purely hearsay which is not worth consideration. In view of the above reason, we request a directed acquittal of NAKASE on the grounds of insufficient evidence.

"Z (1)"

CERTIFIED TO BE A TRUE COPY
James P. Nenny
JAMES P. NENNY,
Lieutenant, USN,
Judge Advocate.

1205

Lastly, as regards KOBAYASHI, the conclusion which is reached by summing up the testimony of the witnesses for the prosecution, KODAMA, KINOSHITA,, UCHIHIRA, KUNO, HOSHINO, SAITO, and TSUBOI is as follows:

KOBAYASHI relayed the order of UENO to make preparations for the operation to UCHIHIRA and others; that he then appeared for a short time at the scene of the operation; and that he was at the scene when ERIGUCHI beheaded the prisoner. Witness KODAMA testified that KOBAYASHI taught ERIGUCHI how to cut when ERIGUCHI beheaded the prisoner, but concerning this point the testimony of the various witnesses is divided, and whether KODAMA's testimony is true or not is very doubtful.

In view of this, the allegation in Specification 1 of Charge I and Specification 2 of Charge II in that the accused KOBAYASHI "assault, strike, kill and cause to be killed by beheading with a sword, " "assault, strike, mistreat, torture and abuse by conducting surgical explorations upon an American prisoner," is definitely not proved. Therefore, we request a directed acquittal of KOBAYASHI on the ground that his acts do not in anyway constitute a crime.

KUWATA, Hidoo.

I hereby certify the above to be a true and complete translation of the original request in Japanese to the best of my ability.

EUGENE E. KERRICK, JR.
Lieutenant, U.S.N.R.
Interpreter.

"2 (2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1206

May it please the Commission:

All the accused hereby make this plea in abatement in order to bring to the attention of the commission the fact that the affidavit of Nagashima, Mitsuo, labelled Statement of Nagashima, Mitsuo, the affidavit of Ueno, Chisato, affidavit called statement of Eriguchi, Takeshi, and the affidavit called, "My Heart" by Tanaka, Sueta are not verified.

The accused point out the judge advocates' error in not having these affidavits verified. The judge advocate may correct this error by simply having the affidavits verified as is required by the rules as regards affidavits thereby avoiding the same mistake in another war crimes trial in regard to the same cause of action.

All of the accused pray that these statements of Nagashima, Mitsuo, Ueno, Chisato, Eriguchi, Takeshi, and Tanaka, Sueta, be stricken from the record, that the accused be not required to give any further answer.

Respectfully,

Martin E. Carlson,
Commander, USNR.

"AA (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1207

May it please the Commission:

All the accused hereby make this pleas in abatement in order to bring to the attention of the Commission the fact that Lieutenant (jg), Fredrick F. Tremayne, U.S.N.R., was not authorized to take the affidavits of Nagashima, Mitsuo; Ueno, Chisato; Eriguchi, Takeshi; and Tanaka, Sueta.

The judge advocates may correct this lack of authority of Lieutenant (jg), Fredrick F. Tremayne, U.S.N.R. by setting in motion the regular Navy procedure whereby Lieutenant (jg) Fredrick F. Tremayne will be duly authorized to take affidavits.

All of the accused pray that these statements of Nagashima, Mitsuo; Ueno, Chisat; Eriguchi, Takeshi; and Tanaka, Sueta be stricken from the record and that the accused be not required to give any further answer.

Respectfully,

Martin E. Carlson,
Commander, U.S.N.R.

"BB (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1208

May it please the Commission:

All of the accused hereby make this plea in abatement in order to bring to the attention of the Commission the fact that the four statements which were admitted into evidence, the statements of Nagashima, Mitsuo; Ueno, Chisato; Eriguchi, Takeshi; and Tanaka Sueta, are not sworn to.

The judge advocate may correct this by having the affidavits which he offers into evidence sworn to.

All of the accused pray that these statements of Nagashima, Mitsuo; Ueno, Chisato; Eriguchi, Takeshi; and Tanaka Sueta, be stricken from the record and prays of judgement of the charges and specifications and that the charges and specifications be quashed.

Respectfully,

Martin E. Carlson,
Commander, USNR.

"CC (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1209

May it please the Commission:

All of the accused hereby make this plea in abatement in order to bring to the attention of the Commission the fact that the affidavit of NAGASHIMA, Mitsuo; UENO, Chisato; Eriguchi, Takeshi; and TANAKA, Sueta, introduced into evidence by the judge advocate to prove the controverted facts material to the issue, cannot be and affidavits are not admissible as to controverted facts material to the issue, that is records of court cannot be proved by affidavit.

We cite the following cases in support of our contention: Ala. Pukering vs Townsend, 118 Ala. 351, 23 S. 703; Ark. Western Union Tel Co. vs Gillis, 89 Ark. 483, 117 SW 749, 131 Am. SR 115; Ga. Naples vs Hoggard, 58 Ga. 315; Ill. Murphy vs Schoch, 135 Ill. A. 550; Fankelstein vs Schilling 135 Ill. A. 543; Austin State Bank vs Morrison, 133 Ill. A. 339; Hume etc. Mfg Co. vs Caldwell, 35 Ill. A. 492 /aff 136 Ill. 163, 26 N.E. 599; Quiun vs Rawson, 5 Ill. A. 130; Ind. Ohio etc., R Co. vs Levy, 134 Ind. 343, 32 N.E. 815, 34 N.E. 20; Kan. Johnston vs Johnston, 44 Kan. 666, 24 P. 1098; Ky. May vs Williams, 109 Ky 682, 60 S.W. 525, 22 Ky. L. 1328; Phoenix Ins Co. vs Lawrence, 4 Metc. 81 Am.D. 521; Newton vs West, 3 Metc. 24; Talbot vs. Pierce, 14 B. Mon 158; Morton vs Sanders, 2 J J Marsh 192, 19 Am D. 128; Mo. Patterson vs Fagan, 38 Mo. 70; N. J. Staley vs South Jersey Realty Co. (Sup) 90 A. 1042; Peer vs Bloxham, 82 N.J. L. 288, 81 A. 659; Baldwin vs Flagg, 43 N.J. L 495; Cooper vs Galbraith, 24 N.J. L 219; Lammis vs Strattan, 2 N.J. L 245; Layton vs Coopa, 2 N.J. L 62; Pullen vs Pullen, 46 N.J. Eq. 318, 20 A. 393; Clutch vs Clutch, 1 N.J. Eq. 474; N.J. Inre Eldridge, 82 N.Y. 161, 37 Am R. 558; Opl. Watkins vs Grieser, 11 Okl. 302, 66 P. 332; Pa. Hoar vs Mulvey, 1 Burn 145; Sturgeon vs Waugh, 2 Yeates 476; Plankurson vs Cave, 2 Yeates 370; Lilly vs Kitzmiller, 1 Yeates 28; S.C. McBride vs. Floyd, 188 C.L. 209; Texas. Henke vs Keller 50 Tex Co. A. 533, 110, S.W. 783; Wash. Graham vs Smart, 42 Wash 205, 84 P. 824; W.Va. Harold vs Crag 99 W.Va. 353, 53 S.E. 466; Peterson vs Ankrom, 25 W.Va. 56; Tennant vs Divine, 24 W.Va. 387; Ind. Kellog vs Sutherland, 38 Ind. 154; Pa. Smith vs Weaver, 41 Pa. Super 253, 256;

The judge advocate may correct this procedure by refraining from bringing into evidence affidavits to prove the records of the court or this Commission that is to prove the controverted facts material to the issue.

All of the accused pray that these affidavits of NAGASHIMA, Mitsuo; UENO, Chisato; ERIGUCHI, Takeshi; and TANAKA, Sueta be stricken from the record and prays of judgment of the charges and specifications and prays that the charges and specifications be quashed.

Respectfully,

Martin E. Carlson,
Commander, USNR,

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNEY,
Lieutenant, USN,
Judge Advocate.

"DD (1)"

12 10

May it please the Commission:

All the accused being charged with a grave crime call the Commission's attention to their constitutional right to meet the witness face to face which includes the right to cross examine the affiant Nagashima, Mitsuo whose affidavit was admitted into evidence against all these accused. When the affidavit of Nagashima, Mitsuo was admitted into evidence he became a witness against all the accused.

No opportunity is being given the accused to cross-examine Nagashima, Mitsuo since he is now insane, said to have become insane since he made the affidavit, and therefore his affidavit admitted into evidence becomes incompetent.

All the accused therefore pray that the Commission order a mistrial as to each and everyone of them.

Respectfully,

Martin E. Carlson,
Commander, USNR.

"EE (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1211

May it please the Commission:

All of the accused pray that this Commission compel the attendance of Nagashima, Mitsuo as a witness in this case.

The accused pray that the Commission issue a writ of habeas corpus ad testificandum to secure the presence in this court of Nagashima, Mitsuo said to be confined as a lunatic in the Matsuzawa Psychiatric Hospital, Tokyo, Japan.

Respectfully,

Martin E. Carlson,
Commander, USNR.

"FF (1)"

IDENTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USNR,
Judge Advocate.

12 12

**OPENING STATEMENT FOR THE RECORD
DELIVERED BY MR. IWATA, Edna.**

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "HI."

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12 13

OPENING STATEMENT
FOR THE
DEFENSE.

Delivered by

KUWATA, Hideo.

At the outset of starting the defense, I shall first outline the allegation of the prosecution and the proof introduced in support of it. And in turn, I shall outline the main facts to be rebutted by the defense and evidence to be introduced for that purpose.

The allegations of the prosecution and the facts which they have tried to prove can be summarized as follows: In June 1944 the 41st Guard Unit at Dublon Island, Truk Atoll, Caroline Island, commanded by Captain ASANO, Shimpei had under its custody 5 American prisoners of war. During an air raid which occurred about 19 June, 3 of these prisoners were killed by the blast of a bomb which had dropped in the vicinity of the confinement. Soon after this incident, the Commanding Officer through the acting Executive Officer, Lt. Comdr., NAKASE, Shohichi, ordered the acting Head Medical Officer, Lt. Comdr., UENO, Chisato to dispose of the 2 survivors. As the Head Medical Officer UENO was not ordered in advance how to dispose of the prisoners, he performed a vivisection upon one of the prisoners in the battle dressing station which was in the vicinity of the sick bay, and subsequently had the corpsmen take the prisoner to the swamp in back of the sick bay. After being taught how to cut by UENO's subordinate corpsman, Warrant Officer KOBAYASHI, Kazumi, Dentist Officer ERIGUCHI, Takeshi who also was UENO's subordinate beheaded the prisoner in the presence of Commanding Officer ASANO, Executive Officer NAKASE, Head Medical Officer UENO and others. While the vivisection was being performed, the other prisoner who had been left outside of the battle dressing station, was also brought by the order of NAKASE to the swamp in back of the sick bay where the prisoner was stabbed by leading seaman TANAKA, Sueta and others. This constitutes the allegation of the prosecution.

Of the foregoing allegation, the fact that one of the surviving prisoners was beheaded by ERIGUCHI and the other was stabbed with a bayonet by TANAKA, has been proved to some extent by the witnesses for the prosecution; but the facts other to this have not always been sufficiently proved. First of all, only one witness, KINOSHITA, Hiroshi testified that Commanding Officer ASANO was at the scene of the beheading, while all the other witnesses for the prosecution testified that they had no recollection of this fact. The allegation that while the exploration was being made upon one of the two prisoners, the other prisoner who was left outside was removed by the order of NAKASE to the swamp, and in his presence bayoneted by TANAKA and others, has been testified to only by KODAMA, Akira who merely said, "While the operation was going on I heard a cough outside, and I think it was that of Lt. Comdr., NAKASE," and by KINOSHITA, Hiroshi who said, "During the operation there occurred some commotion outside. A voice was heard outside saying, 'The other will be next (or now), and I think it was the voice of Lt. Comdr. NAKASE.'"

"HH (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate

12 14

The allegation that NAKASE was at the scene where TANAKA and the others bayoneted the prisoner, was only testified to by one prosecution witness, KANI, Hiroshi. Witnesses for the prosecution, TSUBOI, Haruo and KOMECHI, Takumi who both were with KANAI at the scene, testified that they did not recall such a fact. The accused cannot bear to be condemned on such flimsy and inconsistent evidence. Thus, the accused ASANO and NAKASE will take the stand in their own behalf, and prove that the foregoing testimony of the prosecution witnesses was false, by testifying that no orders were issued or relayed to dispose of the prisoners, nor were they at the scene of the beheading or stabbing. Witness HIRATA, Seiso and HOSAKA, Kazuyoshi will corroborate the testimony of the above accused that they were not at the scene.

Next, in order to prove the allegation that the accused UENO performed a vivisection upon the prisoner, the prosecution produced witnesses KINOSHITA, Hiroshi and KUNO, Keijiro to have them testify to that effect. Whether an incision made upon a human body is an exploration or an operation, should not be carelessly judged by a third party. It is only natural and reasonable to say that the party who actually performed the incision, should be the best person who is able to distinguish between exploration and operation and recognize the real purpose and significance of the incision. Particularly the prisoner in question was ill and weak by the blast of the bomb. The testimony of both KINOSHITA and KUNO was nothing more than their opinion and guess, and most prejudicial to the accused UENO. Thus, the accused UENO will take the stand in his own behalf to elucidate the fact that it was not a vivisection as alleged but an operation for the purpose of treating the weakened prisoner, by explaining in detail the purpose and significance of the incision.

Next, the accused ERIGUCHI will not deny the fact that he beheaded one of the two prisoners. Besides the testimony of the prosecution witnesses, the accused himself has admitted this in his statement accepted by this commission. However, in view of the state of mind of the accused and the circumstances under which he wrote this statement, there are many points in it that need to be corrected. Thus, the accused ERIGUCHI, taking the stand in his own behalf will testify to the circumstances under which he wrote and submitted his statement and make necessary correction.

Next, as regards KOBAYASHI, there have been many things said about him, that he ordered his subordinate corpsmen to make preparations for the operation, that he ordered them to have the prisoners taken from confinement to the battle dressing station, that he led the corpsmen when they carried the prisoner from the battle dressing station to the swamp, that he had a person bring a board on which the prisoner was made to squat at the scene of the beheading, that he instructed the accused ERIGUCHI how to cut at the scene which has been particularly stressed by the prosecution, and so forth. As far as KOBAYASHI is concerned, it seems that every time a new witness took the stand something new was added. Most of these testimonies are based upon falsehood which the accused KOBAYASHI cannot possibly overlook. Thus, the accused KOBAYASHI will take the stand in his own behalf to disclose the whole truth of this incident as far as he knows and prove that he did not do any act alleged in the charges and specifications preferred against him.

CERTIFIED TO BE A TRUE COPY

"HH (2)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12 15

Lastly, the accused TANAKA, Susta will not quarrel over the fact that he and some others stabbed a prisoner with a bayonet. Besides the testimony of the prosecution witnesses, the accused himself has admitted this fact in his statement, in which the accused has stressed that the reason he did the act of stabbing the prisoner was entirely because Senior Petty Officer NAGASHIMA, Mitsuo had forced him by imposing superior authority upon him, and being unable to resist this superior order he ineluctably did it, and emphasized that it was not of his own will. However, in the statement of NAGASHIMA, Mitsuo introduced by the prosecution and accepted as evidence by the commission, it is stated as if the accused TANAKA took the initiative in doing it out of his own free will. Despite the fact that this statement was not made under the solemnity of oath, that the maker, NAGASHIMA, subsequently became insane and that the accused was not given a chance of cross-examination, it has been accepted in evidence. This cannot be overlooked by the accused. Thus, the accused TANAKA will take the stand in his own behalf and explain that the stabbing of the prisoner was not done of his own free will, but reluctantly and unavoidably done according to the orders of NAGASHIMA and will make the plea to the commission. The testimony of TANAKA will be corroborated by his comrade HOSAKA, Kazuo.

All in all, the defense will produce the accused themselves on the stand to elucidate the truth of the incident and to rebut the inconsistency and clarify the obscurity of the testimony made by the prosecution witnesses. Particularly the judge advocate, in his opening statement has stated frankly that the motive of the present incident was not clear but probably it was because of the malicious hatred toward the Americans. If the act of UENO is proved to be a treatment by operation, I believe, this question can be solved.

KUWATA, Hideo.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR.,
Interpreter.

"HH (3)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12 16

JUDICIAL NOTICES DELIVERED BY MR. KARASAWA, Tokumi.
Original documents in Japanese appended to the original record.

CERTIFIED TO BE A TRUE COPY

JAMES P. MANNY,
Lieutenant, USN,
Judge Advocate.

12 17

TO: The Military Commission convened at Headquarters Command,
Commander Marianas, Guam, Marianas Islands, September 22,
1947, by Rear Admiral Charles A. POWNALL, U. S. Navy,
The Commander Marianas.

The accused NAKASE, Shohichi, makes this plea in abatement
on the ground of misjoinder of parties. We bring to the attention
of the commission the antagonistic defenses of the accused NAKASE,
Shohichi and the accused UENO, Chisato.

The testimony of the accused UENO, Chisato shows a definite
clash of interest as against his codefendant NAKASE, Shohichi.

This can only be corrected by a severance.

The accused NAKASE, Shohichi therefore, prays that this
commission grant him a severance at this time from the accused UENO,
Chisato. NAKASE, Shohichi objects to trial in joinder with the accused
UENO, Chisato.

The accused NAKASE, Shohichi prays that the charges and
specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY

"JJ"

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12 18

TO: The Military Commission convened at Headquarters Command,
Commander Marianas, Guam, Marianas Islands; September 22,
1947, by Rear Admiral Charles A. POWNALL, U. S. Navy,
The Commander Marianas.

The accused UENO, Chisato makes this plea in abatement on
the ground of misjoinder of parties. We bring to the attention of the
commission the antagonistic defenses of the accused UENO, Chisato and
the accused NAKASE, Shohichi.

The testimony of the accused UENO, Chisato shows a definite
clash of interest as against his codefendant NAKASE, Shohichi.

This can only be corrected by a severance.

The accused UENO, Chisato therefore, prays that this
commission grant him a severance at this time from the accused NAKASE,
Shohichi. UENO, Chisato objects to trial in joinder with the accused
NAKASE, Shohichi.

The accused UENO, Chisato prays that the charges and
specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

"KK"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

12 19

TO: The Military Commission convened at Headquarters Command,
Commander Marianas, Guam, Marianas Islands, September 22,
1947, by Rear Admiral Charles A. POWNALL, U. S. Navy,
The Commander Marianas.

The accused ERIGUCHI, Takeshi makes this plea in abatement
on the ground of misjoinder of parties. We bring to the attention
of the commission the antagonistic defenses of the accused ERIGUCHI,
Takeshi and the accused UENO, Chisato.

The testimony of the accused UENO, Chisato shows a definite
clash of interest as against his codefendant ERIGUCHI, Takeshi.

This can only be corrected by a severance.

The accused ERIGUCHI, Takeshi therefore, prays that this
commission grant him a severance at this time from the accused UENO,
Chisato. ERIGUCHI, Takeshi objects to trial in joinder with the
accused UENO, Chisato.

The accused ERIGUCHI, Takeshi prays that the charges and
specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

WLL

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1220

To: The Military Commission convened at Headquarters Command, Commander Marianas, Guam, Marianas Islands, September 22, 1947, by Rear Admiral Charles A. Pownall, U. S. Navy, The Commander Marianas.

The accused Asano, Shimpei, makes this plea in abatement on the ground of misjoinder of parties. We bring to the attention of the commission the antagonistic defenses of the accused Asano, Shimpei, and the accused Ueno, Chisato.

The testimony of the accused, Ueno, Chisato, shows a definite clash of interest as against his codefendant, Asano, Shimpei.

This can only be corrected by a severance.

The accused, Asano, Shimpei, therefore prays that this commission grant him a severance at this time from the accused, Ueno, Chisato. Asano, Shimpei, objects to trial in joinder with the accused, Ueno, Chisato.

The accused, Asano, Shimpei, prays that the charges and specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1221

To: The Military Commission convened at Headquarters Command, Commander
Marianas, Guam, Marianas Islands, September 22, 1947, by Rear Admiral Charles
A. Pownall, U. S. Navy, The Commander Marianas.

The accused, Kobayashi, Kazumi, makes this plea in abatement on the
ground of misjoinder of parties. We bring to the attention of the commission
the antagonistic defenses of the accused, Kobayashi, Kazumi, and the
accused, Ueno, Chisato.

The testimony of the accused, Ueno, Chisato, shows a definite clash of
interest as against his codefendant, Kobayashi, Kazumi.

This can only be corrected by a severance.

The accused, Kobayashi, Kazumi, therefore prays that this commission
grant him a severance at this time from the accused, Ueno, Chisato.
Kobayashi, Kazumi, objects to trial in joinder with the accused, Ueno,
Chisato.

The accused, Kobayashi, Kazumi, prays that the charges and specifications
be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1222

To: The Military Commission convened at Headquarters Command, Commander
Marianas, Guam, Marianas Islands, September 22, 1947, by Rear Admiral Charles
A. Pownall, U. S. Navy, Commander Marianas.

The accused, Ueno, Chisato, makes this plea in abatement on the ground of
misjoinder of parties. We bring to the attention of the commission the
antagonistic defenses of the accused, Nakase, Shohichi, and the accused, Ueno,
Chisato.

The testimony of the accused, Nakase, Shohichi, shows a definite clash of
interest as against his codefendant, Ueno, Chisato.

This can only be corrected by a severance.

The accused, Ueno, Chisato, therefore prays that this commission grant him
a severance at this time from the accused, Nakase, Shohichi. Ueno, Chisato,
objects to trial in joinder with the accused, Nakase, Shohichi.

The accused, Ueno, Chisato, prays that the charges and specifications be
quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

400

1223

Re: The Military Commission convened at Headquarters Command, Commander
Marianas, Guam, Marianas Islands, September 22, 1947, by Rear Admiral Charles
A. Pownall, U.S. Navy, Commander Marianas.

The accused, Asano, Shimpei, makes this plea in abatement on the ground of
misjoinder of parties. We bring to the attention of the commission the
antagonistic defenses of the accused, Nakase, Shohichi, and the accused, Asano,
Shimpei.

The testimony of the accused, Nakase, Shohichi, shows a definite clash of
interest as against his codefendant, Asano, Shimpei.

This can only be corrected by a severance.

The accused, Asano, Shimpei, therefore prays that this commission grant
him a severance at this time from the accused, Nakase, Shohichi. Asano,
Shimpei, objects to trial in joinder with the accused, Nakase, Shohichi.

The accused, Asano, Shimpei, prays that the charges and specifications
be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY
JAMES P. KENNY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

STP

1224

TO: The Military Commission convened at Headquarters Command,
Commander Marianas, Guam, Marianas Islands, September 22,
1947, by Rear Admiral Charles A. POWNALL, U. S. Navy,
The Commander Marianas.

The accused UENO, Chisato makes this plea in abatement on
the ground of misjoinder of parties. We bring to the attention of
the commission the antagonistic defenses of the accused UENO, Chisato
and the accused ASANO, Shimpei.

The testimony of the accused ASANO, Shimpei shows a definite
clash of interest as against his codefendant UENO, Chisato.

This can only be corrected by a severance.

The accused UENO, Chisato therefore prays that this commission
grant him a severance at this time from the accused ASANO,
Shimpei. UENO, Chisato objects to trial in joinder with the
accused ASANO, Shimpei.

The accused UENO, Chisato prays that the charges and
specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, U. S. N. R.

"QQ"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1225

TO: The Military Commission convened at Headquarters Command,
Commander Marianas, Guam, Marianas Islands, September 22,
1947, by Rear Admiral Charles A. FOWNALL, U. S. Navy,
The Commander Marianas.

The accused NAKASE, Shohichi makes this plea in abatement
on the ground of misjoinder of parties. We bring to the attention
of the commission the antagonistic defenses of the accused NAKASE,
Shohichi, and the accused ASANO, Shimpei.

The testimony of the accused ASANO, Shimpei shows a definite
clash of interest as against his codefendant NAKASE, Shohichi.

This can only be corrected by a severance.

The accused NAKASE, Shohichi therefore prays that this
commission grant him a severance at this time from the accused
ASANO, Shimpei. NAKASE, Shohichi objects to trial in joinder with
the accused ASANO, Shimpei.

The accused NAKASE, Shohichi prays that the charges and
specifications be quashed as against him.

Respectfully,

MARTIN E. CARLSON,
Commander, U. S. N. R.

WTR

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
The Commander Marianas

1226

We make a motion for a directed acquittal in the case of Asano, Shimpei on the ground that there has been no evidence to justify the commission in believing the accused, Asano, Shimpei, participated in the killing or the operations, or in any way neglected his duty.

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1227

We make a motion for a directed acquittal in the case of Nakase, Shohichi, on the ground that there has been no evidence to justify the commission in believing the accused, Nakase, Shohichi, participated in the killing or the operation.

MARTIN E. CARLSON,
Commander, USNR

CERTIFIED TO BE A TRUE COPY

James P. Kenna
JAMES P. KENNA,
Lieutenant, USN,
Judge Advocate.

STT

1228

We make a motion for a directed acquittal in the case of Kobayashi, Kasumi, on the ground that there has been no evidence to justify the commission in believing the accused, Kobayashi, Kasumi, participated in the killing or the operation.

MARTIN E. CARLSON,
Commander, USNR.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1229

STATEMENT OF YAMADA, SHUNJI.

**Original document in Japanese appended to the original record.
Certified translation herewith appended marked "TM."**

1230

STATEMENT OF TANAKA, SUNTA, FORMER PETTY OFFICER FIRST CLASS, IMPERIAL JAPANESE NAVY.

1 December 1925: Conscribed and entered the Maizuru Naval Barracks at the age of 21.
7 December 1928: Completed the term of conscription of three years and returned home.
26 April 1943: Entered the Yokosuka Naval Barracks in accordance with general conscription.
11 December 1945: Demobilized.

I was in the Navy for three years on active service and two years and four months in accordance with general conscription, but I was never taught about the laws of war from my superiors. If my superiors knew the laws, why did they not teach us about it? I think no enlisted men knew about the laws of war. I had never heard of the laws even in our daily talk. Since I knew nothing about it, I thought it was my most important duty to obey the orders of my superiors, and I was always taught to do so.

On the day of the incident if I had been taught by my superiors and had known about the law, I would not have obeyed him on any account. But I did not know the law. I was nothing but a seaman, and I obeyed the orders of the senior petty officer.

Personal History of Tanaka, Senta, former petty officer first class, IJN.

Date of birth: 25 May 1905.
Birth Place: Amatsugataura, Hamakura-gun, Nagano-ken. The sixth son of Shinoda, Katsumasa.
Present Address: 5,555 Hiraoka, Shionaki-mura, Serasima-gun, Nagano-ken.
Permanent Residence: Same as above.
Occupation: Farmer.
Demobilized: 15 December 1945.
Honorary Posts after Demobilization:

Member of Food Control Committee, Commissioner Agricultural Department. Appointed in March 1947.

Member of the Statistic Investigation Committee, Commissioner Agricultural Department. Appointed in March 1947.

*Resigned in December 1946 on account of dissolution of the association.

Councillor of the Shionaki-mura Agricultural Village Rehabilitation Association. Appointed in March 1946.*

Councillor of the Shionaki-mura Men's Association. Appointed in March 1946.

Member of the Village Land Control Committee, Hiraoka District, Shionaki-mura. Appointed in June 1946.

Executive of the Shionaki-mura Agricultural Association. Appointed in March 1947.

CERTIFIED TO BE A TRUE COPY

James P. Kewney
JAMES P. KEENEY,
Lieutenant, USN,
Judge Advocate.

SW (1)

1231

STATEMENT OF TANAKA, SUSTA, FORMER PETTY OFFICER FIRST CLASS, IMPERIAL JAPANESE NAVY.

1 December 1925: Conscribed and entered the Maizuru Naval Barracks at the age of 21.
7 December 1928: Completed the term of conscription of three years and returned home.
26 April 1943: Entered the Yokosuka Naval Barracks in accordance with general conscription.
11 December 1945: Demobilized.

I was in the Navy for three years on active service and two years and four months in accordance with general conscription, but I was never taught about the laws of war from my superiors. If my superiors knew the laws, why did they not teach us about it? I think no enlisted men knew about the laws of war. I had never heard of the laws even in our daily talk. Since I knew nothing about it, I thought it was my most important duty to obey the orders of my superiors, and I was always taught to do so.

On the day of the incident if I had been taught by my superiors and had known about the law, I would not have obeyed him on any account. But I did not know the law. I was nothing but a seaman, and I obeyed the orders of the senior petty officer.

Personal History of Tanaka, Susta, former petty officer first class, IJN.

Date of birth: 25 May 1905.
Birth Place: Asumiyagatamura, Banishima-gun, Nagano-ken. The sixth son of Shinoda, Entomochi.
Present Address: 5,595 Hirakubo, Shiozaki-mura, Sarashima-gun, Nagano-ken.
Permanent Residence: Same as above.
Occupation: Farmer.
Demobilized: 15 December 1945.
Honorary Posts after demobilization:

Member of Food Control Committee, Commissioner Agricultural Department. Appointed in March 1947.

Member of the Statistics Investigation Committee, Commissioner Agricultural Department. Appointed in March 1947.

*Resigned in December 1946 on account of dissolution of the association.

Councillor of the Shiozaki-mura Agricultural Village Rehabilitation Association. Appointed in March 1946.*

Councillor of the Shiozaki-mura Men's Association. Appointed in March 1946.

Member of the Village Land Control Committee, Hirakubo District, Shiozaki-mura. Appointed in June 1946.

Executive of the Shiozaki-mura Agricultural Association. Appointed in March 1947.

CERTIFIED TO BE A TRUE COPY

James P. KERRY
JAMES P. KERRY,
Lieutenant, USN,
Judge Advocate.

"W" (1)

1231

Delegate of Hiraube Committee. Appointed in April 1947.
Assistant member of the Agricultural Land Committee.
Appointed in November 1946.

Official at the election of Upper House. Appointed on 5 April 1947.

When I was demobilized in December 1946, I wanted to improve my land. So I petitioned that I did not like to have official posts for two or three years. But they begged me to have these posts as I was elected, and I reluctantly shouldered these duties.

Family Condition of Tanaka, Sueta, former petty officer first class, IJN.

Born: 25 May 1905.
Birth Place: Kamakura, Amatsugata-mura, Hamamatsu-gun, Nagano-ken.
The 6th son of Shinada, Katsunosuke.
Permanent Residence: 5,535 Hiraube, Shionakimura, Sarashina-gun, Nagano-ken.
Present Address: Same as above.
Occupation: Agriculture.
My land: 1 cho and 5 tan including field and rice paddy.
(I am cultivating 1 cho myself and renting 5 tan to other person.)
Members of my family: Six.

Mother: Tanaka, Setou, 57, suffering from paralysis.
Wife: Tanaka, Koushi, 37, I married her when she was 33. As she was a nurse before, she is not fit for farming.

Elderest daughter: Tanaka, Hatsuho, 15, student of the Prefectural Sarashina Agricultural Middle School.

Elderest son: Tanaka, Sadao, 13, going to primary school.

Second son: Tanaka, Shigeyoshi, 10, pupil of the primary school.

Second daughter: Tanaka, Seiko, 4, born of my present wife.

In December 1939 I was adopted into the family of the present address and married Tanaka, Yoshii.

In March 1939, my wife Yoshii died leaving three children.

In December 1939, I married Hariguchi, Hana of Gohamuro, Sarashina-gun.

In April 1940, I divorced Hana with mutual consent, because she had been suffering from heart disease for a long time.

In November 1940, I married Koushi, my present wife.

Having few machines, the farming in Japan is done by man power. Since my mother is ill and I have four children, I think it is difficult for my wife to continue farming.

My present wife has little affection for the three children of my former wife, and I know that my mother shed tears for that reason.

As a father of these children, I worry about it very much.

END (3)

RECEIVED 10 11 1947
JAMES P. KERRY
Lieutenant, USN,
Wife Advocate

1232

A country village after the war.

I was demobilized in December 1945 and met the people of my village. They were all saying that they were glad because the war was over. There was no change in the feelings of the village before and after the war. It seems to me that they are much more at ease than before.

Americans developed the atomic bomb, and Japan was no match for America in many respects. Any person of the village knows that the difference between Japan and America is like that between "a bamboo spear and a machine gun" or "a candle and an electric light."

No one speaks about atomic energy. Luckily, our social system was improved by the kindness of the Allied Occupation Forces, and we became free from the restrictions of the Japanese militarists. Equality of men and women was admitted. We are just like a young chicken and I can say that everybody is thankful to the kindness and instruction of the Allied Occupation Forces. My eldest daughter entered the middle school this April. It has been advocated that the foundation of the establishment of a democratic state is thorough education and I received a message that my daughter would be given a liberal education. Even in the primary schools, pupils are taught English. I heard by fourth grade boy saying to my mother, "Good Morning." My three children were talking about English when they were taught on that day. Although most of the people of farming villages are ignorant, they will not accept all the principles of the government. They like democracy, but they do not like communism. I think you can see this from the result of the general election of the members of the House of Representatives.

Formerly, at the assembly of our village, we only received orders from a few leaders and we were not permitted to state our opinions. At present the assembly has become liberal and we all state our opinions and the decision is made by majority. Democracy is prevailing even in a countryside village, and I can see many promising instances.

At present Japan is suffering from the shortage of food. But I hear that they are able to manage by the kindness of the Allied Occupation Forces. Farmers are convinced that they can produce twice as much wheat, if they can get chemical fertilizer. They are working hard for the increase of their crops. I can say, when I see the life of a farming village, that a fine democracy will be established in Japan before long.

Young men and women of the farming village are enjoying their lives in the new liberal society. We could not see such a thing before. Every morning and evening, girls play ping-pong and boys play basketball or baseball. They often hold an assembly of boys and girls and exchange their views. They also have society for scientific research, and you can see that young people are trying to improve themselves. They also render service by farming and the money they make they put to use in helping the old people and comforting them. They take four trips every year, in the Spring, Summer, Autumn and Winter, and as well as enjoy their journey improve themselves. We would never have thought of such a thing in a feudal age. I think that liberal democracy is embodied in the life of a fair and cheerful farming village.

YANAKA, Saita

I certify the above to be a true and complete translation of the original statement to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter. (3)

James P. Kerney,
Lieutenant, USN,
Advocate.

1233

STATEMENT OF MIRAYASHI, KAZUHI.

Original document appended to the original record.
Certified translation appended herewith marked "TL."

1234

STATEMENT OF HORAYASHI, KAZUMI.

Born: January 7, 1911.
At : 1666 Bushima, Tatsuta-gun, Shinano-gun, Nagano-ken.
Present Address: 395 Oyama-cho, Haka-gun, Kanagawa-ken.

Schooling:

I entered the Tatsuta Higher and normal Grammar School April 1, 1927. After graduating on 25 March 1935.

Military Service:

On June the first 1935, I entered the Yokosuka Naval Barracks, and was ordered a fourth class corporal. On the first of May 1936 I was promoted to Corporal Petty Officer Third Class. On the first of August 1943, I was promoted to Corporal Warrent Officer. On the first of May 1945, I was promoted to Corporal Warigh. I was demobilized on the first of March 1946.

Places of Duty:

I arrived at the Forty-first Naval Guards on the 15th of December 1943. Upon my arrival I was ordered Head Corporal and Division Officer and performed these duties until I was repatriated to Japan for demobilization on the fifth of February 1946. On the way back to Japan I was interned on Guam, from the 8th of the same month till the 24th when we left for Japan, and was demobilized on the first of March 1946.

Family:

I have a wife but no children. We were married on the 19th of June 1936. Ever since, due to this senseless war we have not been able to be together. My only duties overseas was at the Forty-first Naval Guards but due to my frequent transfers to the various units in Japan, we have had very little time to be together. The only chance that I have had to lead a normal family life was when I was demobilized. But, then I was taken into custody.

When I was demobilized on the first of March 1946, I resolved that I would do away with the life I lead in the service and become a true civilian and worked for the rebuilding of a truly peaceful Japan. Bringing into use my knowledge of medicine I planned to set up a clinic in a village where for the last thirty years there had been no doctor. I received the permission of the necessary authorities and came to establish the clinic. When I was taken into custody the sorrow of the villagers was very sorrowful.

When I recall this unhappy incident, I heavily feel that we law-breaking men were too cowardly and much too honest. The teachings of our country should be blamed for that, still more the training of the Japanese military forces. I received military training for more than ten years which stressed obedience to orders of a superior no matter what. During that time, I lost my sense of judgment and my man and I strove blindly to obey the orders of our superiors. I know nothing about law especially international

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate

law. Since we were warrant officers it was our custom to be present where our superiors were working. If we were absent we would be reprimanded for it afterwards, and since we were not permitted to state excuses for our absence we were apt to be come servile.

In this incident, the above mentioned feeling was dominant within me although I tried to restrain it, so I came to be involved in the incident without being aware of it.

As a matter of fact, I was the head corpsman and an officer in my division. I was in a position that I had to assist the head medical officer and the officers of the medical department as head of the enlisted men. However, I tried to evade taking part in the incident as much as strict military discipline permitted me. I also acted as conscientiously as I could concerning the settlement of the affair and for the dead prisoner, although the orders were strict.

I also feel very regretful that I have caused so much trouble in the investigation of this case. As this was the first time I met with such an occasion I did not know what to do. Now I realize that my way of thinking was basically wrong.

At the beginning of the investigation I was told that there was a certain statement which I was convinced was not true. I thought that I should not state matters pertaining to other people except about things that I knew and was sure about. I have stated most honestly and frankly the facts concerning me. However, I came to be astonished that other people submitted statements which were entirely based upon their imagination, and I realize that in order to clarify the incident, I also had to state the acts of other people which I knew.

Especially, in this case, I was like an intermediary existence, so everybody misunderstood me stating, "He should have been there," or "He should have done it." I think that the judge advocate will understand that they are mistaken. As I was fully determined from the beginning of the investigation that I would take the responsibility for what I and my subordinates may have done, I frankly stated the fact that I knew.

I think that the irresponsible and imaginary statements of my subordinates may be forgiven but I am very regretful that my former superiors who were in responsible positions at that time made such irresponsible, imaginary statements.

However, I am convinced that my righteousness will be rewarded in the end.

The only thing which I regret now is that I was not allowed to state my opinion on this matter and stop it if I could. If I had not been living in the same quarters with me and if he had given me full authority in controlling my men within my responsibility, like the former head medical officer (IMO) did, I can state with confidence that we enlisted men, would not have been involved in this incident. I can show an example of this: There was the incident of IMHILL, the head of the Fourth Naval Hospital. The incident took place in the isolation ward of our unit, but we, enlisted men, had nothing to do with that incident.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

As I have stated I was involved in the incident against my will on account of absolute obedience to orders my servile feeling and the influence of Bushido. I had neither resentment nor hostile feeling toward the prisoner. I will beg you from my heart that you consider these circumstances, and that you will deal leniently with me.

Lastly, I would like to express my gratitude to you that you have dealt leniently with the enlisted man.

NOBAYASHI, Kamei.

I hereby certify the above to be a true and complete translation of the original statement written in Japanese to the best of my ability.

JOHN E. KENNY,
Lieutenant, USN,
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1237

STATEMENT OF MICHAEL TARNIEL

**Original document appended to the original record.
Certified translation appended herewith marked "AAA."**

STATEMENT OF HIRAGUCHI, TAKESHI, FORMER DENTIST LIEUTENANT, JUNIOR GRADE, IJN.

I am now being tried in this sacred court for the sake of righteousness and humanity. There is no longer any evil thought in my heart. Desiring to be born again as a child of God, I am attending the court with pureness of heart.

I would like to recall how the Japanese were and how I was before the end of the war. We, Japanese, I should say I was narrow sighted and was the slave of tradition. We talked of being civilized but thought little of the community. Indeed, the Japanese are unhappy people. After the end of the war, the Japanese were taught by the Americans and woken up to democracy. I have realized what democracy is and know that the people are free and are qualified to enjoy the favors of heaven and earth by their efforts. Under the pressure of the militarism, the Japanese were restricted in their liberty and followed the orders of their politicians blindly and obediently. I was one of them. Japan is surrounded by the sea and has had little contact with foreign countries until recently. On account of this feudalism has a strong influence on the Japanese. Until the end of the Tokugawa Era, our civilization was not as high as those of western countries. The Japanese respected warriors as people of the highest class, obeyed their tyranny and tried to maintain their lives and property obeying them. In the Meiji Era, the civilization of the western countries flowed into this country and her people were or less woken up from the dream of feudalism. But the current of this civilization was too strong and rapid for the Japanese to utilize properly. They could acquire only the surface, not the contents, of that civilization, and their thoughts still remained feudal. Then, several wars were waged, and militarists gain dictatorship of this country as the warriors had done before. They gained the power to rule the country, and the people were subjected to their tyranny.

I was born and brought up in this age of militarism where strict family teachings and school education were enforced in order to bring up fine soldiers for the future. It was considered an honor by the Japanese to become a soldier. I also received this kind of education. Children had to obey their parents absolutely, pupils their teachers, and the people the dictator. This spirit of absolute obedience grew stronger and stronger as the days went by. In the meantime, people came to think that it was a crime to act according to his own calm judgment. On account of this, in the grammar schools and high schools, the studies which were not vital to the militarists, such as law, or social ethics came to be neglected. I am one who received such an education.

I graduated from college when the World War II was at its height. At that time all men had to enter the army or navy except those who were physically unfit. In order to make the most of my knowledge which I learned at school, I put in to be a navy dentist and entered the navy. I received six months training at the medical officers' school. The training was thorough and we were trained day and night in order to make us soldiers. Absolute obedience to orders of superiors was highly advocated. Emperor Meiji said in his rescript to the armed forces, "You should bear in mind that the orders of your superiors are my orders." We read this paragraph together every morning, and this spirit of absolute obedience was taught deep into our hearts. When the training was over, I was commissioned a dentist ensign and practiced for one month at the Maritime Naval Hospital. It was twenty-one days before the

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1239

incident that I arrived at the Forty-first Naval Guard Unit, Truk Atoll, the first unit where I was to take up my duty. Due to my special knowledge as a dentist, I had become an ensign and was one at this time. But my experience in the navy was less than one year. Honestly, faithfully and strictly, I observed the orders of the head medical officer, USMC, and worked hard at my duties. I was willing to face death if it was the order of the head medical officer, USMC.

I shall never forget the incident in the beginning of July. When the operation was over at the battle dressing station. I was ordered by Head Medical Officer USMC to put the prisoner at ease at the scene. My private feelings did not matter. I could not let it interfere with the order. The prisoner was on the verge of death and looked a little painful. My limbs trembled. I clasped my hands in my heart and prayed for forgiveness. Then I beheaded him with a sword, which was the soul of a soldier. I was nothing but a tool of my superior and I could neither express my opinion nor think of its legal effect before the order. I could only pray for the soul of the prisoner and behead him. Since I am not God, I can not foretell my destiny. From the day of the incident till now, I prayed everyday for the happiness of the soul of the prisoner. My life was really an unfortunate one, but I comfort myself praying that I shall be happy in heaven.

I have a mother, a wife, and a child, and they are relying upon me as their main support. When I think of them, I feel very sorry because they know nothing about what I had done.

On 15 March 1947, after I was placed in Sugamo Prison, my mother was repatriated from Manchuria with nothing but the clothes on her back. My wife bore a son on the 19th of April when I was in Sugamo Prison. I have no house of my own and we are living in a house of the company for which I worked. As I can not work at the company now, I think my family will have to leave the house. My family has no property and I am worrying as to how they are to make their living.

KIKUCHI, Takashi.

I hereby certify the above, consisting of one and one-half (1½) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

EDWARD E. KERRICK, JR.
Lieutenant, USMC.
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

STATEMENT OF WING. CHISATO.

Original document appended to the original record.
Certified translation appended herewith marked "CC."

Statement of Former Surgeon Commander USNO, CHISATO, Imperial Japanese Navy.
Former Head Medical Officer of the Forty-first Naval Guards,
Formerly attached to the Fourth Fleet Headquarters.

1. Born:

22 August, 1906 in a remote village of Nagano, Ogata-Gun Prefecture.
When I was seven years old I moved with my parents to Tochigi Prefecture,
Shioya-gun, Yaita-cho, 907 and I am still living there.

2. Family:

I am the eldest son of my father who is the town doctor and I have
one elder sister and three younger sisters. All of my sisters were married
but one of them has come back home with her son. My wife and I have four
sons and one daughter. My son is sixteen years old and is in ill health.
As my father died four years ago I have to support nine persons. My
mother (sixty-three years old) my sister, her son, and my wife and children.

3. My motive for becoming a doctor:

I graduated the Jikeikai Medical College, Tokyo in 1932 and became a
doctor. Because my father was a doctor and I was his only son, I thought that
a doctor was the finest person in the world, and I thought of becoming a
doctor. In the spring of my thirteenth year my mother suddenly disappeared
after being sick for about ten days. My father just said that she would come
back soon, so do not worry. After about half a month of worrying my elder
sister found a note back in one of the drawers of my mother's desk. As we
were reading this note back, we found that this was her will. It stated
that she was going to Tokyo to be operated on for an incurable sickness
called "womb cancer", that she thought she would not live, and she also
stated where we could find our clothes after she had gone. About two months
later my mother came home looking pale. From the day I read my mother's
will I made up my mind to become a doctor to save sorrowful persons like my
mother. The reason I entered the surgical department for post-graduate work
was a step to become a gynecology obstetrician.

4. My motive for entering the navy:

As I have stated before, I became a doctor which I sincerely wished
to be from the time I was a child, and I enjoyed every day of my life.
Especially, when I went to a meeting to help leprosy patients one spring, and
hearing the doctors report who stood by at the leprosy hospital notwithstanding
the sacrifices they had to pay, I truly rejoiced, that I had selected to be-
come a doctor and swore that I would give my life to help the weak. But
since then, I passed the physical examination to be drafted into the army and
had to go into the army. The army at that time did not recognize our
special ability and all the university graduates were made to take fundamental
training. Therefore, I volunteered to go into the navy's medical department
for two years active service enlistment with the intention of evading the
army, and on September 1932 I entered the navy. I made a rejoicing start as
a young doctor in April 1932, but this was destroyed by the call to serve
the country in distress which followed, so I reenlisted in the fall of 1934
and stayed in the navy as desired. In this way I lead the life of a naval
surgeon for thirteen years until the end of the war. In looking back, my
life was a good one, and I worked for all I was worth, but this was all to-

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

gether a different world from that which I dreamed while I was a child or that of the rejoicing I felt just after I graduated from medical college.

From the end of 1932 until the end of 1935 I served at Yokosuka and for the next four years I served at sea. Since 1937 I continued to serve the navy on land, in the hospital, in the repair department, and during this period for five years I worked at the Hyogo Hospital which gave me the opportunity to treat the Sunshins and their families. I think that I gained very much by it. Thus, on 1 May 1944 with the end of the term for the special students of the surgical department of the Naval Medical School I was sent to the Fourth Fleet Headquarters on Truk.

5. The work I pounded in my soul as a medical officer¹

I would like to state the following facts not only as a medical officer but as a job which I worked with heart and soul under the feeling as a doctor for the first time since I entered the navy which I hoped to continue in the future.

First, the execution and research concerning sanitation in the factory and the supervision of the health of the laborers in the factory. Next, the research in protecting and preventing disaster among the laborers working on dangerous projects. Lastly, research concerning orthopedics of the disabled (including the victims disabled in battle and in the factory.)

My father worked his way to become a doctor, and to make my father a doctor my father's two sisters pushing aside the opposition of the family worked for three years in a silk mill. And his two sisters died of illness just before and after my father became a doctor. Even until my father was old he always used to say that he felt sorry for his two sisters in that he did not return his obligations before they died, further stated that they did die because there was no sanitation in the factory. As I was able to work and live with the people who worked in the factory for five years after I entered the navy, I was able to work as though this was all the memories of the thirteen years of my navy life. My hope of the future of my navy life was to continue this, but the war pulled us apart from our hopes.

6. I will state my belief, position, and feelings as a medical officer concerning the June 1944 incident which took place at the Forty-first Naval Guards.

On the 1st of May 1944 I received orders to report to Truk as an attaché to the Fourth Fleet Headquarters. This particular day was when Truk was being bombed by the American task force. The persons around me and I myself did not believe that I would come back alive. I moved my family who was living at Saoto to the country where my mother and my sister was living and reached Yokosuka on the 9th of May. That night in my room at a hotel I thought in departing what have I to leave with regret? Then as I could not ignore my belief, I wrote to my former superior my opinions concerning firstly, about the perfection of protection for the good of the persons working in factories, the constant progress in their health supervision, and from my enthusiasm concerning this I wrote if I ever set foot on Japan again, I hope to be and work with those working people, and secondly, about the progress and strengthening the work of rehabilitation in the true sense of the meaning

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

for I deplored the present state where the persons who became disable in the war were sent back to their country home before they fail completely with little or no treatment given. Why am I writing such a long and drawn-out statement? This is because I feel in myself the sudden change of fate in which I have thrown myself into by involving myself in this incident only about one month after I desperately wrote my enthusiasm as a doctor of the weak and unfortunate persons when I left Japan. I was a fool. This one month of suddenly changed environment made me lose my power of judgment and thinking and gave advantage to my unguarded mind. I arrived on Truk on the 16th day of May via Saipan. The destruction of Truk at that time was beyond ones imagination and when seen from the sky, nearly all the establishments were destroyed and the only thing that came to my eyes were the bomb craters. Even when I landed, I wondered where the fighting troops could be and how they were to fight. The next day on the 17th I reported to the Guard Unit, but the preceding head medical officer had not yet received his official orders to withdraw, so I was to live there for a little while as the future head medical officer. I think it was around the 27th or the 28th of that month that I officially relieved the preceding head medical officer. During this period we were severely bombed night and day and furthermore, the air raid shelter for the patients was still under construction.

From about the 3rd of June I contracted fever and at first I thought it was typhus and slackened my work; therefore, later when I found out it was dengue fever, I was so weak that I could not take shelter by myself whenever there was an air raid. Because this was my first experience of this sickness and as it was of a bad type, I was just able to leave the bed around the 17th or the 18th of June.

The next day after I was able to go to the officers mess to eat, that is, around the 18th or the 19th of June, the Guard Unit received great damage by an air raid, and at this time three of the five American prisoners of war who were in custody, died by this bombing and two barely escaped death. One of these two seemed to be seriously wounded from the first, but the other was not in such a bad condition.

I was very much worried in regard to the health of these two prisoners, and took special notice for any sudden change in their condition from the first. Probably it was the next day while I was talking with the commanding officer in his room, I was asked the condition of these prisoners, so I stated what I knew from examining them. Then I also stated that they were still under observation and that I do not know when there might be a necessity for an operation. He replied if there is any necessary steps to be taken, go ahead and take them any time. But as I had a belief as a surgeon to have them rest quietly and watch their condition and when the time came where the operation would do no harm to them and when there was a necessity of an operation, then and only then, would I take the scalpel in my hands. I took the conversation with the commanding officer to be his understanding. It was two days later. I was relayed by executive officer, Lieutenant Commander Nakase, who was standing outside the commanding officer's office after the noon meal the surprising words, "dispose of the two persons," stating it was the orders of the commanding officer.

What was I thinking at that time? And what did I reply to this? I can only see myself as a fool. I recall that I went thinking to myself as

CERTIFIED TO BE A TRUE COPY

James P. Nenny
JAMES P. NENNY,
Lieutenant, USN,
Judge Advocate.

I turned my back to the executive officer after answering vaguely, "Has it been decided that way?", and without waiting for an answer I went back to the sick bay.

I will state straight-forwardly. I rather had sympathetic feelings toward the fate of the prisoners up until this time and could never think them as our enemy after they were captured as prisoners.

Why was it that the Fourth Fleet Headquarters had them confined at a place where there was no such facility and make them live miserably? Why wasn't special installations built? I had such vague doubts about my superiors. I was more of a slow-motion person. Also I was in a custom of trying to interpret the words of others to be of good intention. I think about this now.

This was a fatal negligence which I can not recover in my life time. I thought in my heart, "Even such a thing will turn out better," and never imagined that various changes and orders would ensue. I never thought that the words of the executive officer was of such a thorough intent. I was of a silly nature and was apt to trust others too much which drove me to a point where I could not move. When I stare at my fate caused by my foolishness, I do not know what to say. As I was silly, I thought I could hold on to my belief even in such an atmosphere.

Indeed, the order I received (heard) gave me a big chance to act. I did take my scalpel not as a meaning to kill. I was standing before a prisoner when I was ordered to kill with my own hand. I took up my scalpel. Soon afterwards, the second order was given and the prisoner whom I had operated upon with my scalpel was killed. I insist that my act was one of proper diagnosis. But I am afraid it might be unreasonable to ask your understanding of my feelings. It is certain that some part of the prisoner's life was shortened by my own hand during the time between the words of the executive officer and the death of the prisoner.

I have no such uneasy feeling as to evade the responsibility which I should take. In such a case, I was silly that I tried to perform what a doctor should do, and I involved many of my direct subordinates in their fate of today. I regret it greatly and feel that all the responsibility lies on me.

It is my responsibility that the prisoners were carried to the battle dressing station according to the order of the executive officer. I must be blamed for what my subordinates did to one of the prisoners. There is one thing I would like to ask you. That is, that what I wrote in my first statement concerning the act of Head Corporal HIRAYASHI, my subordinate at that time, was based upon my vague recollection. So before the charges and specifications were served, I submitted the second statement (I wrote this statement because I wanted to change the first statement) to the judge advocate and explained to him that I withdrew that part of the first statement. I beg you will have special consideration as to this point on behalf of HIRAYASHI.

During my navy life of thirteen years, I received strict training as an officer and was taught that I had to have a pride as a naval officer. On the other hand, there was also my pride that I was a doctor. I often thought

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

- 4 -

0000

1245

that there were many inconsistencies between these two characters. I keenly feel now that it was because of my poor personality.

Once I had exerted myself to become a helper of weak persons. The exertion was gone, and I committed a mistake against prisoners. When I think of it, I realize that I have made up my fate.

I have frankly related my correct recollection so far as I know on my responsibility. One who was in a responsible position should take the blame for what he did by stating the truth. I think this shows my sincerity towards the victims of this incident and my faith toward my former subordinates. In those days, in the battle field, my subordinates were willing to risk their lives, even to die, if it was an order of their superior. If their superiors dare to evade their responsibility, how can the efforts of these subordinates resign themselves.

From the time I arrived on Truk until the end of the war, the units on Truk were suffering from malnutrition and shortage of food. Yet they maintained strict military discipline and worked hard without disorder. If the commanding officers on Truk had had a definite plan concerning the treatment of prisoners, many tragedies would have not occurred. My foolishness is another thing. I regret it very much.

Now I sincerely desire that the truth be made clear and that I shall be fairly judged for mistakes that I made in the past. I sincerely hope that you will make clear my responsibility for the sake of my subordinates who had faith in their superior until the very last.

Respectfully,

WMO, Chicago.

I hereby certify the above, consisting of four and one-half (4½) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

HENRY E. KENNICK, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Neeny
JAMES P. NEENY,
Lieutenant, USN,
Judge Advocate.

1246

STATEMENT OF HAKASE, SHONICHI

Original document appended to the original record.

Certified translation appended herewith marked "HSE."

RECEIVED TO BE A TRUE COPY

1247

STATEMENT OF HAKASE, SHOKICHI, FORMER LIEUTENANT COMMANDER, IJN, ACTING
EXECUTIVE OFFICER OF THE FORTY-FIRST NAVAL GUARD UNIT.

1. History:

- (a) Born on 7 February 1892.
- (b) I entered grammar school in March of 1896 and finished the course of eight years.
- (c) I entered the navy as a volunteer in June of 1910 and worked up to a lieutenant commander in November of 1943.
- (d) I was ordered to duty at the Forty-first Naval Guard Unit, Truk Atoll in November of 1943 and was appointed acting executive officer, head of the patrol department, division officer and commanding officer of the guards.
- (e) Relieved from the duty of acting executive officer and replaced by Commander AKUTAGAWA on 3 May 1944.
- (f) In the beginning of June 1944, Commander AKUTAGAWA entered the hospital. As I was the senior officer in the unit, I took over his duty and was appointed acting executive officer again at the end of July 1944 when Commander AKUTAGAWA was sent back to Japan.

2. Condition of my family:

- (a) My family consists of four persons, three of them children. One of the children is a cripple on account of an injury.
- (b) Living condition. I have no property, and we could only maintain our living by my work.
- (c) On or about 12 December 1945, I was ordered by the American authorities to go to Guam for two months as a witness. I borrowed money from a friend for two months' living expenses on my family, gave the money to my wife and came to Guam about 20 December 1945. I have not heard from my family and since my arrival on Guam, and I am worrying about how they are getting on. I am afraid that they might starve to death.

3. What I feel about this case:

- (a) About the 20th of July 1947, I was served the charges and specifications of this case. I was astonished to find out the importance of the incident and tried to discover the truth about the incident. But as I was confined in a cell I could not do anything about it and I was filled with doubts and agonies. One day, I was called by an American lawyer, Commander Carlson, and was questioned about the incident. At that time, I did not know the true state of affairs. So I asked Commander Carlson to call all the defendants of the case before him, talk together about the circumstances of that time and, after knowing the truth about the incident, I wanted to attend court. Commander Carlson said to me that he would consider my request if he had time to do so. But we had no time, and my hope was not realized. With uneasiness in my heart, I had to attend this

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

(b) As the trial went on, I heard the testimony of the prosecution's witnesses, and I came to know what the incident was. I was very surprised to know the brutal character of the incident.

The testimony of the witnesses revealed that one of the prisoners was operated by Head Medical Officer UENO with Surgeon Lieutenant KINOSHITA as his assistant and was beheaded by Dentist HIRAHARA and that another prisoner was stabbed by Petty Officer YAMANA. However, as to the motive of the incident, the testimony of the witnesses did not coincide. I think a few differences of the testimony can not be helped because of the different stand-points of the witnesses, either subjective or objective, in which they placed themselves. However, it often happened that one witness testified contrary to another, and some of these witnesses disclosed their lies or incredibilities or changed their testimony in the cross-examination by the accused.

Though these witnesses were not the main actors of the incident, they were accessories who assisted the dissection, administered the anesthetic to the prisoner, or made preparations for the incident. I could see in their attitudes that they were busy trying to protect themselves by using deceptions and plots. What do these facts mean? I can not know if their conscience as human beings is paralyzed or if they are under compulsion, but I feel that I am nothing but a weak existence who is tortured by these witnesses and some of my defendants. I am a feeble prisoner in jail, but I am feeling a deep resentment to the tricks and plots of these persons. But I can not take any steps against them. I am very regretful that all I can do is to tell a part of my feeling to my counsel. I think it is only God who can know that I am right in my heart.

4. I am fifty-seven years old now. When I recall my life of such long years, I feel that I was not rich throughout the time and my work was not an easy one. My life was so-called "a path of thorns," a painful life. But I think I was happy that I had been religiously brought up by my parents when I was a child. After I was married, my family life was a happy one. I used to say to my family, "although we are materially poor, we should be thankful to all people and things and we can be cheerful everyday. Think of a farmer in mid-summer. He is sweating in the burning heat and is working hard to harvest rice, our staple food. Think of a fisherman. He is out in the far, stormy sea on a ship of only twenty or thirty tons in order to serve us fish for our everyday's meals. All other persons are also working hard for the community. We should not forget to express our gratitude to these persons, and we should also work hard in our various positions." I tried to be mild and intimate to others and to hold myself pure and righteous. My life, therefore, has been spiritually happy. However, I came to realize in this court which is the so-called "human feeling." I wondered if the saying "face of man and heart of beast" is applied to such persons. No, they are not men. They are nothing but creatures, or they are like weeds growing around the roadside. I dislike greatly to see the faces of the people in this world. This meanness of men might be the real character or the instinct of human beings. Am I mistaken? I questioned myself again and again. But I reached the conclusion that what I want to say is that man is the lord of creation.

It seems to me that the Japanese at present have a dangerous mind and dangerous thought. This is because, I think, the education system of Japan since the Meiji Era has been fundamentally wrong. I believe that

CERTIFIED TO BE A TRUE COPY

James P. McNelly
JAMES P. MCNELLY,
Lieutenant, USN,
Judge Advocate.

the only way to save them is to give them a thoroughly democratic re-education by excellent educationalists of the United States.

5. At the time of the incident, I was the senior officer of the Forty-first Naval Guard Unit taking over the duty of the executive officer. I would like to ask your pardon that I was unable to perform my important duty of assisting my commanding officer. Also, I would like to pray respectfully for the souls of the two prisoners.

9 October 1947

NAKASE, Shohichi
Former Lieutenant Commander,
Imperial Japanese Navy.

I hereby certify the above, consisting of two and one-quarter (2 1/4) typewriter pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

HUGHES E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

QUALIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

- 3 -

1250

STATEMENT OF ASANO, SHINJI.

Original document appended to the original record.

Certified translation appended herewith marked "USA."

STATEMENT OF REAR ADMIRAL ASANO, SHIMPEI, IJN.

Your Honor the President and Members of the Commission:

As an accused in this case, I would like to express my gratitude that I am given a chance to make a final statement. Being away with all my private motives and feelings, I would like to frankly state my opinion in this case as a responsible commanding officer at the time of the incident.

1. At that time, Truk was in a very miserable situation under the continuous day and night bombings. But, although our condition was as such, I should have done every thing in my power to protect the prisoners under my custody. Unhappily, however, two American prisoners were atrociously and brutally killed by my subordinates. I regret this greatly. Representing all members of my unit, not to speak of the participants, I beg your pardon for what we had done.

2. Under pressing battle conditions, I was given a responsibility to defend Truk Atoll as commanding officer of the Forty-first Naval Guard Unit. I resolved to fight till death with my several thousand subordinates, and exerted myself to the utmost day and night under the continuous air-raids. My codefendants who are present here in this court were my faithful subordinates at that time. Though I was busy in my main duties, I had never neglected looking after the prisoners under my custody. What I regret now is that I trusted my subordinates too much and had no fears or uneasiness about the protection of the prisoners, because I had heard from no one of any incident concerning prisoners on Truk, before. Not to speak of Captain TANAKA my predecessor. Besides, I knew of the following case in November 1943 an American submarine was sunk by a Japanese destroyer, and that forty-odd members of the crew were saved and kept in custody at the Forty-first Naval Guard Unit and that they were all sent to Japan soon afterwards. I bore in mind that prisoners of war had to be sent to Japan as soon as possible, as the general headquarters required me to do so. I told my subordinates not to lose a chance to send them to Japan. This incident was accidental, that is why I regret it so much. I can not believe that my codefendants had an intention to murder the prisoners, but I think I can imagine the following case.

It is natural and it is true that my subordinates were daunted by urgent, pressing, and unfavorable battle conditions and that they resolved to fight to the last man in the coming battle which was approaching us day by day. Therefore, not only the defendants in this court but all men on Truk were then influenced by a peculiar war psychology, and it seemed to me that there was something wrong in their mental state. Especially, I can imagine the feelings of UENO and KUROKI who came to Truk from Japan without any experiences of battle. I hope you will consider these peculiar circumstances.

3. The next thing which I regret is that I, as a responsible commanding officer I did not investigate and make clear the incident at the very time of its occurrence. I shall not state the reason here, but, on account of the defendants and witnesses made self-serving, false testimonies mostly concerning the responsibility of this incident. They tried to depart from the truth, and disclosed their ugliness. I am really sorry and feel shameful of it. It might be inevitable that those who blindly participated in the incident with their temporary excitement without knowing its result try to burden their blame upon the shoulder of their commanding officer when they came to be tried for their crimes. I can understand their feelings. As I

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

as one of the defendants, I think I am not qualified to state about it. After all, the true conscience of the defendants themselves should know about the real state of the incident and their role which they played in the incident.

4. There is a saying that the truth is not always just and that the justice is not always true. So long as an organ called a man is the subject in an affair, an incident or affair occurring under the same conditions may have different characteristics and appearances by the character, thought or principle of man who participated in it. That is, there are exceptions in everything. I hope you will fully remember this.

5. It may sound haughty but we inherited from our ancestors such phrases as, "If I can trust my righteousness, I will bear any difficulties"; "Those who violate justice should be despised"; "Share your merits with your subordinates and shoulder the blames of your subordinates" or "Better die in attempt than live in idleness." I have been in the Navy for thirty years and have courted myself to be a good commanding officer. That I served without serious faults I feel is due to the kind instructions of my seniors and to earnest cooperation of my many subordinates. As I was about to finish my official work when I met with the greatest ordeal of my life. That is, how I act and behave in this trial. In other words, in determining where the responsibility lies. If I am misunderstood or suspected that I cowardly tried to escape from my responsibility by telling a lie although I was a responsible commanding officer, this would be a life-time disgrace which is more unbearable for me than death. I believe that, so far as I am concerned with this case, I should not insist that I am innocent, still more to evade the responsibility and shift it upon my subordinates. My conscience will never permit me to do so. Concerning this incident of prisoners, my position and duty are very disadvantageous to me. I have been tormented by this till now. I could bear it for my subordinates, but I will never permit them to make use of me meanly, even if they were my subordinates.

It is the indiscretion of us, the participants of the incident, that have troubled the judge advocates for a long time on the investigation of this incident. It is our indiscretion that some of us stated untruths and inconsistencies in this sacred court before this military commission. I am really ashamed of it and would like to beg your pardon. I hope that you will consider the various circumstances, and that you will not draw conclusions as to the Forty-first Naval Guard Unit by this one shameful instance.

In short, those who realize their own responsibility will fully respect the responsibility of other people. So such persons will neither act rashly nor inconsiderately, no matter what fate may fall upon them. Those who are fully aware of his responsibility will take their blame when they make a mistake.

Since this case is being tried at length with your careful and fair judgment, I expect that you, the Members of the Commission, will discover the true state of this incident and that you will give us a strict and righteous verdict.

DECLARED TO BE A TRUE COPY

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

In view of my position and responsibility, I am willing to accept any blame if it will mitigate or provide clemency to my subordinate defendants. In behalf of all the defendants, I beg your consideration.

ASANO, Shinsai,
Rear Admiral, IJN.

I hereby certify the above, consisting of two and one-quarter (2 1/4) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

HUGHES E. KENNEDY, JR.
Lieutenant, USN.
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kennedy
JAMES P. KENNEDY,
Lieutenant, USN,
Judge Advocate.

3
-1-

1254

OPENING ARGUMENT FOR THE PROSECUTION

BY

JAMES P. KENNY, USN.

If it please the commission:

In the two specifications under Charge I the prosecution has charged these six accused, former members of the Imperial Japanese Navy, with the murder of two American prisoners of war on Dublon Island, Truk Atoll, on or about 20 June 1944. Four are charged with both murders and two, Kobayashi and Tanaka, with one.

First we will take a brief look at the law of homicide as it applies to this case and then it will be pointed out how the prosecution has proved all six of these accused guilty of murder as charged.

Naval Courts and Boards, Section 53, defines Murder as "The unlawful killing of a human being with malice aforethought." Unlawful means without legal justification or excuse. The defense has at no time claimed that there was any legal justification or excuse for the killing of these two prisoners of war. It, therefore, follows that the killings were unlawful. The term "malice aforethought" means only that at the time of the killing there existed the intention to kill. There can be no question but that it was the intention of these accused to kill at the time the one prisoner was beheaded and the other bayoneted. The legalistic language found in the two specifications of this charge, viz, "willfully, feloniously, with premeditation and malice aforethought", express this same meaning and nothing more.

Now let us consider the accused with relation to the specification 1 of Charge I. Eriguchi admits he beheaded the prisoner. Ueno admits he gave Eriguchi the order to behead. It is true that both plead that their acts were done pursuant to superior orders but, as this commission well knows, such a plea is no defense to the crime charged. This principle of law has been reiterated in present years by both the International Tribunal at Nuremberg and the Supreme Court of the United States (Matter of 14 USL Weekly 414 - February 4, 1946 Yomanhita). Kobayashi does not plead superior orders but claims that he was no more than a

"HHH(1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny

JES P. KENNY,
Lieutenant, USN,

at the Commission.

1255

spectator at the beheading. The evidence is so overwhelming against Kobayashi that I will not take the time of this commission to review it. He was not only present (as he admits) but he also showed Eriguchi how to commit the crime. By his actions he made himself an accessory to the crime and is guilty of murder. He would now like to be relegated to the position of a spectator at that beheading but on that fateful day back on Dublon Island, he was so proud of his part in the performance that he bragged to his comrades that he had shown Eriguchi how to do the job (answer 39 of witness Saito, Kazuo).

Let us now consider both the accused Nakase and the accused Asano with reference to their guilt for the beheading of the American prisoner of war. Both have denied their guilt. A prosecution witness, a former member of the IJN, has placed Asano at the scene of the beheading. In its opening statement the defense tried to make light of this testimony and stated that there was an inconsistency in the prosecution's case because other witnesses had not seen ASANO. There is no inconsistency. It might be that they did not see him among the crowd and it also might be that they did see him but were reluctant to testify against their former commanding officer. The proof that KINOSHITA was not mistaken was found in the confession of ERIGUCHI in which he also placed ASANO at the scene and even mentioned how ASANO had complimented him for doing a good job in beheading the prisoner. It is true that on the stand ERIGUCHI endeavored to soften this blow against ASANO by stating that he wasn't sure whether the compliment had been given at the scene or later. It is obvious that in either event it would have been necessary for ASANO to have seen him perform. ASANO was a spectator who by International Law had a two-fold duty placed upon him: (1) to control the members of his command (2) to protect the prisoner of war. In not exercising these duties and preventing ERIGUCHI's unlawful act, he became an accessory to the murder. ERIGUCHI, in his confession states that NAKASE was also present at the beheading. He too owed a duty to the prisoner since he was in charge of all prisoners of war at the Forty-first Naval Guards. By the same principle of law he too would be an accessory to this murder.

It was not necessary for the prosecution to establish the physical presence of ASANO and NAKASE at the beheading to prove this specification. If either or both of these accused set in motion the criminal agency that eventually led to the killing, then they are guilty as charged. There is ample evidence throughout the record of this trial

"HHH(2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1256

that UENO was given orders by ASANO through his executive officer, NAKASE, to dispose of the prisoners. Once those orders were given the physical presence at the scene of the execution of these two accused was not necessary to convict them of murder. This principle of law applies to specification two as well as specification one.

Let us now look at specification two of charge I. ASANO, UENO, NAKASE, AND TANAKA are accused of the murder of one prisoner of war by stabbing with a bayonet. TANAKA has admitted doing the actual act of stabbing. The evidence establishes that after receiving the order to dispose of the two prisoners UENO had them brought to the Battle Dressing Station to operate on them and that during the operation on the one prisoner he passed the word outside that he would not operate on the other, who was thereupon taken and beheaded. If the commission believes that these actions of UENO were in pursuance to the orders to dispose of them, then he is an accessory to the bayoneting of this prisoner.

Prosecution witness, Lieutenant KINOSHITA, identified the voice that came from outside the Battle Dressing Station giving the order to take care of the other prisoner as that of NAKASE.

The witness KODAMA further established the presence of NAKASE by identifying his cough. Prosecution witness KANAI, Masahiro testified how NAKASE was present at the scene of the bayoneting. On cross-examination by defense counsel he was able to give the exact location of NAKASE in the crowd of spectators and describe his attire. Since NAKASE had this prisoner in his custody he owed him the duty of protection and by his failure to exercise that duty at the scene he is guilty of the murder of this prisoner. As previously stated ASANO and NAKASE are guilty of the murder of this prisoner on the sole basis of setting into motion the criminal agency by the order for their disposal. In the case of this prisoner we have the statement of NAGASHIMA that he received the order to dispose of the prisoner from UENO and then verified it with ASANO and NAKASE before executing it. NAGASHIMA's statement is further verified by the confession of TANAKA which relates how NAGASHIMA said the act was being done on the orders of the Commandant and the Executive Officer.

We now turn to a consideration of Charge II in which, under four specifications, various of the accused are charged with Violation of the Law and Customs of War. In the first specification, ASANO, UENO, NAKASE,

"HHH(3)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1257

and KOBAYASHI are charged with the vivisection of one of the prisoners prior to his beheading. UENO has admitted operating on the prisoner but tells a fantastic story about the need for the operation. The assisting surgeon, KINOSHITA, and a spectator, Surgeon Lieutenant KUNO, could give no reason why the prisoner was subjected to the knife other than for research and experimentation. The story of UENO that he was operating for the purpose of diagnosis loses all credibility in the light of his admission that he knew at the very time he was operating that shortly thereafter the prisoner would be murdered. UENO made an understatement when he testified that his actions are hard to explain. Indeed, it is impossible to explain them. ASANO and NAKASE are guilty as accessories if the Commission believe they had knowledge that the surgery was to be performed. Their knowledge plus their duty to the prisoner would make them accessories to the wrongdoing of UENO. In order to find KOBAYASHI guilty under this specification, the commission must believe that he had knowledge that UENO was performing a vivisection or dissection. In this specification these accused are charged with that portion of the Law of War as found in Article 2 of Title I of the Geneva Prisoner of War Convention of July 27, 1929, which states: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity."

In Specification 2 of Charge II ASANO is charged with a violation of the Law of War because of his neglect in failing to control the actions of his subordinates. The Supreme Court of the U. S. has recognized the duty which International Law places upon commanders to control the operation of their subordinates as follows: "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence 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." (Matter of Yamashita, 14 USL Weekly 414, February 4, 1946).

The law placed an obligation upon Asano because of his position. He failed in that obligation and is therefore guilty. Proof of his position

"HHH(4)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1258

plus the proof of the acts as charged were sufficient to substantiate the specification. Actual knowledge that the acts were to be committed is not a necessary element. This principle also applies to specification 3 of Charge II where Asano is charged with a Violation of the Law of War in failing to exercise his duty to protect prisoners of war. Likewise, Ueno is guilty of the violation of the Law of War as charged in Specification 4 of Charge II because of his position of command of Acting Head Medical Officer in failing to protect the two prisoners of war who were delivered into his custody.

It should be noted that the defense of these accused has taken the familiar pattern of most prior Japanese war atrocity cases tried in this area. Everybody was reluctant to do his part in the execution and was begging forgiveness of the victim but, as in other cases, all were able to overcome their reluctance and commit murder.

If there is anything in this cases more incredible than Ueno's explanation of the operation, it is the defense of Asano and Nakase that they, the Commanding Officer and Executive Officer, knew nothing about these murders. It is an insult to the mentality of any military man to expect him to believe that a medical officer on his own authority called out most, if not all, of the station personnel, issued orders to a dentist to behead a prisoner and orders to petty officer of the executive officer's division to bayonet another - did all this without first consulting and getting the permission of his superior! How such things could take place without their knowledge defies comprehension!

Gentlemen, this completes my review and comment on the evidence. The prosecution feels that we have proved the case beyond a reasonable doubt. There is no reason why this commission should doubt the testimony of the Japanese witnesses who appeared for the prosecution. It was obvious from their attitude in the witness chair that they were reluctant to testify against their former comrades. If they were guilty of anything it was not falsehood but understatement.

When the Japanese disinterred the grave of these two Americans after the end of the war and cremated their bones, they succeeded in removing the last visible remains of their crimes. Unfortunately for them they could not erase the memory of those barbaric events from the minds of the spectators. Those memories have proved the guilt of all six of these accused. Justice demands that they be punished.

Respectfully,

James P. Kenny,
Lieutenant, USN,
Judge Advocate.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

"HHH (5)"

1259

ORIGINAL DOCUMENT OF KARASUNA, TAKEMI FOR THE ACCUSED, IN
JAPANESE APPENDED TO THE ORIGINAL RECORD DATED 1944.

CERTIFIED TRANSLATION HEREWITH APPENDED DATED 1944.

1260

ARGUMENT FOR THE DEFENSE
IN BEHALF OF THE ACCUSED ERIGUCHI, TAKESHI,
AND THE ACCUSED KOBAYASHI, KAZUMI,
DELIVERED BY DEFENSE COUNSEL KARASAWA, TAKAMI,
on
23 October 1947.

If it pleases the commission:

I would like to give my argument in behalf of Eriguchi, Takeshi and Kobayashi, Kazumi, among the six defendants of this case.

I claim not guilty for the accused Kobayashi after examining and comparing various evidences introduced in this court, and I shall explain in behalf of the accused Eriguchi why he had to act as alleged in this case and shall examine the inevitable circumstances at that time in which he had to position himself.

Closing argument in behalf of the accused KOBAYASHI, Kazumi.

By the reason listed in specification 1 of charge 1 that, "On or about 20 June 1944 at Dublon Island, Truk Atoll, Caroline Islands, 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," the accused KOBAYASHI is charged with murder, and in specification 1 of charge 2, "On or about 20 June 1944, at Dublon Island, Truk Atoll, Caroline Islands, 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.

At this time I am compelled to observe closely the proofs against the above facts made by the Judge Advocates. The points which the Judge Advocate tried to prove against the accused Kobayashi are the 7 following points. Namely, (1). Ordered the prisoners to be brought from the place of confinement to the battle dressing station. (2). Ordered the preparation for the operation. (3). He was at the scene of the operation. (4). He was among the persons who carried the prisoner from the battle dressing station to the scene of the beheading. (5). He showed Eriguchi how to behead. (6). He ordered the board to be brought at the scene of the beheading. (7). He ordered the digging of the bones after the termination of the war.

"JJJ (1)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

Of the above as the last point was not mentioned in the specification I will not deal with it in this argument.

Thus it seems that the Judge Advocate is trying to stress from the above six facts that the accused Kobayashi committed murder and performed surgical explorations on a live body. Concerning these facts I will argue in detail latter by citing each evidence, but there isn't sufficient grounds to charge the accused Kobayashi of murder and crime in violation of the law and customs of war. Every time a new prosecution witness took the witness stand, the Judge Advocate, added one new fact against the accused Kobayashi. But the main object of this attack was pointed at the fact that the accused Kobayashi taught Eriguchi how to behead and the fact that he ordered the preparation of the operation. It seems that the prosecution is trying to condemn the first to specification 1 of charge 1 and the last one to specification 1 of charge 2. I can only understand the other facts to be supporting evidence to these two facts.

I will endeavor to deny precisely the fact that the accused Kobayashi taught Eriguchi how to behead basing this on the various evidences. But, unfortunately, even if this is not acknowledged, I still believe that it is absolutely impossible to acknowledge the guilt of such a grave crime, dealing with life or death, against the accused Kobayashi by such mere facts. Even though the war crimes may differ greatly from the ordinary concept of crime, we must take note of ones intentions and acts and evaluate fairly since each individual will be held for the criminal responsibility. Especially, according to the specifications the accused are condemn to the fact that they did the act of murdering or cause to murder. Has the accused Kobayashi committed such acts? I stress that the accused Kobayashi is not guilty of specification 1 of charge 1.

Next, in thinking over the point where the accused Kobayashi is charged of ordering his subordinate to make preparations for the operation in specification 1 of charge 2, this too lacks grounds. The accused Kobayashi was in a position called Head Corpsman of the 41st Guard Unit at the time of the incident. He was ordered to perform a operation, and he in turn ordered it to his subordinates. Is this a reason to charge a person? In regard to this point I stress that the accused Kobayashi is also not guilty.

In the foregoing I will endeavor to clarify the accused Kobayashi's actions on the day of the incident one by one.

First let us look at the actions of the accused Kobayashi on the day of the incident in general.

The accused Kobayashi around 10:00 a.m. on the day of the incident was told by head medical officer, Ueno at the entrance of the officers' quarters of the sick bay, "I am going to operate on the prisoners of war at the battle dressing station this afternoon." He knew that of the five prisoners of war who were confined at the 41st Guard Unit at that time three had died of the bombing and two were still alive. Therefore,

"JJJ (2)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1262

He thought the two surviving prisoners were wounded and thus, an operation was going to be performed. He did not have any doubt in his mind and as usual relayed this to Senior Petty Officer Uchihira, by saying, "As the head medical officer told me that he was going to operate on the prisoners this afternoon, ask him for the details." Thus, as he was working in the office of the sick bay after the noon meal, he heard from the seaman that the operation had started. He, who was faithful and diligent to duty went to the battle dressing station thinking, "Whether the men were making any blunders and if they were being scolded by the head medical officer, was operating on the big toe of the right foot, and the men seem to be doing alright and were not being scolded; so he left the battle dressing station right away, and then ordering to bring some fertilizer for he planned to plant some banana trees to three or four corpsmen, he went back to his former work. Fortunately, that afternoon there were no air raids, and the work which had accumulated progressed quicker than he thought. Perhaps one or two hours had gone by when he suddenly heard some one say, "Ensign, Eriguchi is going to behead a prisoner." Being surprised he went out of the sick bay and saw many persons going to the back of the medical supply store house. He too from curiosity went toward the scene. At the scene Ensign, Eriguchi was already standing near the prisoner with his sword, and the enlisted men were holding the prisoner's body, and in a little while he saw the prisoner being cut by Eriguchi. The prisoner fell into the hole. He then planted the banana trees which he told the corpsmen about, and after finishing this he again went toward the scene and saw four or five men covering up the hole; so he said to them, "Put plenty of dirt on the hole", and went back to his barracks. It was already near evening. The above are the actions the accused Kobayashi took that day. However, among the facts which the Judge Advocate tried to prove the above mentioned actions are shown, but he tried to add some color to it, and furthermore, he tried to involve the accused Kobayashi in some facts he did not have anything to do with.

At this time I would like to consider in detail the action of the accused Kobayashi on that day and the progress of this incident together with the summarized evidences which has been presented at this court.

First, in regard to the fact of bringing the prisoners from the place of confinement only one prosecution witness, namely, witness, Tsuboi alone testified that he removed the prisoners from the place of confinement by orders of the accused Kobayashi. But the witness, Tsuboi in the cross-examination of the defence answered as follows: Question No. 97. You testified before it was Kobayashi, but wasn't it Kinoshita? Answer. I do not remember clearly. As it is clear from the testimony of the witness Tsuboi, the fact that Kobayashi ordered the prisoners be brought is not clear as he himself who stated this admits. Furthermore, to make this point clear I will quote the testimony of the prosecution witness, Kinoshita, Hiroshi. This point was stressed by the Judge Advocate in questioning this witness. He was questioned about 20 times in regard to this. In other words, witness Kinoshita testified that after being ordered by head medical officer Ueno to bring the prisoners to the battle dressing station, he ordered the corpsmen and had the stretcher prepared, and he himself leading this group went to the stockade and relaying the words of the head medical officer to the senior

CERTIFIED TO BE A TRUE COPY

"JJJ (3)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1263

petty officer on duty he himself brought the prisoners, stating to the prisoners "Come with me." Furthermore, as this fact has been testified to by Head Medical Officer Ueno, who gave this particular order, that he told Kinoshita to bring the prisoners to the battle dressing station any how. From this alone this is very clear and I do not see any necessity of explaining this any further. The accused himself when he took the witness stand in his own behalf, in cross examination of the Judge Advocate, when this point was put before him, he answered that he thinks that it was a mistake in the memory of Tsuboi. Surely, this point is clearly the mistaken memory of the witness Tsuboi. Thus, we know the fact that the accused Kobayashi, ordered the prisoners be brought from the stockade to the battle dressing station is utterly false.

Next is whether Kobayashi is responsible concerning the preparation for the operation.

As I have stated in the beginning of my argument, I think this point is the main factor by which the accused Kobayashi is charged in specification 1 of charge 2. Concerning the fact that Kobayashi ordered his subordinates to prepare for the operation the most important and fundamental factor is I believe how Kobayashi who gave this order understood the operation to be and under what understanding, he gave this order. I do not wish to quarrel as to whether Kobayashi, relayed the words of the head medical officer to Senior Petty Officer Uchihira, and had him make preparations. But I absolutely cannot acknowledge the assertion of the Judge Advocate that Kobayashi gave the orders for the preparation knowing that the prisoners' live body was going to be experimented on. The operation performed in this case as was explained by Head Medical Officer Ueno, over and over again, was not an experiment on the prisoners. Presuming that this was an experiment by yielding to the Judge Advocate 100%, it still is only a subjective on the part of the executor and has no bearing on Kobayashi whatsoever. Why? Because he was not told concretely in regard to the operation. It is obvious that the prosecution's evidence as to this has completely failed. The accused Kobayashi was told by the Head Medical Officer Ueno, around 10:00 a.m., on the day of this incident at the entrance of the sick bay's officers' quarters, "I am going to operate on prisoners at the battle dressing station this afternoon." In other words, he only said that he was going to operate. So Kobayashi relayed this to the senior petty officer, Uchihira. Let us see how Senior Petty Officer Uchihira testified to this. Namely the prosecution's main question, number 15. Question: How did you come to go there (meaning the battle dressing station.) Answer: That day after the noon meal I went to the office. Kobayashi came in and said that because the head medical officer told him that he was going to operate on a prisoner that afternoon; have the men of surgical department make preparations.

Furthermore in the cross-examination of the defence counsel, he testified as follows: Question 84. When did you relay the orders of Kobayashi to Hoshino and Kodama? Answer: I received the orders before the noon meal around 11:00 or 11:30 and relayed it right away. But the time is not definite.

"JJJ (4)"

CERTIFIED TO BE A TRUE COPY

James P. Nenny
JAMES P. NENNY,
Lieutenant, USN,
Judge Advocate.

1264

Furthermore, he testified: Question No. 170. You received orders from Kobayashi. Was this the regular channel? Answer: Yes.

As we can understand from the above testimony, it was Kobayashi's every day work at the sick bay to relay the orders of the head medical officer to his subordinates. Furthermore, the accused himself on the witness stand testified that because he heard that three of the prisoners died by the bombing, he thought that the two remaining prisoners were wounded by the bombing and required an operation; therefore I had no doubt in my mind and I relayed it to the Senior Petty Officer Uchihira. In summing these up and thinking it over we can easily understand that Kobayashi, ordered Uchihira, to prepare for the operation because he understood it to be a ordinary operation. The prosecution is prejudice in that Kobayashi in relaying the orders of the head medical officer to Uchihira knew of the acts as alleged in specification 1 of charge 2 and ordered the preparations. This is what I regret the most. If we think back today after three years since the incident the fact that the accused Kobayashi gave the orders for preparation and then went to the battle dressing station once, it can very easy lead us to the wrong concept. But when we throw away our prejudice and look at the facts from a fair stand point, I am sure the above easily mistaken concept will melt like ice on a stove.

At this time I would like to add one word in regard to the testimony of the witness, Hoshino. He has testified to question 13, "I was told to go there by Kobayashi," but this shows how vague his memory is. In the testimony of witness, Uchihira and Kodama who with Hoshino received orders directly from Uchihira in answer to question 118 he testified, "I was told to make preparation for a operation from Uchihira at the surgical room.

I believe from the above explanation the members of the commission can understand that Kobayashi gave the orders for preparation thinking it was an ordinary operation. And also I believe that it is understood that he only carried out his ordinary duties, as a head corpsman.

Would this coincide with the truth to allege this accused Kobayashi, for the responsibility of the acts as shown in the specification. If this accused Kobayashi is found guilty in this case, I believe a human being will not be able to lead a cooperative social life. The reason is that we would be afraid of the subjective will of others.

The accused Kobayashi, at the scene of the operation. Next, the point which draws our attention in the testimony of the prosecution is the fact that Kobayashi, was at the scene of the operation. In regard to this fact I am not trying to deny it. I believe it is impossible to allege a criminal responsibility with the fact that a person was at the scene of the operation alone. I think the reason why the prosecution makes it an issue is that he wants to prove that he had close connection with this incident by weaving it together with the fact that he gave the order for preparation.

Let us study the various evidence in regard to why Kobayashi, went to the scene of the operation, when did he go, and how long did he stay at the scene.

"JJJ (5)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1265

First, the accused Kobayashi explained the reason why he went to the scene of the operation as follows: He testified, "Because at this time the head medical officer had just recovered from dengue fever, he was very short tempered; so I who was the head corpsman and who was to supervise them was worried whether they were being scolded; therefore I went to see them."

Next, is when did he go there.

It has been made clear from the various evidence that the progress of the operation began with the operation of the big toe of the right leg. Next came the operation of the right thigh to reveal the artery, then to the testicles. Kobayashi in his testimony testified that when he went to the scene of the operation, the head medical officer was operating on the big toe of the right leg. Therefore it is clear that the time he went to the scene was at the beginning of the operation. This fact was further made clear by the testimony of the prosecution witness, Kuno. In other words, as witness Kuno has stated in his testimony, he stated that he was at the scene until the second step, namely, the operation on the femoral artery. This same Kuno in the direct examination by the prosecution testified; Question No. 11. Did any one come in during the operation? Answer: I do not remember clearly, but I think that Kobayashi came in for a while and went out right away.

From this testimony this fact is easily understandable. Furthermore, the next point as to how long Kobayashi stayed is also indorsed by this testimony of the witness Kuno. The accused Kobayashi testified that he stayed only about two or three minutes and went out. Furthermore, the witness Kinoshita to question 373: Was Kobayashi there when you brought the prisoners to the battle dressing station? He answered he was not there to question 375. Thus he testified that Kobayashi was not present at the beginning of the operation.

Witness Uchihiro in answer to question 223 stated that I recall Kobayashi was not there at that time. Thus he testified that Kobayashi was not present when the operation ended.

Next, in looking at each testimony of whether Kobayashi was at the scene of the operation, helped in the operation, Uchihiro, testified to question 258, "Did Kobayashi help in the operation?, he did not help. Kuno testified: Question, "Did you see Kobayashi doing anything? Answer: "He did not do anything." Hoshino's testimony: Question 186, "Did Kobayashi participate in the operation?" Answer: "No he did not."

As it is clear from the testimony which I have state above, the accused Kobayashi was only at the scene of the operation for about two or three minutes at the beginning, and it is clear that he had to do with the operation. This operation was carried on by Head Medical Officer Ueno, with Kinoshita as an assistant and Kodama as an helper. Then, why is it that Kobayashi who had nothing to do with it being charged as an accused.

"JJJ (6)"

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1266

Next, the point which the prosecution tried to prove was the fact that Kobayashi ordered his subordinate to carry the prisoner from the battle dressing station to the scene of the beheading. In regard to this the prosecution witness Saito in his testimony testified that he saw Kobayashi among the persons who carried the prisoner, and codefendant, Eriguchi in his statement states that the prisoner who was operated on was put on a stretcher and under Kobayashi's command he was brought to the place behind the sick bay. I can only understand that the first testimony to be to the meaning that he just saw Kobayashi go to the scene from a distance. In regard to the fact written in the statement of Eriguchi, when he took the stand in his own behalf testified that he would like to correct it because he wrote it from his presumption. In regard to this point the prosecution witness Uchihira, in his testimony testified as follows: Question 221 on. Question: "Was it Kinoshita who ordered the prisoner to be carried out?" Answer: "I do not remember." Question: "Was it Ueno?" Answer: "I do not know who ordered. Because I received this while I was putting on the bandage, I do not know." Question: "Was it Kobayashi?" Answer: "I recall that Kobayashi was not present at this time." Question: "Do you know whether Kobayashi ordered to clean up?" Answer: "I recall that I was not ordered by him."

Witness Kodama testified: Question, "Who ordered you to carry out the prisoner from the air raid shelter?" Answer: "I was ordered by Ueno."

As I have stated before Kobayashi was not at the scene of the operation when this operation came to an end. He was at the office of the sick bay working. Therefore, as Uchihira, Hoshino, Kodama, and others testified, it is clear that he did not give the order to carry out the prisoner. Concerning the fact that the defendant Kobayashi showed his codefendant Eriguchi how to cut.

This is the point which the Judge Advocate most firmly maintains. It seems that this is the only fact for which the accused Kobayashi is indicated in specification 1 of charge I under the crime of murder. I hold, however, that such a fact is an entire fabrication and that the accused Kobayashi is not responsible for the alleged crime of murder.

As the accused Kobayashi, testified when he took the stand in his own behalf, he was surprised when he heard from someone that Ensign Eriguchi was going to cut a prisoner. When he arrived at the scene, Eriguchi was already standing by the prisoner with a sword in his hand, and in the mean time Eriguchi beheaded the prisoner. It is quite untrue that Kobayashi showed Eriguchi how to cut.

The prosecution tried to prove the fact by the testimony of Kodama Saito, and by the statement of codefendant Eriguchi. I shall examine these evidences in detail.

Let us look at the testimony of Kodama first.

He took the stand in this court as the first witness, and like witness Kinoshita, he is one of those who gave the most testimony. Be-

CERTIFIED TO BE A TRUE COPY

"JJJ (7)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1267

sides, at the scene of the operation, he handled the instruments used in the operation and played an important part in it. We can say that he is a witness who might fall under the category of a defendant. When we listen to the testimony of witnesses, we should bear in mind what was their positions in this incident, because they are apt to misrecall the fact or tell a lie in order to protect themselves. In the testimony of witness Kodama, we sometimes feel such inclinations.

Kodama testified that, although he was in the battle dressing station, he could identify the executive office by a cough which was heard coming from the outside. He also testified that he saw codefendant Tanaka stab in a few minutes when he was at the scene forty meters away from the stabber although he was in a place difficult to see it. These are instances of such testimonies. His testimony that Kobayashi showed Eriguchi how to cut is also based upon his vague recollection. So the accused, in the cross-examination of this witness asked him: Question 232. "Wasn't it Yoshinuma who showed Eriguchi how to cut and not Kobayashi?" Kodama was confused at this question and answered: "As I recall it was Kobayashi." Thus he admitted the inaccuracy of his previous testimony. To Question 221, he answered as follows: Q.221. "How many spectators were present when Eriguchi was shown how to cut?" Answer: "As I recall there was no one near by."

Let us compare this testimony with that of witness Kinoshita who testified: Question 303: "When Eriguchi beheaded the prisoner what persons were close by?" Answer: "Ensign Yoshinuma was close by." Question 306. "Was Kobayashi near by?" Answer: "As I recall he was not near by."

The testimony of these two witnesses apparently contradict each other. Besides, Kodama testified that Kobayashi showed Eriguchi how to cut at the spot five meters to the west of the prisoner, and that the prisoner was beheaded immediately after that. If this is correct, Kodama, should have known that Yoshinuma, was present.

As I have mentioned, it is clear that the testimony of Witness Kodama is not credible.

Let us examine the testimony of Witness Saito next.

He testified in direct examination by the prosecution as follows: Question 39. "What did Kobayashi say to you?" Answer: "He did not say directly to me but he said it to the persons who were present and I remember him saying the following: 'I Kobayashi showed Eriguchi how to cut the prisoner, and Eriguchi cut the prisoner skillfully.' " Question 109. "That Kobayashi showed Eriguchi how to cut, did Kobayashi himself tell you this or who did tell you?" Answer: "He did not speak directly to me, probably I think it was addressed to the senior petty officer but I was there and heard it." Then to Question 111, he answered: "I remember it at that time and in February of this year when I was questioned in Tokyo, I recalled it again."

Thus, his testimony became very vague. If Saito was correct as to

CERTIFIED TO BE A TRUE COPY

"JJJ (8)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1268

this point, why didn't Senior Petty Officer Uchihira testify to this point? If Saito was correct, why didn't the prosecution ask Uchihira if he recalls it? If Kobayashi had actually told this to Uchihira, why didn't Uchihira remember it and why only Saito who heard them talking testified about it? The conversation between Kobayashi and Uchihira is hard to believe. Uchihira was at the scene of the beheading and did actually see the beheading. It is unnecessary for Kobayashi to take the trouble of talking to Uchihira about such a matter.

Next, I shall state for a few minutes about the statement of co-defendant Eriguchi. As to this point he took the stand in his own behalf and testified as follows: Answer. "No. In my statement which I submitted at Sugamo I stated that the head corpsman Kobayashi taught me this. I stated this because of the question of the investigator at Sugamo. I was asked when I beheaded did someone tell you how to behead. As I recall someone in my back saying something to me at that time that is how I wrote it. I was not told how to behead the prisoner and this is not true." And he vaguely recalls that he was taught how to cut by Ensign Yoshinuma at the officers' room of the sick bay.

When he was cross-examined by the Judge Advocate: Question 82. "Will you tell the commission why then that you wrote down that Kobayashi had shown you how to behead the prisoner at the scene of the execution?" Answer: "The head corpsman, Kobayashi was about three or four meters away from me at the scene and I remember this fact clearly. At the scene someone in the back of me said, 'Unless you put your right foot a little forward, it is slippery, and you will cut your left when you cut if you put the right foot forward.' Whether it was Kobayashi I do not remember exactly but as I remembered Kobayashi that is how I wrote this when I said I was taught this is what I meant."

According to this testimony it has become clear why Eriguchi wrote such an untruth. According to my above assertions, I think the fact that the accused Kobayashi showed Eriguchi how to cut has vanished. I view of the official position of Kobayashi, Kobayashi was nothing but a warrant officer in the medical department. It is actually impossible that a warrant officer of the medical department should teach Eriguchi, a young officer, how to behead the prisoner. But if it was Ensign Yoshinuma who taught Eriguchi how to cut, we can understand it. Because Yoshinuma was an excellent swordsman and was a line officer. So it is natural if he taught inexperienced Eriguchi, how to behead.

I hold that it is utterly impermissible to determine the criminal responsibility of the accused Kobayashi for such a serious crime as murder with the above cited weak evidence.

The Judge Advocate tried to prove that the accused Kobayashi ordered the witness Kodama to prepare a board at the scene. However, we can fully understand that, when the accused Kobayashi arrived at the scene, Eriguchi was already by the prisoner with a sword in his hand and that there was no time to make such a preparation. As to this point, the Judge Advocate got only the incredible testimony of witness Kodama.

"JJJ (9)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1269

Now I stop my observation of the facts concerning the accused Kobayashi. Summing up all my assertions, I wish to conclude that there is no ground to indict him as the accused in this case. Without knowing the circumstances, he ordered his subordinates as usual to prepare for the operation. This was his proper duty. The Judge Advocate introduced the fact concerning the acts of Kobayashi at the scene of the beheading, but Kobayashi himself did not know anything about such an alleged fact.

As I argued at the beginning of my argument, this is a case of murder. Are the facts revealed and proved by the Judge Advocate sufficient to constitute a crime of murder? Specification 1 of charge I alleges that the accused, "Did each and together assault, strike, kill and cause to be killed, by beheading with a deadly weapon, to wit, a sword." Did the accused Kobayashi assault? Did he strike with a sword? Did he kill or cause to be killed a prisoner? Concerning to these points, nothing was proved.

Without knowing anything about the incident, the accused Kobayashi carried out his duty believing that it was his proper duty to do so. If he is still responsible for that, he will not make any excuses. He himself has nothing to be ashamed of, himself. So he believes that Heaven will help him whatever restraint he might be inflicted from the outside.

With confidence, I hold in behalf of the accused Kobayashi that specification 1 of charge I and specification 1 of charge 2 not proved and that the accused Kobayashi is not guilty of these charges.

IN BEHALF OF THE ACCUSED ERIGUCHI, TAKESHI.

The accused Eriguchi is charged with murder in specification 1 of charge I which states: that he did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, 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."

When I sum up the various evidences introduced in this court and compare them with the testimony of the accused Eriguchi himself, I can not help admitting that the accused Eriguchi was obliged to behead a prisoner of war with a sword according to the order of Head Medical Officer Ueno, his codefendant. As to this fact, I, with the accused Eriguchi, would like to apologize deeply.

Under what circumstances did the accused Eriguchi commit the act? Any fact has its ground on which it is based. We should not be so thoughtless as to judge the whole aspect of the case only by its result.

I would like to consider first the relation between the accused Eriguchi and Head Medical Officer Ueno. According to his own testimony, the accused Eriguchi entered the navy on 10 October 1943 as a dentist

"JJJ (10)"

CERTIFIED TRUE COPY

James P. McNary
JAMES P. MCNARY,
Lieutenant, USN,
Judge Advocate.

1270

probational officer. He was appointed to ensign on 1 March 1944, and on the 7th of June of the same year he arrived and was attached to the 41st Naval Guard Unit, the first unit where he served. Needless to say, Ueno was then a head medical officer. Head Medical Officer Ueno was a direct superior of the accused Eriguchi and was also an instructor of unexperienced Eriguchi. I can fully understand the attitude of Eriguchi that he obeyed whatever order given by Head Medical Officer Ueno and worked hard at his duty.

It is also natural that Eriguchi could not resist and obeyed the order of Ueno to execute the prisoner at the scene of beheading of this case. It is entirely impossible for us that Eriguchi might have resisted the order.

It is repeatedly argued in this court that orders of superiors were absolute and that the violation of such orders would be punished as crime of resisting orders. The positions of Lieutenant Oishi and Ensign Asamura in the foregoing Iwanami case were the position of Eriguchi.

He himself answered to question 25 as follows: Answer. "I disliked very much to kill a person but I could do nothing against superior orders. At this time this was the first unit in which I was dispatched to take up duties. I had only been attached to the unit for a short time. I absolutely could do nothing against superior orders so I went to get my sword at the officers' quarters of the sick bay."

Then he testified in this court of his mental state when he received the order to execute the prisoner from the head medical officer. He said in his final statement on the stand as follows: "I would like to state a little concerning the head medical officer at the time. I was given the order to execute the prisoner and also my feeling at this time. The head medical officer, Ueno, had just recovered from sickness at this time his face was very pale, his eyes sharp and he was very short tempered. He was usually a gentle person but his face when he gave me this order was desperate. When I looked into his eyes I was like a three year old child and was over powered. When I received the orders all my nerves became centered and shock from fright because of the frightful order. I had a rate of ensign, it had only been half a year since I entered the navy, I hardly knew the life of the navy. I obeyed the orders of the superior officers blindly just the same as a raw recruit. I could do nothing else but to obey those orders. During this time I performed by duties under the feeling that if it were the orders of the head medical officer I would even forfeit my life."

How can we expect Eriguchi to reject the orders of Ueno?

When we demand the personal responsibility of a crime, we can demand his criminal responsibility if we can expect that he can prevent the committance of the crime and if he acted against our expectation. In other words, no one will be shouldered with a criminal responsibility, unless he can check the committance of the crime.

"JJJ (11)"

CERTIFIED TO BE A TRUE COPY

James P. McNny
JAMES P. McNNY,
Lieutenant, USN,
Judge Advocate.

1271

Let us consider the situation of the accused Eriguchi in this case. As I have already stated, when he was ordered by Ueno to commit a criminal act of beheading a prisoner, he was in such a situation as unable to resist the order. If it is so, it is impossible to expect of him that he could prevent the committance of the criminal act. Therefore, it is too cruel to burden the criminal responsibility of murder in this case upon the accused Eriguchi.

If one violated superior orders on Truk in June 1944, he would be charged and punished with a crime of violating orders. In such a situation, how could he stand against the orders of his superior to execute a prisoner of war? It is clear that not only the accused Eriguchi but also any person in the Japanese forces would have obeyed the orders.

The accused Eriguchi testified concerning his mental state when he beheaded the prisoner as follows: Question 29, "Tell us what were your feelings when you beheaded the prisoner?" Answer: "I dislike very much cutting the prisoner as it was the superior orders praying to the prisoner, 'I regret this very much' and my feelings at the time was that both myself and the prisoner became like a God and beheading him feeling please forgive me."

When I compare his feelings when he received the orders from Head Medical Officer Ueno with the one when he beheaded the prisoner, I feel that this officer who had just been dispatched to the unit, at that time, and knew little about the navy looks like a little lamb, when he lost his capacity to consider, and acted according to orders as if he had been a tool.

The accused Eriguchi was thus obliged to behead the prisoner according to the orders of Ueno. But the neck of the prisoner was not cut off. This fact is corroborated by the testimony of Eriguchi himself and prosecution's witness Uchihira. Prosecution's witness Kodama testified that the neck was cut off, but as I stated in my argument in behalf of Kobayashi, the testimony of Kodama is incredible.

It is clear from various evidence that the prisoner beheaded by Eriguchi had been operated on that day at the battle dressing station and was on the verge of death at the time of beheading. We should notice here that the death of the prisoner was caused not only by the beheading of Eriguchi. What did Ueno say when he gave the order to Eriguchi? He said to Eriguchi, "Put the prisoner at ease." This point is clear by the testimony of witness Kinoshita and Ueno himself. This prisoner was already injured when the 41st Naval Guard Unit was bombed. He was on the verge of death after the operation performed in the battle dressing station. He was destined to die. It is true that the beheading of the accused Eriguchi made him die. But he would have died even without the beheading. In other words, the beheading of Eriguchi was nothing but an act inflicted upon the prisoner who was destined to die.

Eriguchi put the prisoner at ease as he ordered to do so by Head Medical Officer Ueno.

"JJJ (12)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1272

The accused Eriguchi intended to be a dentist and entered the Tokyo Dental College in April 1940. After he finished the course of four years, he graduated from the college in September 1943. As soon as he graduated from the college, he entered the navy, and, after receiving seven months officers' training, he was dispatched to the 41st Naval Guard Unit. He was demobilized in December of the year of the termination of the war, and worked as a dentist in Japan. His family consists of his wife and child whom he has never seen. Their living was supported by the income of the accused Eriguchi. I do not know his ability as a dentist, but dentists are very important in Japan of today. As you know, the people with the most decayed teeth in the world are the Japanese. We can understand this from the fact that the American authorities in the Allied Occupation Forces in Japan is giving an earnest help to improve the skill of dentists. The Tokyo Dental College which the accused Eriguchi graduated became a dental university this year. If the accused Eriguchi will work hard to the best of his skill and ability at his original occupation, dental treatment, I think he will contribute much for the society. I wonder if the confinement of this young dentist in jail separating him from the society for long years is sure enough to realize the righteousness demanded by the law. Especially the accused Eriguchi acted according to the orders without knowing nothing when he experienced only several months of the navy and in the first unit to which he was despatched. So his criminal responsibility is a very small one. It is easy to give pains to persons who is looking forward to the return of the accused Eriguchi, but it is hard to give them joy.

Gentlemen of the Commission, I would like to finish my argument sincerely hoping that you will consider the real circumstances in which the accused Eriguchi participated in this incident, and that you will deal with him as leniently as possible.

KARASAWA, Takami.

I hereby certify the above, consisting of thirteen typewritten pages to be a true and complete translation of the original argument to the best of my ability.

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"JJJ (13)"

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

1273

CERTIFIED TRANSLATION HEREWITH APPENDED MARKED "AII."