

CLOSING ARGUMENT

IN

BEHALF OF THE ACCUSED,

UENO, Chisato,
Surgeon Commander, IJN.

and

TANAKA, Sueta,
Petty Officer First Class, IJN.

Delivered by:

Mr. KUWATA, Hideo,
Defense Counsel.

On 22 October 1947,
at Headquarters Command,
Commander Marianas, Guam,
Marianas Islands.

INTRODUCTION:

I present this argument in behalf of the accused, UENO, Chisato, and the accused, TANAKA, Sueta, among the six accused. My argument consists of three (3) parts. Part One: Deals with the defense of the accused, TANAKA, Sueta. Part Two: Is in behalf of the accused, UENO, Chisato, and part Three: Is titled "The Relation Between War Crimes and the Japanese Society." In which I wish to indicate that the cause of war crimes is, after all, attributed to the semi-feudalistic nature of Japan, prior to the present defeat.

Since man is influenced by environment and the accused of the present case were all born, reared and educated in Japan, they cannot very well escape this semi-feudalistic nature. I believe I shall be able to indicate that this nature of the Japanese people was the motivation in the present incident. Since the responsibility of mistreating prisoners should not be solely attributed to the accused but to the Japanese people as a whole, the method of condemnation should be considered from the other point of view then penalty. Thus, I feel that this point should be taken into consideration in finding and weighing the criminal responsibility of the accused.

PART ONE

IN BEHALF OF THE ACCUSED, TANAKA, Sueta.

As regards the fact charged against the accused, TANAKA, Sueta, specification Two of Charge I reads as follows: ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards and TANAKA, Sueta, then a leading seaman, IJN, attached to the 41st Naval Guards, both attached to the military installations of the Imperial Japanese

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James P. Wenny
JAMES P. WENNY,
Lieutenant, USN,
Judge Advocate.

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Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at the said military installations, acting jointly with NAGASHIMA, Mitsuo, and others to the relator unknown, and in pursuance of a common intent, did each and together, at Dublon Islands, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, wound, strike, kill and cause to be killed by stabbing with a deadly weapon, to wit, a bayonet, an American prisoner of war, name to the relator unknown, said prisoner of war being then and there held captive by the armed forces of Japan, this in violation of the law and customs of war. In order to prove this allegation, the prosecution has produced as evidence the testimony of witnesses KODAMA, Akira; TSUBOI, Haruo; KOMIICHI, Takumi, and KANAI, Misahiro, the statement of NAGASHIMA, Mitsuo, and the confession of the accused, TANAKA, himself. I believe it has been proved by this evidence that the accused TANAKA at the swamp in the back of the sick bay of the Forty-first Guard Unit, Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, stabbed with a bayonet one American prisoner of war, name unknown, then held captive by the above unit. The accused, TANAKA, himself testified affirmatively to this fact when he took the witness stand in his own behalf. Therefore, I shall not compel myself to quarrel as regards the fact that the accused, TANAKA, stabbed with a bayonet one American prisoner of war. The problem however, is how he came about to stab the prisoner. Concerning this point, the account in NAGASHIMA's statement should be noted.

The resume of NAGASHIMA's statement concerning the accused TANAKA is as follows:

"I could not see very well from outside the air raid shelter. While I was outside, the head medical officer, suddenly came out and said, 'The senior petty officer shall dispose of the other one.' However, as I thought I could not do it, I reported this matter to the executive officer. When I did this, I was ordered by the executive officer also to dispose of the prisoner. Therefore, I had no other choice than I told the order to the men who were nearby. When I left the stabbing to those who wanted to stab of their own free will, TANAKA, Sueta yelled 'I'll do it,' and hurried off in the direction of the dispensary. TANAKA and twenty or thirty others quickly brought the prisoner to a field. Ensign YOSHINUMA and some others were included in the group, but I don't remember exactly who they were. Because I watched this from the rear, I do not know their names but two men bound the prisoner's hands behind him, passed a pole between his arms and held him up. I definitely heard the voices of many people shouting, 'Hurry up and stab.' Following their example I also said this, but because I left it up to their own free will, I never gave any order. As lots of men were yelling this with one accord, those who had the will to stab, stabbed first. After TANAKA three or four persons (I do not know their names) stabbed and when the prisoner fell I returned to the barracks."

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James P. Kewney
JAMES P. KEWNEY,
Lieutenant, USN,
Judge Advocate.

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This statement of NAGASHIMA's I believe, should be regarded as an affidavit, in view of the classification of evidence. And as an affidavit is one kind of hearsay evidence. Ordinarily it is not admissible as evidence. This statement, however, was accepted as evidence because it so happens that NAGASHIMA became insane after writing this statement and it was impossible to summon him before the court as a witness. Even under the circumstances, it is clearly provided in Section 204 of Naval Courts and Boards that such documents are admissible as evidence only when the entry or writing is against the interest of the maker.

This commission, however, has greatly relaxed the extent of accepting evidence as a result of applying the SCAP rules and has acknowledge the evidential competency of NAGASHIMA's statement. Even though it has been admitted into evidence, we must say that its evidential value is weak. I shall demonstrate this point by citing concrete examples from this statement.

First of all, the account of this statement is very vague. NAGASHIMA states, "I could not see very well from outside the air raid shelter. Suddenly while I was outside the head medical officer came out." It is not clear what he could not see very well and where he was outside of. Taking his remarks in good intention, we might understand it to mean that he could not see the condition of the prisoner who was inside the shelter and that he was outside of the shelter. But there still remains a doubt as to why NAGASHIMA, who was not a corpsman, was outside the air raid shelter in the vicinity of the sick bay. Then he goes on to state, "The head medical officer said, 'The senior petty officer will take care of the other one.' However, as I thought I could not do it I reported this matter to the executive officer." But it is neither clear whether NAGASHIMA acknowledged or refused the order of the head medical officer, nor who was ordered and in what manner by the executive officer to dispose of the prisoner. I believe the members of the commission who are all officers can easily understand that it is inconceivable for the chief medical officer to order the disposal of a prisoner to a line senior petty officer who was under a different chain of command. According to the testimony of the accused, UENO, he did not even know that the other prisoner was at the battle dressing station so it could not have possibly happened that UENO ordered NAGASHIMA to dispose of the prisoner. As regards the executive officer, it is incredible that an officer, when giving an order to a petty officer, did not clearly instruct as to who should carry out the order and in what manner. This also, I am sure, is easily understood by the members of the commission who are all military officers. Taking the stand, the accused, NAKASE, has also denied this fact. NAGASHIMA then states, "Therefore, as I had no choice I told the men nearby." But nearby what? Perhaps NAGASHIMA means nearby the place where he was, but it is not clear where he was at the time he relayed this order. Lastly, NAGASHIMA states, "When I left it up to those to stab, who of their own free will wanted to stab, TANAKA, Sueta, yelled, 'I'll do it,' and hurried off into the direction of the dispensary. TANAKA and twenty or thirty others quickly brought the prisoner to a field." It is not clear where and when those twenty or thirty others came. It seems as if they descended from heaven or grew out of the earth. The account of his statement is simply preposterous and fantastic.

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

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Secondly, the account of this statement is so exceedingly self-serving that it seems ridiculous. This is why I objected to the statement being admitted into evidence. NAGASHIMA has made such remarks as "I have left it up to those who of their own free will wanted to stab," or "I left it up to their own free will I never gave any orders." But he himself is admitting that he received orders to dispose of the prisoner from the head medical officer and executive officer. It is only natural and reasonable that once one receives an order even if it were to dispose of the prisoner, one is responsible to carry it out. Ordinarily, NAGASHIMA himself should have disposed of the prisoner. If he wanted to have his subordinates perform it, he should have appointed the person and should have given orders designating the time, place, and the method of carrying out the order. In spite of this, to say, "I left it up to their own free will I never gave any orders," is highly irresponsible, and is incredible in the military forces where discipline is regarded as the life-blood, particularly so in the Japanese Armed Forces. NAGASHIMA then states at the end, "After TANAKA, three or four persons stabbed and when the prisoner fell I returned to the barracks." As a person who has the duty of carrying out an order which he had received, could he possibly return leaving the prisoner after he fell without caring anything at all of the aftermath? At any rate, while admitting that he was responsible for disposing of the prisoner in his statement, NAGASHIMA has tried to show in the same statement that he acted as if he were a by-stander. It is highly inconsistent and contradictory. Summarizing the aforesaid facts and the testimony of the witness, HOSAKA, Kazuyoshi, and the accused, KOBAYASHI, Kazumi, that there were many lies in what NAGASHIMA said, we believe that the slightest credibility cannot be given to NAGASHIMA's statement. It seems even the investigator and judge advocate have not trusted the portion of NAGASHIMA's statement dealing with the accused, TANAKA, because the statement of the accused, TANAKA, which conflicts in the important point with NAGASHIMA's statement, has been introduced into evidence at the same time.

In order to make a contrast with NAGASHIMA's statement, let us outline the testimony and the statement of the accused, TANAKA, which was introduced by the judge advocate and admitted into evidence by the commission. He has stated, "Until three days before this incident, I had been hospitalized at the Fourth Naval Hospital with amoebic dysentery for twenty-five days and I had not completely recovered. But as the hospital became crowded with patients I was discharged and told to rest one week at my barracks in the Forty-first Guard Unit. On the day of the incident the Kanpankakari (Deck Petty Officer) and the senior petty officer came to me and forced me to work in the farm. I had no choice so I went out to the farm where all the light patients were working. One hour after I came to work, Senior Petty Officer NAGASHIMA came and ordered, 'Stop your work and fall in.' As I was the largest in stature I fell in on the right end. After we had lined up NAGASHIMA ordered, 'I have just received an order from my superior to dispose of a prisoner. I am responsible for carrying it out so you follow me.' Because of the unexpected and horrible nature of NAGASHIMA's order we all said, 'We are patients. We cannot do such a terrible thing.' When I said, 'Even if it is the order of the superior officer we cannot do such an inhuman act,' the

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

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rest said in accord, "Yes, it is unreasonable." Then, the senior petty officer's eyes popped out of his head, he bared his white teeth and made a frightful face like he was going to take a bite out of some one and raising his voice scolded everyone with fearful words, "You fools!!! With such lack of courage do you call yourselves members of the Japanese Navy? What do you understand orders of the higher authorities to mean? Do you say that you will not obey the orders of the commanding officer and executive officer? You probably know that if you do not obey the orders of the higher authorities you will become criminals whom it is not easy to pardon. Can a military organization be built up on such practices?" After scolding us NAGASHIMA said, "Follow me." Recalling the Imperial Rescript of Emperor Meiji, "Orders of the higher authorities should be understood at once to be my orders. Those who do not obey the orders of the commanding officer and executive officer and higher authorities will be criminals who cannot be easily forgiven by the country." I and the rest having no choice followed him to the swamp in back of the sick bay. Soon after we arrived at the scene, a prisoner wearing a summer uniform and blindfolded was brought over. NAGASHIMA ordered two men who were in the left wing of the line to tie the hands of the prisoner in the back. Passing a pole which was found nearby through the prisoner's arms, NAGASHIMA ordered two men to hold the ends of the pole. Then NAGASHIMA said to us, "You have probably never killed a man as yet. There is no knowing when the enemy will land on Truk. All of you shall stab the prisoner to test your courage for that time." The senior petty officer brought over a bayonet, and handing it to me in head of the line, he ordered, "Starting from you, you all will take a turn at stabbing." As I was hesitating, NAGASHIMA shouted, "You timid fool, what are you dilly-dallying about," and pushed me forward. For forty days until that morning I had been a patient confined to my bed. I felt dizzy and could hardly walk. As it was the order of my superior I had no choice, so I went into the marsh with the bayonet - my feet sinking about seven inches into the swamp. With my eyes closed and praying to the prisoner for forgiveness for what I had to do according to orders but I had no desire to do, I thrust the bayonet forward once towards the part which I thought was the hip. When I opened my eyes, the prisoner was not bleeding nor was there blood on the bayonet. I immediately handed the bayonet to the senior petty officer. Receiving permission to return I went back to the barracks. I washed my legs and hands, made my bed and lied down. I clasped my hands and prayed to the prisoner over and over again from the bottom of my heart to please forgive me for what I did according to orders but I had opposed in my heart. Suddenly it was time to eat. However, a horrible feeling filled my heart and I did not have the courage to eat."

The foregoing statement of the accused, TANAKA, is consistent throughout and without the slightest gap. When taken in comparison with the statement of NAGASHIMA, full of vagueness and contradiction, they are comparable to the sky and earth. Comparing these two statements, who would hesitate to place credibility on TANAKA's statement? Who could imagine that TANAKA who was in the hospital for twenty-five days out of the forty days that he was sick, being on a liquid food diet and eating only gruel, confined in bed until the morning of the incident, to yell out, "I'll do it," and run towards the dispensary.

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

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At this point NAGASHIMA's statement reaches the height of its preposterousness. Moreover, how the accused TANAKA hated to stab the prisoner, how he reluctantly did the act by NAGASHIMA's stern orders, are so vividly related in his statement that it seems the scene has been reproduced before our very eyes.

When the accused TANAKA was ordered by NAGASHIMA to dispose of the prisoner for the first time at the farm, he objected and refused over and over again. The authority of a superior over his subordinate in the Japanese military forces, is beyond the imagination of the American people living under the motto of democracy. Particularly, the senior petty officer is the overall supervisor of the enlisted men, and his position is comparable to that of an admiral towards an ensign. But TANAKA's strong sense of righteousness still drove him to oppose even after NAGASHIMA had railed at him with the words "Timid fool." Without acceding to TANAKA, NAGASHIMA forced TANAKA and the others to follow. The obstinate nature of NAGASHIMA surpasses all.

TANAKA's sense of righteousness and mercy still did not permit him to stab the prisoner even after he had been handed a bayonet by NAGASHIMA at the scene. TANAKA was stalling and hesitating. At this moment, the thundering voice of NAGASHIMA shouting, "You timid fellow, what are you dilly-dallying about," struck TANAKA like a bolt of lightning. To be called a "coward" in the presence of others, I believe is the greatest insult and most unbearable disgrace to a military person. Not only was TANAKA railed at, but at the same time his body was forcefully pushed forward by NAGASHIMA.

The judge advocate has labelled TANAKA's act with the terms, "willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause." In this instance, I wonder, whose intent was in operation? Here, only NAGASHIMA's intent exists and TANAKA's intent was not manifest in the slightest degree. As I have already discussed in detail in the IWANAMI Case, I shall refrain from reiterating at this time that superior orders is absolute and implicit in the Japanese military forces and that a subordinate is comparable to a mere instrument or machine in the face of superior orders. Apart from the elaborate argument as regards the legal points, what else could we say but that in this case TANAKA was only an instrument or a machine. There cannot be any differentiation of legal and illegal nor the question of justifiable cause existing or not existing in a person totally wanting of his own intention.

If this account is intended to serve as a sheer excuse on the part of TANAKA, it may be laughed off as crying over spilt milk. But TANAKA's statement is not mere self-serving declaration. It is remarkably corroborated by the testimony of witness HOSAKA, Kazuyoshi. I shall not burden the commission by reciting the testimony of witness HOSAKA, since I know it is still fresh in your memory. Suffice it to say that the statement of TANAKA is not a mere empty self-serving declaration.

I sincerely ask the members of the commission to confide in the pathetic appeal of TANAKA, coming from the depth of his heart and pray that a verdict of not guilty be granted.

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

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If, unfortunately, he is not exonerated, he merely stabbed the prisoner around the hip, timidly and trembling. He has testified that the prisoner did not even bleed nor was there any stain of blood on the bayonet. It was a mere assault and infliction of wound. From the legal point of view, I believe TANAKA cannot help being condemned for murder since the death of the prisoner was caused by the concerted action of TANAKA and others, but we must not forget that TANAKA's act was but one weak blow. Moreover, on considering the state of mind of TANAKA, we find in him a strong sense of righteousness and humanity. I beg your deepest sympathy for this pitiable man and ask your most lenient judgment.

PART TWO

IN BEHALF OF THE ACCUSED, COMMANDER UENO, CHISATO.

As in regards to the facts charged against the accused, UENO, Chisato specification one of Charge II reads as follows: ASANO, Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards,both attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving at said military installations, acting jointly and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, 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 hold captive by the armed forces of Japan, 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. In order to prove this allegation, the judge advocate has produced as evidence the testimony of witnesses KODAMA, Akira; KINOSHITA, Hiroshi; UCHIHIRA, Seiichi; KUNO, Keihiro; HOSHINO, Jinkuro, and SAITO, Kazuo, and the statements of the accused, UENO, Chisato, and the accused ERIGUCHI, Takeshi. The accused, UENO, has admitted, in his statement and also in his testimony when he took the stand in his own behalf, the fact that he did, at the air raid shelter utilized as a battle dressing station of the Forty-first Naval Guards, Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, perform subcutaneous operations upon the chest, abdomen, scrotum, right thigh and right foot of one American prisoner of war then held in custody of the said unit. The problem, however is, whether these subcutaneous operations are surgical explorations as the judge advocate insists, or it is an operation for the purpose of diagnosis or treatment as the accused, UENO, has explained. Therefore, I believe it is unnecessary to go into further discussion as in regards to the testimony of the witnesses KODAMA, Akira; UCHIHIRA, Seiichi; HOSHINO, Jinkuro, and SAITO, Kazuo, and the statement of codefendant ERIGUCHI, Takeshi among the evidence produced by the judge advocate. I believe that the prosecution has based

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

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their allegation that the subcutaneous operations were surgical exploration upon the testimony of witnesses KINOSHITA, Hiroshi and KUNO, Keijiro. Reserving the comment and criticism of the testimony of both these witnesses in the later part of my argument, let us at present listen to what the accused, UENO, has explained. The outline of UENO's testimony when he took the stand on his own behalf is as follows: I arrived for duty at the Forty-first Naval Guards, Dublon Island, Truk Atoll, on 16 May 1944, and was appointed the acting head medical officer. Around the first part of June I became sick and was confined to bed for about fifteen days. On the very next day that I left my sick bed, that is, on or about 17 June we were bombed by the American planes. Three prisoners among the five who were then held in the confinement hut of the guard unit were instantly killed by the blast of the bomb which had dropped near the hut during this raid. I investigated the death of the seaman who was the guard at the confinement hut and who was killed at the same time, and went back to my quarters to make up the record of the investigation. After completing my record, I again returned to the confinement hut and examined the two prisoners who had survived. As the two survivors were weak and in a daze by the effect of the blast, I injected one shot of camphor to each.

When I examined them the next day, I noticed a little swelling on one of them. They were both still in a daze. The other prisoner had recovered to the extent that I thought there would be no further danger. As the treatment of a patient who is thought to have troubles caused by the impact of the blast, is difficult I made up my mind to place him under observation for a while. The next day when I went to the commanding officer's room, I was asked by the commanding officer, "How is the condition of the prisoners?" I stated the result of my observation and answered, "In those cases the condition may change suddenly or it may turn out to be very light. But in the case of the two prisoners we cannot be too optimistic. Therefore, it may happen that an operation may be necessary." Then I was told by the commanding officer, "Don't hesitate to give any treatment you think is necessary." But as I wanted to observe their condition a little more, I did not intend to take any specific steps as yet.

One prisoner was recovering very quickly, but the other whom I thought from the beginning to be in a serious condition, was very weak. So about four days after the bombing, I made up my mind to perform an operation to reach a definite diagnosis of the prisoner's troubles. In other words, I determined upon an operation for the purpose of diagnosis. Then I ordered Surgeon Lieutenant KINOSHITA to bring the patient to the air raid shelter on the east side of the sick bay. This shelter was utilized as a battle dressing station and was fully equipped and the safest place from the air raids. I also ordered Lt. KINOSHITA to make preparations for an operation. As I was told around one-thirty p.m., of the same day that the preparations had been completed, I went to the battle dressing station. When I entered I saw a prisoner lying on a stretcher which was placed on the operating table.

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James P. McNary
JAMES P. McNary,
Lieutenant, USN,
Judge Advocate.

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First of all, I thoroughly examined the body of the prisoner by feeling and observation, and examined the chest by percussio and hearing. As a result of this examination, the following came to light: The swelling was the same as the previous day, there were black and blue bruises on the skin of the arms, legs, hip and the chest, there was a change in the big toe of the right foot, one testicle could only be felt; the pulse was strong but his breathing was weak; the abdomen was not very swollod, but at the bottom part it felt a little tight. Then I ordered Lieutenant KINOSHITA to use chloroform ether and administer a general anaesthetic on the prisoner. I began operating after the prisoner was completely under the influence of the anaesthetic.

First of all, as one third of the right toe had changed color, felt feverish presumably by inflammation, and had the symptoms of paronychia, I removed the nail. As there was some blood and pus collected between the nail and the incision, I wiped it off and placed a sterilized gauze upon it. This is the best treatment for paronychia. The affected part was feverish, so I judged that it was in a condition of spreading. In order to check this spreading, I thought that an injection of sulpha-amide solution into the femoral artery which was the most up to date and effective treatment was the best thing to do. So, for the purpose of giving this injection I made an incision about three centimeters long on the inner part of the right thigh, because this injection was simpler and safer to perform by making an incision and exposing the femoral artery than by injecting the solution from the outside. I then managed to expose the artery which was under the muscles and placed a gauze in order to make the position. I performed this incision thinking that the sulpha-amide drug was available, but finding that the drug was not in hand and time could not be wasted, I could not administer the injection.

Thinking the reason for feeling only one testicle was because the other was crushed by the blast or because it went up into the abdomen, I made a two centimeter incision upon the skin of the left scrotum in order to examine it. I made a thorough examination of the contents only to find that my judgment was a mistake and that there was nothing wrong. This prisoner was an extraordinary case of one interitant testicle. Furthermore, I did not remove the testicle nor did I explain the method of castration when I performed the operation on the scrotum.

Next, I made an incision of about twelve centimeters from a point just below the pit of the abdomen to about one centimeter below the navel along the median line in order to diagnose the troubles in the abdomen. I did not find any trouble in any of the internal organs. Concerning the fact that I indicated and said, "This is the appendix," during this operation, I positively did not remove the appendix.

As I next noticed a swelling and change of color around the sixth rib of the right chest, I thought, "probably, there is some trouble in the rib, or in the chest," and made a small incision of two centimeters on that part.

From the fact that there was no striking trouble in the intestines after operating and examining the inside of the abdomen, I judged that the cause of this swelling and lethargy was not in the abdomen but in the chest. But I could not proceed any further, because, it was ordinarily impossible to diagnose the chest by surgical operation, and

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

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furthermore, the condition of the prisoner did not permit an operation on the chest. I was also, at this point, completely worn out and exhausted because as I have already stated I had just recovered from a sickness and was still weak.

Truly, the account of the accused, UENO, outlined in the foregoing, is consistent, free from contradiction and not a speck of conflict.

Let us now take note of the testimony of the witnesses. In order to prepare the way for argument, I shall cite in the below the essential portions of the testimony of witness KINOSHITA, Hiroshi:

"50. Q. Do you know why that toenail was removed?
A. I do not know.

"51. Q. As a doctor did you notice anything wrong?
A. As I was administering the anaesthetic I was furtherest away from where the operation was being performed but as there were wounds in several places in the body, due to the bombing I think there may have been wounds on the toe."

"54. Q. Did you see Ueno do anything to that toe after he removed the toenail?
A. It was just as he had left it."

"63. Q. Do you know why this incision was made in the inguinal region and the femoral artery exposed?
A. I do not know.

"64. Q. Was there anything wrong in that region where this incision was made?
A. I did not think there was anything wrong with that region."

"72. Q. Did you notice any abnormal pathology in the area of the scrotum?
A. I do not recall noticing any abnormal pathology.

"73. Q. Did Ueno point any out?
A. I have no recollection."

"87. Q. What next was done to the prisoner?
A. An incision was made in the right breast over a rib.

"88. Q. Did Ueno say why he did this?
A. As I recall he did not say anything.

"89. Q. Did you notice anything wrong with that region of the breast?
A. I have no recollection if there was anything wrong with that part of the body."

"94. Q. Other than showing you and Lieutenant Kuno how to do these things, do you know as a medical practitioner of any reason why these things were done to the prisoner?
A. At the very beginning he stated that it was for research in surgery and I think the reason for it was research.

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Lieutenant, USN,
Judge Advocate.

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"95. Q. Was there anything done during the whole of this operation that was beneficial to the prisoner?

A. To my recollection I do not think there were any."

"168. Q. Then did you know that stretchers were necessary?

A. As for myself, I did not know anything at all about the condition of the prisoners so I thought it might be necessary to take stretchers along.

"169. Q. These two prisoners which remained out of the five which were bombed, had you heard that the two remaining prisoners had been effected by the bomb blast?

A. I had not heard about the prisoners which had lived through the bombing but as it was right after they had been bombed I thought they may have been weakened so I took the stretcher."

"177. Q. What is the distance between the place of confinement to the battle dressing station?

A. As I recall it was about one hundred meters.

"178. Q. Then was it that you determined that the prisoners you had placed on the stretchers could not walk one hundred meters?

A. Yes.

"179. Q. Could you see any outward signs which showed that he had to be carried on a stretcher?

A. On his hands and feet were scratches and bruises which were due to the bombing. His face looked very tired."

"182. Q. Do you know that wounds from a blast of explosion is light on the outside and very serious internally?

A. When a bomb explodes near a person he is effected by the blast in especially the breast and abdomen which you cannot see from the outside but of a serious nature. I have seen many patients who have been weakened by the effects of the blast and that is why I know of this.

"183. Q. Then this prisoner that you placed on the stretcher, the wounds on the surface were the ones on his arms and legs. Did you as a doctor fear that he had been wounded internally so that he had to be carried on a stretcher?

A. As I did not examine him closely I could not determine if there was anything wrong with him internally or not."

"235. Q. You testified that Commander Uono said he was going to operate and do research and therefore, you testified that this operation was done for research, is that what you surmised?

A. As for myself, I was told I am going to do research and also the prisoner was weak but as a doctor I saw no need for these operations also he explained about these operations, therefore, I thought it was for research."

"424. Q. Was any treatment administered to this prisoner during the operation?

A. No treatment was given.

"LIL (11)"

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"425. Q. Isn't the operation itself a treatment?

A. The operation was for the purpose of research and I do not think it was for treatment.

"426. Q. When you state this - you state this as your own conclusion, is that correct?

A. Yes."

Witness KINOSHITA, Hiroshi, was the person who acted as the accused, UENO's assistant all through the operation, so if this operation performed by the accused, UENO constitutes a crime, witness KINOSHITA was in a position to be logically indicted. Even KINOSHITA himself, I believe, realized that he could not escape indictment. But unfortunately, he was designated as a witness for the prosecution. A person in such a delicate status could not possibly have testified impartially. Thus, he has testified with prejudice against the accused, UENO, in not a few instances in the course of his testimony. It would be quite easy to cite his testimony and indicate this fact, but since it is irrelevant to the issues I shall refrain from doing so. It is sufficient here to indicate merely the general fact that his testimony as a whole is wanting in credibility in view of the position he had occupied in the present case.

KINOSHITA was not on Dublon Island during the air raid around 17 June 1944 when three out of five prisoners were killed by bomb blast while in custody of the Forty-first Guard Unit. He was at Param Island during the raid, and returned to the Forty-first Guard Unit, one or two days later. After returning to the headquarters of the guard unit, he did not examine even once the two prisoners who had survived the bomb blast. Therefore, he could not have possibly known what effects the blast had produced upon the two prisoners nor what subsequent condition they were under. In spite of this, he has testified, "I saw no need for these operations." When we consider the fact that as a military man KINOSHITA was the subordinate of the accused UENO, and as a doctor, his junior, we can only say, "what an insolent attitude he assumes." "What impudent words he utters." I believe it was not only myself who felt indignation at this testimony. And as the basis for his testifying as "The operation was for the purpose of research, it was not a treatment," he could only reply to the direct examination by the judge advocate as, "At the very beginning he stated that it was for research in surgery and I think the reason for it was research." Consequently the insolent and shameless witness could not but yield and reply "yes", when he was asked by defense Counsel, Mr. AKIMOTO, "You state this as your own conclusion, is that correct?" As the witness KINOSHITA had to finally admit, his testimony was nothing more than his own conclusion as far as the significance of operations performed by the accused, UENO, was concerned. Even if we merit him as an expert witness, arbitrary conclusion are in no way admissible. It is the general rule of criminal procedure throughout the entire world that arbitrary testimony is valueless.

"LLL (12)"

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Lieutenant, USN,
Judge Advocate.

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Then, witness KINOSHITA testified, "At the very beginning he stated that it was for research in surgery and I think the reason for it was research." How can the witness as a doctor utter such preposterous words? Counsel is speechless. I wonder if an operation is always attributed to antinomic nature, - - - if operation is research it is not a treatment and if it is a treatment it is not research. Isn't it possible to conceive an operation which is a treatment and at the same time research? If the answer to this question can be made only in the negative, I believe all the hospitals attached to the various medical universities would be worthless. The purpose of these affiliated hospitals must be in rendering practical verification of the theory and principle taught in the class and in extending clinical training to the students. Yet, at the same time the patients of these hospitals are receiving fine treatment. I do not believe KINOSHITA is a senseless doctor unaware of this self-evident truth. And, yet, he insists on saying, "At the very beginning he stated that it was for research and I think the reason for it was research." This is one of the reasons why counsel stresses that his testimony is highly prejudicial to the accused, UENO.

Next, in order to set the premises for rebutting the testimony of the witness, KUNO, Keijiro, I shall cite below the essential portions of KUNO's testimony:

"16. Q. After you had this conversation with Kobayashi what happened?
A. When I had this conversation with Kobayashi he seemed worried at the time. I did not like to stay at the sick bay and I wanted to go a different gun emplacement but I had no special reason to go so I stayed there.

"17. Q. What do you mean when you say, "I didn't want to stay at the sick bay." Why was that?
A. I had not heard that the prisoners had been wounded and it was said that prisoners were going to be operated on who had not been wounded so I did not want to stay there.

"18. Q. Who did you hear this from?
A. It was because I had not heard up to this time that prisoners had received wounds."

"40. Q. After you saw Commander Ueno operate on the inguinal region of the prisoner what happened then?
A. About this time as I was afraid that I may be ordered to assist I left and went back toward the sick bay."

"44. Q. Doctor, based upon your observation of this operation, and your previous experience as a doctor, what was the purpose of this operation?
A. It was an operation in which true treatment was not administered."

"46. Q. If true treatment wasn't administered do you know why this operation was performed?
A. I can not understand myself why this operation was performed."

"LIL (13)"

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Lieutenant, USN,
Judge Advocate.

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"79. Q. When you watched the operation on the foot of the prisoner did you notice the paronychia on the foot where the operation was performed?

A. There may have been but as I was standing toward the back of the head I could not see well.

"80. Q. Isn't it natural when there is a paronychia the nail is removed?

A. Yes, this is natural.

"81. Q. When paronychia becomes worse and affects the blood stream isn't it usual that sulpha drugs are injected into the femoral artery to combat this?

A. Yes.

"82. Q. That Commander Ueno probed for the femoral artery in the inner part of the thigh isn't this natural operation in such case?

A. It can be thought of.

"83. Q. Then the operations that you saw were the operations on the foot and the operation for the femoral artery, is this correct?

A. Yes.

"84. Q. And to the extent of the operation that you saw you testified that you thought the operation of Commander Ueno's was not justified. What is your basis for this?

A. I saw him operate on the foot but I have no recollection of his treating the foot.

"85. Q. When you say 'treating the foot' do you mean administer medicine to the foot?

A. Yes.

"86. Q. When a doctor treats a person isn't there cases when medicine is not administered?

A. There are."

"177. Q. You testified that injections in the artery can be made without incisions being made and in some cases with incisions being made. Injections in veins from the outside are usual but in case of injections in the artery isn't it safer to reveal the artery and then make injections in the artery?

A. I think an injection can be made without making an incision but it would all differ according to the way the person performing it worked, his method or the way he practiced. It would depend upon the person who practices.

"178. Q. In general veins are near the surface and arteries are deeper therefore, can it be said that it is safer to reveal the artery and make the incision?

A. It is only natural that if the artery is revealed it would be all the easier to make the injection.

"179. Q. Isn't the operation to reveal the femoral artery a very simple one?

A. It is not a major operation."

"ALL (14)"

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Lieutenant, USN,
Judge Advocate.

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The contention of witness, KUNO, Keijiro, that the operations performed by the accused, UENO upon the prisoner was not justified, has been so exhaustively rebutted in the cross-examination by defense counsel Mr. AKIMOTO, that it hardly seems necessary to make further comments on it.

All in all, witness KUNO also did not for once examine the said prisoner after the air raid. Therefore, being unaware of the fact that paronychia had developed on the right toe of the prisoner, he assumed that there was no paronychia and basing upon this assumption he surmised that there was none. KUNO himself has admitted that the operation performed by UENO is natural and can be justified, if considered upon the basis that paronychia had developed there.

But one problem still remains, as KUNO indicated, that though the inner right thigh was incised and the femoral artery exposed, sulpha-amide drug was not subsequently injected. This point, I believe, remains as a problem. As regards this point, the accused, UENO, has replied as follows: "I performed this operation thinking that sulpha-amide drug was available. But as I noticed that it was not handy after I had performed the incision, it would not be in time so I could not administer the injection." According to this statement, we can see that the accused UENO intended to check the spreadin of paronychia by injecting sulpha-amide drug when he incised the inner thigh and exposed the femoral artery, and that he did not make the incision without any reason or honest thought. Of course, it may be said that he should have proceeded with the incision after ascertaining whether this drug was available or not. In this sense, the accused UENO is not without fault. But a mistake is a mistake and nothing else. It should be essentially differentiated from intention. As the accused, UENO, has testified, this sulpha-amide injection is not a cure by single shot but shots must be given several times as the case may require. Thus, at times the mouth of the incision must be left open for a day or two. It is sufficient that some treatment is applied so that the incision will not contact with bacteria. To apply some sterilized gauze upon the incision would be considered sufficient. Thus, it is not unnatural or unlawful that UENO suspended the operation after making an incision on the inner right thigh and placed a gauze on the wound. If he wanted to give this injection, he could later have gone to the Fourth Naval Hospital and obtained the drug. Why he was unable to give this injection, together with why he could not sew the incisions perfectly instead of the sewing for the purpose of keeping position, is attributed to another separate reason, and we cannot deny by this single instance his contention that this operation was for the purpose of diagnosis and consequently a treatment.

As it is clear from the foregoing comment and examination, we cannot conclude as yet, by dint of the testimony of witness KINOSHITA, Hiroshi, and KUNO, Keijiro, that the operations which the accused, UENO performed on the prisoner was solely for surgical exploration and had no meaning of a diagnosis or treatment. As I have stressed

"LIL (15)"

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

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in the opening statement for the defense, it is only natural and reasonable to construe that the person who actually performed the incision is the most competent to explain whether an incision upon a human body was an exploration or an operation, the matter should and not be arbitrarily judged by a third party. Particularly in this case, the witnesses KINOSHITA and KUNO have not examined this prisoner for once after the bombing. On the other hand, the accused, UENO had examined the prisoner every day and observed the conditions from the time of the bombing up to the day of the operation.

It would be impossible for the witnesses who did not even once examine the prisoner, to criticize the propriety of the operation which was performed by UENO who after examining almost every day saw it necessary to do so. It is an act which cannot but be called insolent and arrogant if not malicious slander against the accused, UENO. Furthermore, according to the testimony of the accused, UENO, the prisoners were already in a rather weak condition as a result of being exposed to a considerably strong blast, and no striking signs of their weakening came to appear on the body of the prisoner as the result of the operation performed by UENO.

Consequently, the incisions which the accused, UENO, performed upon the prisoner is as he contends a diagnosis or treatment and is definitely not an incision for the purpose of exploration or experiment.

Of course, the accused, UENO, at the time of the operation may have possessed the intention of teaching the young doctors such as witnesses KINOSHITA and KUNO, by availing this opportunity. But this was always secondary, and was in no way the main purpose. To teach by availing the chance of diagnosis or treatment, is common practice in all medical schools, and there is nothing odd about it. On the contrary, it is only a natural thing for a doctor to do.

I reiterate that these incisions performed by UENO upon the prisoner were operations for the purpose of diagnosis or treatment. The incisions performed by UENO have justifiable cause in that they were operations for the purpose of diagnosis or treatment. In what phase of these operations performed by the accused, UENO, can we find a speck of unlawfulness or a shadow of inhumane treatment? To allege these acts as assault, strike, mistreat, torture, and abuse is distortion of facts beyond all words. There would be no greater prejudice against his acts than this.

On the foregoing grounds, I am fully convinced of the accused, UENO not being guilty as regards to specification one of Charge I and ask for your finding of not guilty.

Next, as a second fact alleged against the accused, UENO, specification one of Charge I reads as follows:

"In that ASANO, Shimpai, then a captain, IJN, and commandant of the 41st Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while

"ILL (16)"

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

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so serving at said military installations, acting jointly and in the pursuance of a common intent, did, each and together, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944,..... wilfully, 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."

In order to prove this allegation, the judge advocate has produced as evidence the testimony of witnesses KODAMA, Akira; KINOSHITA, Hiroshi, and UCHIHARA, Seichi, and the statements of the accused, himself, and the accused, ERIGUCHI, Takeshi. I shall not quarrel over the fact that the accused, UENO, did on or about 20 June 1944 at the swamp in back of the sick bay of the 41st Guard Unit, Dublon Island, Truk Atoll, Caroline Islands, order codefendant ERIGUCHI, Takeshi to behead with a sword one American prisoner of war, then held captive at the said unit, because other than the testimony of various witnesses, the accused himself has admitted this fact not only in his statement but also in his testimony. I wish at the moment to state merely how the accused, UENO came to order codefendant ERIGUCHI To behead one American prisoner, and ask your sympathy.

Let us hear the explanation of the accused, UENO as regards this point. The outline of the testimony of the accused, UENO concerning this point is as follows:

In the afternoon of the incident, I was performing an operation on this prisoner for the purpose of diagnosing the ailment of this prisoner, in the air raid shelter which was utilized as a battle dressing station, located east of the sick bay of the Forty-first Guard Unit. Just about the time when I was operating on the abdomen, it seemed that the outside of the shelter became noisy and many people were assembling. A short time later, an order, "General assembly of all who are not working, beside the sick bay," was heard. At the same time, an enlisted man's voice was heard from the outside, saying, "One will be taken now, bring the other later." The prisoner who had been outside was taken by a group of men. At this moment, recalling executive officer NAKASE's words, to dispose of the prisoner spoken that morning, I gather that the disposal of the prisoner was going to take place after all. I gave up treating the prisoner and stood there with heavy heart. I sowed the incision to keep the organs in position and ordered the corpsmen to apply the bandages. Then I ordered the corpsmen to carry the prisoner to the scene of the general assembly. When I reached the scene I thought that there was no hope for him. I went to the scene, anticipating that the men who took the other prisoner were still there. But there was no sign of the other prisoner. Everyone was standing there absent-mindedly and I could see no one who looked like the persons who were going to carry out the execution. Faced with this difficult situation I was quite at a loss as to what to do. After thinking about it, I ordered Dentist Ensign ERIGUCHI who was beside me to put the prisoner at ease. This is the outline of UENO's account.

"LIL (17)"

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Lieutenant, USN,
Judge Advocate.

As I have stated in the foregoing, this prisoner was being treated as UENO's patient since the prisoner sustained the shock during the air raid several days before. The condition of this prisoner had not improved at all, so after making up his mind and receiving permission from the commanding officer, ASANO, the accused, UENO, mustered up all the strength left in his weak body which was recovering from illness, and performed an operation in order to make a definite diagnosis of the cause of the prisoner's sickness. Right in the midst of this operation, he came to hear the definite order of the disposal of the prisoner. What were the feelings of UENO when he heard about this? I believe his words that he stopped the operation and stood there with heavy heart, explicitly explain his state of mind at that time. Thoughts of astonishment, grief and sorrow recurring in his mind, I believe, he was lost and did not know what to do. The reason why he was not able to inject the sulpha-amide drug which he had highly relied upon, and why he was unable to sew the incisions completely and perfectly, was entirely because of this sudden happening. He had expected that some other person would dispose of this prisoner. But he could not find anyone who looked like the person to carry this out, when he arrived at the scene. At this moment the thought dominated his mind that all hope is lost to save this prisoner. His fate has been determined. Yet the prisoner is in pain. If the prisoner is left alone as he is because there is no one to dispose of him, it would only protract the pains of the prisoner. Instead, it would rather be merciful to kill him with a single blow."

He was faced with the predicament of killing by his order the prisoner which he had treated as his own patient. What sarcastic fate was this that he had to face? As the Napoleon, described by George Bernard SHAW, and as MacBeth described by William SHAKESPEARE, the accused, UENO was also "a man of destiny."

At this point, I must make some explanation concerning the expression, "put him to ease." When there is a sick person in a Japanese family, who has no hope of recovering and yet is suffering from great pain, the husband, wife, parents, child, brother and sister who are beside him in his last moment, will often ask the attending doctor, "The patient seems to be suffering very much, please hurry and put him at ease." Upon receiving such a request, the doctor would take some appropriate measures. In the circle of criminal jurisprudence it is known as "euthanasia" which recently is being discussed very much. Whether this so-called "euthanasia" constitutes a reason to preclude unlawfulness, is subject to great controversy among the scholars of criminal law in every country and a definite theory has not been established as yet. I believe this problem should be solved according to the general opinion or common thought of each society. Aside from the academic controversies, it is an undeniable fact that the performance of "euthanasia" is an acknowledged custom in the society of Japan.

A certain English poet wrote, "Life protracted is protracted woe." If the life of the prisoner in the present case was protracted one second, he would have so much more suffering to endure. Should it be condemned so severely to shorten one's life under such circumstances and shorten his last woe in this world?

"LL (18)"

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

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Next, as the third fact alleged against the accused, UENO, the second specification of Charge I reads as follows:

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

In regard to this fact, I suppose the judge advocate charged UENO on the testimony of witness KINOSHITA, Hiroshi who testified that this prisoner was brought to the battle dressing station from the place of confinement together with the prisoner on whom UENO operated and was made to stand outside, and on the statement of NAGASHIMA, Mitsuo in which he stated that while I was standing outside the air raid shelter (battle dressing station) the head medical officer came and said to me, "The other one you (senior petty officer) do it," but as I thought that I, myself, could not do such a thing, I reported this to the executive officer, at which time I was again ordered to do it.

As I have already stated minutely concerning the credibility of the statement of NAGASHIMA, Mitsuo in my argument in behalf of the accused, TANAKA, Sueti, at this time I would like to refrain from reiterating it and burdening the commission again. I believe it is sufficient here to lodge the two doubts, namely, for what reason NAGASHIMA was standing outside the battle dressing station, and how was the accused UENO able to order NAGASHIMA? There must have been a special reason for NAGASHIMA, who was not a corpsman, to be standing outside the battle dressing station. But I am unable to find anything which tends to clear this reason in the statement of NAGASHIMA. Next, I am sure the president and the members of the commission who are all military persons are well aware of the fact that the accused, UENO, a medical officer, could not possibly order the disposal of the prisoner to an enlisted man of the line personnel. Furthermore, the accused UENO has testified that he did not go out of the air raid shelter while operating on the prisoner. From this we should know that the statement of NAGASHIMA is not credible. Next, let us hear what the accused, UENO has to say in regard to bringing this prisoner to the battle dressing station:

"ILL (19)"

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Lieutenant, USN,
Judge Advocate

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Question: You stated that the other prisoner was waiting outside, but for what reason was this prisoner there?

Answer: When I said to Kinoshita anyway bring the prisoner to the battle dressing station, as I have stated before, I did not think from the first that an operation was necessary on one of the prisoners for he seemed to be in good health. But as I did not specify the exact number when I said to bring the prisoner to the battle dressing station, I think he, too, was brought. When it became noisy outside of the battle dressing station I heard from some one near me that the other prisoner was left outside.

Question: Did you see the other prisoner that day?

Answer: No, I have not seen him.

As it is noted from his testimony cited above, the accused, UENO did not think from the first that an operation was necessary on this prisoner for he had recovered his health soon after the bombing. Therefore, he did not have the slightest intention of bring this prisoner to the battle dressing station. It so happened that he did not mention the number of the prisoners in ordering KINOSHITA, and this was the cause for that prisoner to have been brought to the battle dressing station. Furthermore, as KINOSHITA stated in his testimony, he himself, the person who was ordered to bring the prisoner, did not know where this prisoner was while the operation was being performed on the other prisoner. Therefore, he did not report to the accused, UENO that he had brought the other prisoner to the battle dressing station also. The accused, UENO was told for the first time by someone near him that this prisoner was standing outside the battle dressing station only when it became noisy outside the battle dressing station. Furthermore, this particular time, in other words, was when this prisoner was carried away to the swampy area by some one. The accused, UENO had not seen this prisoner even once on the day of this incident. In other words, the accused, UENO has no relation whatsoever with the disposal of this prisoner. I can only say that it is utterly unreasonable to allege UENO for the murder of this prisoner. As far as it concerns the accused, UENO, I firmly believe that he is not guilty of specification two of Charge I. Therefore, I request that the accused, UENO be found not guilty of this charge and specification.

Lastly, as the fourth fact alleged against the accused, UENO, Specification four of Charge II reads as follows:

"In that UENO, Chisato, then a surgeon Lieutenant Commander, ESN, and acting head medical officer of the 41st Naval Guards, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and while so serving in the said 41st Naval Guards, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944,unlawfully disregard and fail to discharge his duty as the acting head medical officer of the

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

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said 41st Naval Guards, to take such measures as were in his power and appropriate under the circumstances, to protect two American prisoners of war, names to the relator unknown, then held captive by the armed forces of Japan, and then and there in the custody of the said UENO, at Dublon Island, Truk Atoll, Caroline Islands, as it was his duty to do, in that he permitted the wilfull killing, without justifiable cause, on or about 20 June 1944, by personnel of the 41st Naval Guards, of one said American prisoner of war by beheading and one of said American prisoners of war by stabbing, this in violation of the law and customs of war."

I believe the reason for the judge advocate to account the responsibility of protection on the accused, UENO, who was no more than a departmental head of the 41st Naval Guards, is because the prisoners were once brought to the battle dressing station and subsequently killed.

Let us first consider as regards the prisoner who was stabbed by codefendant TANAKA and others. I do not hesitate to admit that this prisoner was brought by witness KINOSHITA and others from the place of confinement to the battle dressing station. But judging from the physical condition of this prisoner at that time, the accused, UENO, had not the slightest intention of operating on this prisoner, as I have already stated in the foregoing. Therefore, UENO did not have the slightest intention of bringing the prisoner to the battle dressing station. For the more reason that UENO did not happen to designate the number of prisoners in ordering KINOSHITA to bring the prisoner who had not in any previous occasion examined the prisoners and who did not know of the condition of the prisoners, ordered his subordinate corpsmen to bring two prisoners to the battle dressing station. This was entirely caused by the accidental misunderstanding between the accused UENO and KINOSHITA. Moreover, even KINOSHITA who was responsible for removing the prisoners was unaware where this particular prisoner had been left. Consequently, KINOSHITA did not report to the accused, UENO, that he removed this prisoner from the place of confinement to the battle dressing station. He happened to know about this prisoner when he was about to finish the operation of the abdomen on the other prisoner at which time the outside of the battle dressing station became noisy. The moment he became aware of the prisoner outside, the prisoner was taken away by someone. Thus, the accused, UENO never even set eyes on this prisoner on the day of the incident, not to speak of his permitting a member of the 41st Naval Guard Unit to stab this prisoner. I have already made clear that NAGASHIMA's statement concerning this point cannot be given any credibility. As far as this prisoner is concerned, the slightest speck of UENO's intention is not in motion. It is impossible to place criminal responsibility where there is no intention. Therefore, I am fully convinced that there is no ground to condemn the accused UENO of not executing his responsibility of protecting this particular prisoner.

Next, let us consider the prisoner who was beheaded with a sword by the codefendant ERIGUCHI.

"ILL (21)"

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Lieutenant, USN,
Judge Advocate.

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It seems that there are two essential conditions to meet before we can prove upon a head medical officer of a certain unit the responsibility of protecting not only a prisoner but also any person. First, is that the person is a patient.

Second, is that he accommodated the patient in an establishment under his supervision. This holds true as regards the civilian doctor, too.

If as the judge advocate has alleged, this operation which the accused, UENO performed on this prisoner is surgical exploration on a live body, then there should be no problem from the beginning. Because, it is pointless to anticipate responsibility of protection from a person who from the beginning has the intention of performing a surgical exploration on a live body. The pointlessness of it is comparable to expect management of property from a thief. Robbery and embezzlement are distinguished in the criminal laws of all the countries of the world.

Furthermore, what would the result be if we were to admit that the accused, UENO had responsibility of protection even when this prisoner was accommodated at an installation other than that under his supervision? For instance let us assume that the accused, UENO performed a surgical exploration upon this prisoner at the place of confinement which is under the supervision of another person. In this case, what would the grounds be for accounting UENO's responsibility of protecting this prisoner? I believe, even the judge advocate would find it impossible to establish against the accused UENO the responsibility of protecting this prisoner. No responsibility of protection exists if the surgical exploration is performed in the place of confinement; but responsibility of protection exists because the act was done by chance in the battle dressing station.

We cannot possibly concede to such mechanical argument. Despite the fact that the judge advocate alleges that the operation performed by the accused, UENO upon this prisoner is surgical exploration upon a live body, and still on the other hand holds him responsible for neglect of duty in that he did not fulfill the duty of protecting the prisoner expected from him, we cannot see it in any other way than that the judge advocate took steps in providing for any contingencies: in the evidence, provided in Section 19 Naval Courts and Boards under title Duplication of Charges. Therefore, whether the accused, UENO is accountable for the neglect of duty in not executing his responsibility of protecting the prisoner, depends solely upon the constitution or non-constitution of the crime alleged in specification one of Charge II. There is no need in going into further argument. We have only to wait for the outcome of the finding of the said charge.

I believe, however, we are still under the obligation to make further explanation concerning this point, since we have held that the facts alleged in specification one of Charge II are not medical exploitations upon the live body of a prisoner, but operation for the purpose of diagnosis or treatment. If we were to assume that he killed the prisoner on his own intention because he had failed in his operation and placed himself in a difficult position, in this case, it may be that UENO

"LL (22)"

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

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cannot help being held for neglect of duty in that he did not execute his responsibility of protection. But according to the testimony of the accused, UENO, the prisoner did not show striking signs of weakening on his body as the result of his operation. At this point, UENO's responsibility of protecting the prisoner ceases. Truly, there is the fact that subsequently the prisoner was taken to the swamp in back of the sick bay and beheaded by codefendant ERIGUCHI according to UENO's order. But this is originated from an entirely different order, and it was not the intention of UENO. In other words, between the operation performed by UENO upon this prisoner and the beheading of the same prisoner, there interposes another person's intent, and between the two incidents there exists no direct casualty. As both incidents occurred by chance in continuity of time, it appeared as if they were of one continuous intent. As a matter of fact, the accused UENO has testified as follows:

"If I had done the same thing (operation) the next day a different result would have occurred or the day of the incident. And I thought how my position would have differed from the actuality."

Because of the aforementioned reason, I am firmly convinced of the accused UENO being not guilty concerning specification four of Charge II. Therefore, I urge a finding of not guilty of the said charge and specification.

PART THREE

RELATION BETWEEN WAR CRIMES AND THE SOCIETY OF JAPAN.

The previous IWANAMI case and the present ASANO case are both regrettable incidents. Each accused in the present case may have his own excuse or reason for his acts, but the fact still remains that two American prisoners of war were killed by the hands of the Japanese. As a Japanese, I wish to express my sincere apology and extend my heartfelt condolence on those victims. But it is not enough for us Japanese to merely offer our apology, it is incumbent upon us to probe into the cause of these unfortunate incidents, to make a critical examination of our past life patterns and set forth thereby the basis upon which our future rehabilitation shall be erected.

Then, why did such unfortunate incidents occur? What demonic power drove the Japanese people - who taken individually possess learning equal to any other people of the modern civilized countries, and considerable amount of discernment - to commit such acts? In short it is because from the ethical point of view, the Japanese people lacked the true sense of humanity, and from the political point of view, the Meiji Renovation, in spite of the word renovation, was not a democratic revolution of the bourgeoisie. In order to elucidate this point, I shall make a brief retrospect of the modern history of Japan.

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

In the period prior to the Meiji Era, we are able to find to some extent the rising of the merchant class and the upheavals of the peasants against lords. The 270 years of seclusion under the Tokugawas, enabled the Japanese people to enjoy lasting peace without experiencing any stimulus from the outside. And because of this peaceful environment, culture progressed and the standard of the people's life, especially that of the samurai class, improved greatly. As a result of this improvement, the samurai began to feel difficult in sustaining their living only by the stipend that they were receiving from their lords, so they began to sell their household goods and clothing, as Japanese people are doing today, and even then, as they were unable to balance their income to their expenses they were compelled to sell their swords, spears, armours and others which were passed down from their ancestors and prized as the treasure of the family. The same difficulty was also true of the lords. In order to cope with this difficulty, the lord began to press the farmers for more tax which in those days was paid in rice. Their policy towards the peasants could be expressed as "exaction by the sword." The saying, "The more you squeeze the peasants and the oil-seeds, the more you get out of them," vividly expresses the extent of "exaction by sword," which the peasants had to bear under the lords. Unable to endure this persisting exploitation, the peasants availing themselves of every chance, grouped together and attacked the tax collector, and rose against the lords. This is what is known as the peasant's upheaval. But, they rose against the lords only by instinct, to overcome the agony imposed upon them by the ruthless exaction of the lords, and there existed no class consciousness in them, as yet. Their unity lacked permanency and would dissolve as soon as the excitement had died away, so they were easily subjugated by the appeasement of a cunning lord. It is obvious that the peasant who were lacking in class consciousness could not have become the mainstay of a social revolution.

I have already stated that as the result of difficulty in living, the lords and the samurai not only sold their household goods and clothing but also their armours and swords handed down to them from their ancestors and valued as their lives, but where did all this wealth go? We find that this wealth flowed and concentrated into the hands of the rising class of merchants who later converted it into capital for usury. It was as if the lords exploited the peasants in order to make the merchants wealthy. Particularly, in the last third of the Tokugawa era, the merchants practically of Edo and Osaka overpowered the samurai by its great wealth, and there were hardly any lords in the country who was not receiving financial support from these merchants.

It must have been a pitiable or rather ludicrous sight to see the chief retainers of the lords throwing aside their self-respect, prostrating before the merchants to gain their favor in order to gain financial support from them. But the merchants were not fully aware of their power. Despite the fact that the feudalistic class order of samurai, peasants, artisans, merchants was disintegrating, the merchants

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Lieutenant, USN,
Judge Advocate.

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were satisfied in being the lowest social class, and rather sought pleasure in luxurious food and clothing, drama and the like. Thus, culture was freed from the monopoly of the nobility, priest and samurai, and was transferred into the hands of the merchants. This is the reason why the culture of Edo period is called "culture of the townsmen." There could not possibly be any unity between the merchant and peasant because the wealthy merchants despised the poverty stricken peasants. Intoxicated by the sweet wine of feudalism, the merchants were also unqualified to be the bearer of a social revolution.

Why didn't the people in this period gain class consciousness? Production in Japan prior to the Meiji Era was carried out by domestic combination of small scale agriculture and manufacture. Therefore, the people were isolated from each other because they were self-supporting peasants. The peasants had no common tie between them nor had they any chance to discuss their troubles in life. It was difficult to unite among themselves and they did not have any organization. So, the peasants could not represent themselves and they were compelled to lead a life represented by others, though they constituted 80% of the population and suffered the same difficulties in their life.

But the pace of time did not permit Japan to enjoy her peaceful slumber forever. Presently a Russian ship visited north Ezo. (now called Hokkaido.) A British ship came to Nagasaki which was in the eastern side of Japan. Finally in 1854, four black ships led by American Commodore Perry appeared at Uraga, nearby Edo. The coming of Perry produced an unimaginable shock upon the Japanese people. From this time on, diplomatic negotiation with the leading powers became numerous and complicated. On the other hand, the corrupted authorities of the Tokugawa Shogunate and the lords no longer possessed the ability to take charge of the involved political situation. At this moment, it was the sons and brothers of the lowly samurai who rose to meet the situation. Some of their ancestors were called "ashigara" or foot soldiers in the feudal age which constitutes the lowest group in the samurai class. Their meager stipend indicating allowance for so many persons, was barely enough for subsistence. But now the changes of the time swept away the oppression of the feudal age from them. The time had come for them to give full wings to their ability. Guided under the banner of "respect the Emperor and repel the foreigners" the sons of the lowly samurai of Satsuma, Choshu, Tosa and Higo clans, mustered the radical nobilities and loyalists of other clans, and finally succeeded in over-throwing the shogunate. The curtain of feudalism was drawn by them and the renovation of Meiji dawned upon Japan.

As soon as they came out of the dark cave into the world of light, they were greatly astonished. While the Japanese people closed their country and were enjoying three hundred years of peaceful slumber, the world had already made great progress.

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Lieutenant, USN,
Judge Advocate.

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The verse, "The steamer broke the peaceful slumber, four ships and I could not sleep," tersely expresses the astonishment and bewilderment of the Japanese people.

Literal Meaning:

Drinking four cups of tea called jokison (steamship), I cannot sleep all night through.

Figurative meaning:

Having been once aroused from my peaceful slumber, by the visit of four steamships, I cannot sleep thereafter.

Japan imported various machinery which had given birth to modern civilization and which had motivated the industrial revolution in England one hundred years before. She also adopted the capitalistic system. Industry advanced from the stage of manufacture to that of factory; commerce was managed chiefly to pursue profit. Thus the wealth of the nation was increased and the power of the country was strengthened. But this was all in benefit of the state and not for the people who constituted it. The people succeeded in adopting superficially the civilization of the west, but overlooked its spirit. They did not detect that in back of capitalism realized by the bourgeois there lie hidden the principle of democracy.

They realized the seriousness of the situation and knew that their country would not possibly be able to compete with the leading powers if they hesitated at this crucial moment. They were possessed with one thought, to make the country prosperous and strong by importing the civilization of the western countries. It is only natural that the catch-word of that era was "civilization and enlightenment" and "prosperous country and strong soldiers." Left behind in the progress of the world and delayed considerably in coming into contact with the modern civilization of the west, Japan's urgent need since opening the country was to recover this retardation. To attain prosperity by improving the national standard of life, cultivating one's character and developing one's individuality, were thought to be a lengthy and roundabout method. The chief concern of the officials of the Meiji Government lay in how to make the country prosperous and strong. The logical sequence of this policy promoted the strengthening of the military clique and bureaucrats and fostered the growth of plutocrats such as the Mitsui and Mitsubishi. But after the Sino-Japanese and Russo-Japanese wars the power of Japan came to be recognized by the rest of the world. Moreover, after World War I, Japan was counted among the five leading powers, and thus the power of her militarists, bureaucrats and plutocrats became firmly established. But the feeling of being oppressed by foreign powers, never left the minds of the Japanese people even after they were recognized as one of the leading powers. The militarists, bureaucrats and the government, colluding with the plutocrats shouted the crisis of the nation and aggravated this feeling of oppression. Thus followed the Manchurian Incident, the

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

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withdrawal from the League of Nations and subsequently the Pacific war resulting in her present catastrophe.

As it is apparent from the foregoing outline of the modern history of Japan, the Japanese nation since the Meiji Era, was based upon the principle of militarism and radical nationalism. The grave error of militarism and radical nationalism was attributed to looking upon the world as "might is right." This resulted because the relation of each individual, was as Thomas HOBBS so ably said, "Homo homini lupus" or "Bellum omnium contra omnes" criterion as respect, love, sacrifice, peace etc., was not recognized as being the dominant factor. This mode of thought manifested itself in the rise of bureaucratic authority in the country and outwardly to the exclusion and disdain towards the foreigners which resulted in Japan becoming the rascal of the world. But this anti-foreign sentiment was not only pointed towards the foreigner. This antagonistic feeling was also conspicuous among the Japanese people themselves, and has not been eradicated today after experiencing the bitter experience of defeat. On the contrary, the destitute economical life after the present defeat seems to have further exposed this trend.

The social relationship binding the Japanese people during the feudal age, was the family relationship bound by the collective livelihood of kins concentrated in the spirit of the ancestors and subjected to the feudal lord through the medium of land to which they were bound. The Meiji Renovation merely converted this submission to the feudal lords into loyalty to the Emperor. To the Japanese people who did not experience the democratic revolution of the bourgeoisies which advocated freedom, equality and fraternity, there existed no intermediary society besides the state and family to bind the two.

The mutual tie in the family bound by blood relation is firm, and affection of the members to each other is warm. Influenced by the idea of a hierarchal state the sense of loyalty toward the State symbolized by the Emperor who is the descendant of the common ancestor, is very strong. Yet on the other hand, love towards one's neighbor is very weak. I shall exemplify this point by citing a few specific examples. The Japanese people have been living under the family system. So, when a man and a woman are married, the wife enters the family of the husband and becomes a relative of the rest of the family. This is called "yomeiri" or marriage into family. Once a bride is united in matrimony she becomes a member of the family and should be treated without discrimination. But the actuality is not so. The Japanese bride is the first to rise in the morning and last to rest at night; all through this period she is made to work hard. Not only does she attend her husband and children but also she must care for her husband's parents and his brothers and sisters. She is made to work the hardest and yet to eat the poorest food. What is the cause of this treatment? It is because the bride comes from another family and she has no blood relationship with her husband's family. The saying "Blood is thicker than water" accounts for this situation.

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

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In a recent Japanese novel which I read, there is a chapter relating to the trouble and distress of a young lady who is working as a typist and translator of foreign literature and though desiring to get married and settle down, since she realizes that she had become 27 years old, the imagination of the unpleasant family life which she would have to lead after marriage weakens her resolution of matrimony. The words of the writer spoken by this young lady are very interesting in that it expresses the miserable status of the bride in a Japanese family. Si I shall cite it here. "After the usual course from love to marriage, I wonder how long this so-called happiness will last. Care of the children - wanting to to to the "po", always crying and if not in mischief contacting some fever; concern over the mean mother-in-law and sister-in-law; trying to balance the living expenses which is purely a matter of the family with no public significance. Exerting one's entire energy in such trivial matters the bride finds herself dead-tired and sleeping like a log. The young ladies who were once said to have talents in music and writing, who once spoke with high spirits their cherished ideal of enlightening their fair sex and improving their status, as soon as they are married, nine out of ten find themselves weary and worn in leading the life of a humdrum woman and presently being classified as a feeble-minded old woman. Of course, one reason for this is because they are not able to overcome the surrounding feudalistic customs of the so-called family system. The foolishness of it, for even myself who is not pretty, to struggle in forcing myself into marriage which seems as if it were the designated fate of all women." Truly as this writer has stated once a girl marries and enters the husband's family the ideal and hope cherished during her girlhood days are ruthlessly shattered by the conventions of the feudalistic family system. It is aptly said that "Matrimony is the grave of love."

Next I shall cite a striking example which has occurred during the war and still continuing today. From the end of 1944 the mainland of Japan was severely bombed day by day by the American forces. At the time of the end of the war, Tokyo, Osaka, and all other cities with a population of over 100,000 with the exception of Kyoto and Kamazawa, were destroyed and burned to ashes. Prior to this, the inhabitants of the cities sought to their kins and relatives and evacuated to the country in order to protect their lives and properties from the horrible raids. When the air raids were at their height more and more people were forced to leave the city into the country because they had lost their homes. Furthermore, in view of the defense of the cities from these air raids, women, children, and the old were instructed to make compulsory evacuation into the country. Under such circumstances, it was impossible to rely solely upon one's relatives, so every available building in the country, whether it was a shrine, temple or school were crowded with people from the city. Did the people of the country extend warm arms of relief to these pitiable people of the city? They looked upon the city people as intruders. Taking advantage of the hard up situation in food, shelter and clothing, the country people did not hesitate in charging exuberant prices for their rice, wheat, vegetables and rooms. There was no work suitable for a city dweller to do in the country. During several

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

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months of this sort of life, the immigrants from the city had spent most of their hard earned savings which they laid aside for many years. The little amount of clothing and household goods which fortunately escaped from being burned, were also sold. Deploring in vain over the difficult living condition in the country and practically stripped of their clothes, they had no choice but to return dispiritedly to their former cities burned to the ground.

The answer to why the Japanese people are wanting in a mind of social-responsibility, can be found in the flourishing black-markets which have swelled with striking speed from the last stage of war up to the present day. In the present war where Japan had staked her fate in waging war against the leading powers, America and England, private demands suffered acutely in order that the productive power of the country may be concentrated in producing war supplies. Controlled economy was strengthened extensively and intensively, from control over finance to control over production and ultimately to control over consumption. Finally there were ration coupons but no goods to back them up; so in many instances they became empty promises. The ration coupon for clothing is an outstanding example of such case. Consequently, the people's life in terms of consumer's good became destitute. The people found the way out of this difficulty no other than in the black-markets. People who had easy access to money bought randomly, greedy merchants and farmers nonchalantly looked upon the distress of the people and hoarded, black-market prices began to soar and thus inflation became worst. On the other hand, seventy to eighty per cent of the goods which were essential to the living of the general public, had to be obtained at the black-markets. Truly, official prices were designated but the situation was as if they had not existed. The people that suffers most in this raging inflation are the salary class composed mainly of intellectuals. In spite of this condition, I have not heard that cooperative unions have made great progress, except to the extent of a consumer's cooperative store developing at one's respective work post. And the function of such store was only to the extent of buying black-market goods at a partial expense of the company and distributing it to the employees at a slightly cheaper price. This method differs in no way in paying salary partially by goods. Thus, the Japanese people are struggling to solve a problem which properly should be socially solved and which only could be socially solved, from a stand-point persistently confined to a single individual, one family or one factory without endeavoring in the least to solve it socially.

The judge advocate has stated in his opening statement: "The prosecution can throw no light upon their motivation. Let them be judged upon their actions, however, which seems to indicate that they were all motivated by a malignant hatred of Americans."

Indeed, if the acts of the accused were committed only towards the Americans, desire for vengeance would burn. No matter how the character of the American people are noble, obviously they are humans and not saint

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

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No matter how much they progress or how high they are elevated in character, since they are humans it cannot be denied that somewhere in the bottom of their heart lies the desire of vengeance. Despite the profound preachings of the German Ethical School and Italian School of Criminal Policy which have made progress recently, the reason why the Kant's theory of Retribution stating that punishment is the retribution of justice against the wrong, is still being adhered to is probably because the sense of vengeance is still rooted deeply in the core of the human nature. I do not wish to constrain myself in denying this aspect of the human nature. But if the judge advocate realizes the fact that the Japanese people show hatred not only to the foreigner but at times even to their countrymen who are not related in blood or by geographic basis as I have explained in detail in the above, I believe he will be able to throw light upon the motivation of the present case which he states is incomprehensible, and have sympathy with them.

In the booklet "Pocket Guide of Japan" from which Commander CARLSON cited in his closing argument in the previous IWANAMI case, it is stated: "You will never fully understand the way the Japanese think or do things today, because in almost every way our ideas are exactly opposite to theirs, and, as a result, our actions are too. In time the Japanese nation can be taught to think that other people have rights."

As it is stated in the above, the Japanese nation which in an imperfect manner, or rather erroneously, imported the spirit of modern civilization of the west, knew only that he had rights but did not know that his neighbor had the same rights, not to speak of foreigners having the same rights.

The Japanese people after the barbaric rule by the semi-feudalistic militarist and bureaucrats who dropping grimly over the people's head trampled over their human nature and completely ignored the solemnity of personal rights or in short after despotism had been removed by a single stroke by the power of foreign countries particularly America as the result of the present defeat, the Japanese people finally became aware that they had to thoroughly accomplish the democratic revolution in order that personal rights are assured and that the human nature is not trampled on again, that is, in order to avail themselves of the precious sacrifice of defeat. The Japanese people are filled with hope and inspired with joy comparable to that of western European people during the Renaissance Era who opposed the despotic rule of the medieval feudal lords and Catholic nobilities, shouted the emancipation of human nature and finally won the solemnity of personal rights. Trade unions according to industry or job, were rapidly organized. The striking manifestation of this consciousness lies in the fact that within two years after the end of the war Japan had 15,000 trade unions and 5,200,000 organized laborers.

It is explicitly stated in the preamble of the New Constitution of Japan:

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Lieutenant, USN,
Judge Advocate.

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"We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth."

Casting aside the policy of international isolation, she is endeavoring to pursue the policy of international goodwill. The German philosopher Hegel said, "History is the development of freedom. First it is the freedom of one man, then the freedom of the few and finally the freedom of all men." In the former days Japan was sterilized in the "stage of freedom of the few." Awakened from this dogmatic dream by the severe blow of defeat, Japan will come to comprehend the true meaning of liberalism and democracy and hoisting the sail in the sea of history will attain the goal of "freedom of all men." When this time has come, I ask your judgement of the Japanese by reflecting upon the light of modern civilization. I beg that the American people who are noted for their magnanimity and forbearance and who are the leader of the world today will not be over-zealous in condemning the past faults of the Japanese people. Alexander POPE, the great English poet of the 18th century, said, "To err is human, to forgive is divine." I do not believe that it is too much of a burden to expect the divine work of God from the American people. Extending my heartfelt condolence and praying for the happiness of the bereaved family I wish to conclude my argument.

KUWATA, Hideo.

I certify the foregoing, consisting of thirty-one (31) 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.

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"LL (31)"

James P. Kenny
JAMES P. KENNY,
Lieutenant, USNR,
Interpreter.

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ORIGINAL REPORT OF MR. ALBERT H. HIGGINS,
JANUARY 1941, U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL.

IDENTIFIED TRANSLATION HEREWITH ATTACHED NAMED "H.M."

1307

ARGUMENT FOR THE DEFENSE
IN BEHALF OF THE ACCUSED:

Read Admiral ASANO, Shimpel, IJN
and
Lieutenant Commander NAKASE, Shohichi, IJN.

DELIVERED BY
Mr. Akimoto, Yuchiro
of
Tokyo, Japan.

On
23 October 1947, Convened
at Guam, Marianas Islands.

May it please the Commission:

I think it is an honor that I have been a defense counsel in the crimes trials of this court for about one year since November of last year. I would like to express my deepest gratitude that in your judgment you have been considerate, careful and fair.

Before entering the main argument concerning the facts of this incident, I would like to state, of the difference in judicial systems and national characteristics between the United States and Japan, and my frank impression of the rule of evidence applied by the judge advocates in this court.

I have participated in the criminal cases tried in Japan, as a lawyer for twenty years, and I believe I have a considerable understanding of both strong and weak points of the trial procedure in the Japanese judicial system. Especially, I believe I have a full understanding of the peculiar state of mind and feeling that Japanese defendants and witnesses have.

However, as to the American judicial system, especially to her trial procedure, the only experience that I have is the one year in this court. Therefore, the opinion which I am going to state about is based upon this limited and short experience, and there may be some misunderstandings or mistakes in my opinion. I hope you will consider these points.

The judicial system of Japan is based upon the Continental laws, and is systematized by so-called statute law, while the American judicial system is based upon the laws of England, and is systematized by case law. Therefore, our view is different from yours in the interpretation and application of the law. I keenly felt this point in the cases of Furuki and Inoue of Jaluit Atoll in which the Japanese laws were applied. But I don't want to discuss substantive law at this time. I would like to state my opinion on criminal procedure, especially about the rule of evidence.

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JAMES P. NENNY,
Lieutenant, USN,
Judge Advocate

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In Japan, the examination of witnesses is mostly made by the court, and the questions of the judge advocate and the accused are only complementary ones. Rulings of the admissibility of evidence is made by free conviction. So the rules of evidence are not so complicated as those of the United States or England. One might say, therefore, the the court is apt to abuse its authority. But the decision of the court is followed with the statement of its reason which states on what ground the evidence is admitted or rejected so that we can easily find if the decision is in accordance with the rules of evidence.

On the other hand, in the American and English judicial system, the parties play important part in the court procedure. Introduction of evidence is left to the judge advocate who is representing the plaintiff and the counsel representing the accused. Judges who know nothing about the case before hand give the decision on the admissibility of evidence introduced by the parties. Therefore, I think it can not be helped that both parties are apt to use court tactics in order to prove their assertions. As the result of this, the rules of evidence are necessarily strict in that system.

I will not discuss which system is better, but, anyhow, the aim of criminal procedure is to find the truth. If there exists something which hinders the discovery of the truth, the aim of criminal procedure will not be attained no matter how the rules and regulations are detailed. This can not solely be judged by the law. We should consider the nature of the accused or suspect, the object of the trial. Frankly speaking, I want to say if you judge a Japanese who has different manners, views on humanit, education and customs from Americans with your own standard, the true aim of the trial will not be attained. Appropriate rules of evidence for the trial of Americans are not always appropriate when you try Japanese persons. In such a case, it will often be hard to find the truth. Even if it is so, the procedure which is already admitted in the judicial system is quite legal, and I can not set up any objections to that procedure. I do not intend to blame the American system.

The only thing which I sincerely hope is that the weak point of the system may be made up by the efforts of the persons. Both in the American and the Continental system, the ruling on the evidence is determined by the free conviction of the judges. Therefore, if the accused, on account of his peculiarity of character, has some handicap in the rules of evidence, I hope you will think deeply on that peculiarity so that the weak point of the judicial system can be supplemented? That is why I am going to state my views as follows. I sincerely ask your full consideration.

1. Admissibility of a confession or a statement made by an accused outside the court. According to the Anglo American law, a confession made outside the court is admissible as evidence if it was made voluntarily. It is a rule that a confession which is unlawfully induced or influenced by one in authority is not admissible as evidence. Inducement will mean to induce the accused that he will be released, not be indicted or be dealt leniently with if he confesses, or such material and substantive one as to force the accused to confess. But even if

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

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the one in authority does not use words, promises or torture, there may exist an invisible inducement which has the same influence over the accused. In such a case, isn't it usual that such confessions or statements are admitted as voluntary confessions or statements and not as induced ones? I think this is dangerous. Especially I keenly feel its danger when the accused or suspect is Japanese.

If the Japanese are fully aware of their rights and are able to magnificently state what they want to say to the authorities like the English or the Americans, the danger will be less.

However, as Mr. Kuwata pointed out in his objection, the Japanese are not yet free from the bonds of feudalism. They have abnormal fears toward and try to tune themselves to the authorities. Their unfortunate reality is that they are in such a slave-like state of mind as to make them unable to state their opinions before the authorities. How can we expect that they, being deprived of their liberty, are able to make voluntary statements before the judicial authority who have power over their lives, even if they are not materially tortured or induced? Not only we defense counsels but any person in connection with trial unanimously admit that a confession or statement made by an accused before a Japanese policeman or judge advocate is far different from the truth.

Thus, as a rule, we do not admit a confession of the accused as evidence except in the trial by a local court.

Article 346 of the Law of Japanese Criminal Procedure reads: "When an accused confessed in a local court, the judge may omit to not examination of other evidences, if there is no objection of the parties." But this is a provision as to the confession in open court, not outside the court. Investigation report of policemen or judge advocates have themselves no value as evidence. They are nothing but bases on which the court proceeds its examination.

There are former regulations of the Japanese criminal procedure. The rights of the accused can not be protected by such law, so the New Constitution states in its Article 38: "(1) No person shall be compelled to testify against himself. (2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. (3) No person shall be convicted or punished in cases where the only proof against him is his own confession." Thus the power of evidence of a confession is fundamentally denied. The provision of Paragraph 3 should be specially noticed. Although this provision in its nature should be stipulated in the law of criminal procedure, it has been set up in the New Constitution under Chapter III, rights and duties of the people. In this point, we can find the peculiar character of the Japanese and Japan which made a new start as a democratic country. If the Japanese were as fully aware of their rights as the Americans, such a stipulation would not be necessary. But the Japanese have a weak point that their rights are not protected without the stipulation. Speaking frankly, a confession of a Japanese under detention made before the judicial authority is, even if it is not made under material inducement or compulsion, regarded under mental oppression and not a voluntary statement, so it can not be admitted as evidence to convict or punish the accused.

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James P. Kennedy
JAMES P. KENNEDY,
Lieutenant, USN,
Judge Advocate.

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When I think of these real circumstances of the Japanese and the rules of evidence applied by the judge advocate in this case, I find something beyond my conjecture.

Victory nations can hardly imagine how the Japanese are afraid of war crime trials. A person who has a connection of some extent to an incident and is arrested by the authorities as a war criminal, he will think that he can not come home alive. This is their state of mind. Thus they stand before the investigator feeling more dead than alive. As you know, Nagashima who participated in this incident went mad after the investigation, and it became impossible to indict him. In the stockade of this island, too, Captain Shirota became insane, and witnesses Nakamura and Ikeya committed suicide. What do these facts mean? Sane suspects and accused are on the verge of insanity. They are not in a normal state of mind. Can a statement or a confession taken before the power of investigation and written by persons in such an abnormal state of mind be said voluntary? Especially, it is imagined that, at the time of the incident they did not think much of it and therefore they did not notice what the other person did. Three years have passed after that, and they have suddenly been arrested and investigated. How can they recall clearly the day of the incident. If the other person told him that it was white, they may think that it might be white; if they were told it was black, they will imagine that it might be black. This is quite natural. Besides, they are standing before a horrible investigator with such an abnormal state of mind! Even a word or an act of the investigator will influence them. Someone will become unable to insist on his assertion. Thus we can easily imagine that they would affirm what they were told by the investigator, that they would try to tune themselves to the investigator and that would write statements different from the fact. I am afraid that the discovery of the truth will not be achieved if these statements as they are are admitted as evidence.

As the evidence of this case, the Judge Advocate introduced statements of Ueno, Tanaka, Eriguchi and Nagashima. I especially feel what I have mentioned as to these four statements. Particularly, Nagashima may be deemed a main actor in this incident, and besides this he became insane after the investigation. It is too unreasonable to believe a statement written by such a person describing the acts of other persons to whom he has conflicting interests.

How was the statement of Eriguchi made? You have all heard him testify when he took the witness stand in his own behalf and testified that almost all of his statement is false. He is a man of weak character, so he was quite upset at the time of the investigation. So he stated matters far from the truth describing his imaginations, rumors and what he was told by the investigator. I think this is natural for a person with the state of mind of the accused. It is especially natural for a Japanese. As the time passes, he recovered his calmness and regretted the writing of the statement. But it was too late. The judge advocates have already introduced the statement as evidence, and he, the accused, can do nothing about it. The accused Eriguchi testified that he wrote a statement different from the fact not from what he witnessed but by tracing his imagination, conjecture, rumors he heard and his vague recollections, that when he was questioned the investigator knew well about the incident and he told him (Eriguchi) about the incident, and that he affirmed what he was told by the investigator and that he wrote a statement accordingly when requested. Such a thing

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

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is frequent in Japan. When an accused was told by an investigator that the fact was such and such, it would be safe and advantageous for the accused to affirm the words of investigator if they have no connection with himself. Besides, he was not ready to deny these words. So he simply affirm them. When these conversations appears as a document they take a form as though it had been made voluntarily according to his recollection. Then the document is introduced as evidence.

And if there is not strong disproof, it is natural the judges admit the statement. And if the writer of the statement is thus convicted on account of his statement, it is his fault, and he can blame no one but himself. He must give up. However, if some innocent person is convicted by a false statement of some other person, this is a grave matter. Gentlemen of the Commission, I hope you will consider well on these matters when you weigh them as evidence.

2. Testimony of witnesses. It is a serious matter when one of the accomplices takes the stand to testify against the accused as a prosecution witness. For instance, witness Shitome in the Furuki case and the Inoue case, witness Nakamura in the Iwanami and Sakagami case, and witness Kinoshita, in this case each played very important parts in each of the incidents, and the judge advocate could indict them if he wanted to do so. They are persons who were accomplices at the time of the incident. Prosecution witnesses Kodama, Saito, Uchihira, etc are accessories though they are low ranking men. If these persons take the stand as prosecutions witnesses, they are able to escape from being indicted. Therefore, the result has no difference from the statement made under unlawful inducement. For these persons, it is the best way to protect themselves by giving favorable testimony for the prosecution. If their interests stand against the accused, they will make self-serving statements and shift his responsibility upon the shoulders of the accused. Therefore, to summon persons in such a situation as witnesses do not go with the discovery of the truth, the biggest aim of the criminal procedure. I dare say that it is a grave cause which hinders the discovery of the truth. But so long as it is admitted in the American trial procedure, I think is legal and I will not state any objection against it. Gentlemen of the Commission, I hope that you will consider well, when you rule upon the admissibility of evidence, for the situation of these witnesses and the fact that they are testifying in such circumstances as they might be subject to prosecution if they testify otherwise, and that you will reinforce the weak points of your system in order to give a fair judgment.

Each counsel will examine the testimony of witnesses against his accused, so I shall not repeat it here.

The situation which I feel especially sorry for is that of the accused Kobayashi. He was the head corpsman and so he was recognised by many persons. In order to perform his duty, he gave instructions to his men now and then. From these circumstances, we can easily admit that he, although having no connection with the incident, has been involved in the case.

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

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First, the preparation of operation performed by Ueno was made up by Kinoshita, and not by Kobayashi, which was corroborated by the testimony of both Ueno and Kinoshita. In spite of that, someone testified that Kobayashi prepared it. It is also the delusion of Eriguchi when he stated that Kobayashi gave directions when the prisoner was carried to the scene and that Kobayashi taught Eriguchi how to cut. Eriguchi, under oath, took the stand in his own behalf and stated that his statements were not true. Accordingly, Kobayashi had nothing to do in the incident except that he was in the operation room for a few minutes and that he was also at the scene with the other spectators. Compare this with the situation of Kinoshita. He took the prisoners from their confinement to the operating room; he anaesthetized one of the prisoner; he was an assistant of the operation from beginning to end; he went to the scene of execution. This Kinoshita became a witness and could escape from indictment while Kobayashi became an accused and is being tried. When I think of these matters, I think that the rules of evidence applied by the judge advocate, although they are legally admissible, do not go with the discovery of the truth. I request your deep consideration on this point.

Kodama and Kinoshita testified against Nakase when they said: "I heard a cough coming from the outside. I heard it only once. I think it is the cough of Executive Officer Nakase. I knew his cough when he was in the hospital. And nothing other than a cough was heard during that time"--- This is Kodama's testimony. But as Kuno testified, Nakase was in the hospital in January of the year, while Kodama himself testified that he arrived at the guard unit in the end of May of the same year. Therefore, his testimony that he remembers Nakase's cough in the hospital is entirely false. According to Kinoshita it became noisy outside and many voices were heard. Among them he heard a voice, "We are going to do the other one next." According to his opinion, it seemed to be the voice of Nakase and he did not remember other voices.

The cough of Kodama's testimony and the voice of Kinoshita's testimony are just like dialogues which we often hear in comedys in American movies. It is most ridiculous.

The testimony of Kinoshita, "I saw the Commanding officer standing on the patio, and I did not salute him" is also nothing but the dialogue of a comedian. But in order to prove the guilt of Asano and Nakase, such childish testimony must be admitted as evidence. This is unreasonable. I hope you will consider this point with utmost care.

Now, I would like to enter my main discourse.

ARGUMENT IN BEHALF OF NAKASE, SHOHICHI.

Specification 1 of Charge I states: "Asano, Shimpei; Ueno, Chisato; Nakase, Shohichi; Eriguchi, Takeshi; and Kobayashi, Kazumi, did, at Dublon Island, Truk Atoll, on or about 20 June 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, an American prisoner of war, 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.", and alleges these persons under the crime of murder.

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

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In order to prove this allegation, the judge advocate produced the following evidence: (1) Testimony of witness Kodama, Akira, Question 54. He heard a cough outside of the air raid shelter; Question 57. He recognized it as the cough of Nakase; Question 164. Witness heard nothing other than the cough; Question 165. Nakase was a patient at the sick bay for several weeks so witness recognized it as the same cough that Nakase had; Question 166. Nakase was hospitalized two or three months before the incident; Question 294. Nakase was a patient in May 1944; Question 299. Nakase was a patient during the beginning of May and at this time witness became familiar with this cough.

However, it was after the middle of May that he (Kodama) was attached to the 41st Naval Guard Unit, and according to the testimony of Surgeon Kuno it was in January and February that Nakase was in the sick bay. Kodama could not have known about Nakase when he was in the hospital. He heard the cough only once, and it was when an important operation was being performed. Besides, Kodama was an important assistant who took charge of the instruments. Under such circumstances, according to his testimony, recognized that it was Nakase's. Both Kinoshita and Ueno testified that they did not hear the cough. No testimony can be so ridiculous as this one. There is no such silly dialogue even in a comedy played by monkeys. If he was trying to tell a lie, it would have been better had he testify that he saw Nakase. But he could not be as base as to testify so. For his conscience forbids him. That is why he used a vague expression that he heard a cough and that it was the same cough which he heard when Nakase was in the sick bay. Nakase was in the sickbay in January and February, at which time the witness was not in the 41st Naval Guard Unit. So he testified that Nakase was in the sick bay in May, but there is no fact which states that Nakase was in the sick bay in May. It is really hard to tell a lie. It is foolish to examine honestly the testimony of Kodama concerning this point, so I will argue further on it.

(2) Let us examine the testimony of Kinoshita next. Question 12. Ueno said to the witness that he had been told by the executive officer to dispose of the prisoners. This testimony matches the testimony of Ueno himself, but can we believe Ueno's testimony as to this point? Ueno was asked various questions by Asano about the prisoners, and he replied in detail about their physical condition. Ueno then explained to him the necessity of operating on them. Asano said in warm and considerate words that if it is necessary to operate on them and Ueno was allowed to do so. So he operated on a prisoner with a doctor's conscience. He had no malice --- this was what Ueno said about his mental state. I believe that any doctor in the world would have done as he had done in his place. Asano himself was fully aware of how to handle the prisoners. He directly talked with them and told them that he would send them to a rear base as soon as transportation was available. He had a special concern for the prisoners. But how could he order them executed? Since Asano did not give such an order, how could Nakase relay it to Ueno? When I found two inconsistent testimonies of the accused who are persons of our patriots of Japan it is very hard for me to judge which is true. However, the defense counsel should be the protector of righteousness like the judge advocates. I should determine, according to my logic, that the testimony of Ueno is incredible. I also can not help thinking that Kinoshita gave his testimony turning himself to Ueno.

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

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Therefore, Kinoshita's testimony is also incredible.

Question 101. Witness heard a voice saying -- "We are going to do the other prisoner next. Question 102. According the witness's recollection it seemed to be the voice of Nakase. Question, 243. When the witness heard the voice, he thought that the other prisoner was going to be disposed of.

Two prisoner were carried to the operation room on stretcher; one was taken inside, another remained outside. The operation on one prisoner was almost finished. If, in such a case, a voice, saying, "We are going to do the other one" was heard, the meaning of the voice should have been to operate on the next prisoner. Whether or not this was spoken in Japanese, question 18, it is possible to interpret the meaning as otherwise? Kinoshita's testimony that the meaning of the words is that the other prisoner is going to be disposed of is not only unnatural, but the fact that he heard such a voice itself is doubtful. Kodama said that he heard a cough once but nothing else. Ueno said that he did not hear the cough but he heard a voice, "I'll take one of them. You take the other one," and that he thought this was a voice of an enlisted man. Question 254. The voice which the witness heard was to the entrance that Ueno went out of. Question 257. When the voice was heard the witness understood that plans were changed. Question 266. Ueno heard noise outside when operating on the abdomen. He went out, came back and continued the operation, at this time the witness heard the voice. Question 268. Witness modified the testimony and said that he heard the voice while Ueno was operating on the chest.

Who can believe this inconsistent testimony of Kinoshita's? Like the testimony of Kodama, it is nothing but the dialogue of a comedy of monkeys. Like Kodama, Kinoshita was not skilled in telling a lie. He tried to involve Nakase, but he could not tell bold lies. He had a conscience so he made a vague testimony that he heard a voice and that he thought it was Nakase's voice.

As I have mentioned, you can easily find that the testimony of Kodama and Kinoshita against Nakase is not the truth. I would like to show some more disproofs citing the testimony of the witnesses of the prosecution.

(1) To question 164, Kodama testified that he heard nothing other than a cough and denied the testimony of Kinoshita. (2) Uchihiro answered to question 117 that while he was in the shelter he did not hear any conversation outside, and denied the testimony of Kinoshita. (3) Kuno said to question 7 that he did not recall Nakase coming near by or hearing Nakase's voice when he was in the shelter. In question 16, he testified that he did not remember any cough outside while the operation was going on. In question 18, he said that he did not remember any cough that might be recognized as Nakase's. In question 7, he said that he did not see Nakase outside when he left the shelter after being there a short time. In these answers, Kuno denies the testimony of Kodama and Kinoshita. (4) Witness Hoshino testified to question 136 that he did not remember hearing a cough. He also testified to question

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

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187 that he did not remember seeing Nakase at the operation and to question 188 that he would have remembered if Nakase had been there. Thus he also denied the testimony of Kodama and Kinoshita. (5) Witness Saito testified to question 83 that he did not notice Nakase at the shelter and to question 84 that he did not know of hearing the voice or cough of Nakase, and thus denied the testimony of Kodama and Kinoshita. (6) To question 240, witness Tsuboi answered that he did not remember seeing Nakase at the air raid shelter and denied as same.

Thus the testimony of Kodama and Kinoshita is crushed to pieces by the testimony of the prosecution witnesses.

Ueno Chisato, the performer of the operation insists upon the point that Nakase relayed the order to dispose of the prisoners, and maintains that Nakase is responsible for that. Therefore, if it were true that Nakase came near the shelter or took the prisoner, he would never hesitate to corroborate their testimony. In spite of that, he denied it stating that he heard neither the cough nor the voice of Nakase.

He said that he heard a voice, say, "I'll take them. You take another one," and that it was a voice of a petty officer. To the cross-examination of the judge advocate, he said, "I said it was a voice of a petty officer. I thought so because he wore puttees. It might be a mistake. It might be true to say that I did not know." In any case, if he were Nakase, how could Ueno overlook it. But he was not Nakase. As Ueno was a senior officer who was a man of honor, he could not tell such a whopping lie as Kinoshita and Kodama did. From this point it is clear that the testimony of Kodama and Kinoshita is a fabrication, and I think further explanation is unnecessary.

Among 15 witnesses of this case, nine of the prosecution and six of the accused, it was only Kanai who testified that Nakase was at the scene of execution. Kanai testified in question 42 that Nakase was standing toward the rear of the spectators. If, as Ueno says, Nakase had received the order from the commanding officer and had relayed it to Ueno, he would naturally have been at the scene because of his responsibility. And if he had been at the scene, his existence would have been noticed by all spectators, because he was then an executive officer. But, Ueno himself said that Nakase was not at the scene, and even Kodama and Kinoshita, who testified that they heard a cough or voice at the air raid shelter, did not affirm that Nakase was at the scene.

Witness Uchihiro answered to question 229 that he did not remember Nakase being in the group at the scene of execution. Witness Tsuboi answered to question 217 that he had no recollection of seeing Nakase in the swamp at the scene of stabbing. None of the other prosecution witnesses and none of six defendants, not to speak of Ueno, affirmed that Nakase was at the scene. From this fact, it is clear that the testimony of Kanai is not true. Of course, it is hard to recognize a enlisted man or a low ranking officer among the crowd, but anyone would have recognized the executive officer if he were actually there. Especially, Ueno stated that he acted by the order relayed by Nakase. How can

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James P. Penny
JAMES P. PENNY,
Lieutenant, USN,
Judge Advocate.

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he deny Nakase's presence, if Nakase had actually been there? If these evident disproofs are neglected and only the testimony of Kanai admitted, there is no need to argue the case. Because, in such a case, only the vague one witness would be sufficient to convict the accused. I have faith in your clever judgment and have no doubts that the assertion of the defense will be admitted.

By the above assertion, I think the evidence of the prosecution is entirely disproved down. The remaining question is which of the statements of the co-defendants Ueno or Nakase's is true. When the interest of one accused stands against that of another, I am pained as to how I shall defend them. But this question should be solved. It can not be left at it is. I would like to calmly consider it from a fair and objective view-point. I am very sorry for one of the accused, but I must state my frank opinion.

I ask that you listen to the assertion of Nakase, first.

1. He was born in 1892 and is 56 years old now. He entered the navy as a volunteer in June 1910 at that time he was nothing but a seaman. He was gradually promoted till he was appointed a lieutenant commander in the navy in November 1943, and at the time of the incident, he was acting executive officer and an officer of the guard, because Executive Officer, Commander Akutagawa was sick in the hospital. But, in the Japanese Navy, an officer who did not graduate from the Naval Academy and was commissioned after service as an enlisted man is has disadvantages as a special service officer, and it is usual that such an officer can not take part in important affairs of the navy even he had a high rank. Therefore, other senior officers of the unit liaised directly with the commanding officer without consulting a special service executive officer. This point was testified to by Lieutenant Commander Shintome in the Jaluit Case, and Nakase in the 41st Naval Guard Unit was not its exception.

(2) After he was demobilized, the accused Nakase was living a peaceful life but was ordered by the American authority to go to Guam for two months as a witness. In February of this year, he was confined as a war criminal which he had never expected. All he knew about the incident is as follows: Toward the end of June 1944, the 41st Naval Guard Unit was bombed by the American air forces, and three out of five prisoners in custody of the unit was killed by the explosion of a bomb. The other two were seriously wounded, and they were treated by the medical department of the unit. But the condition of the two patients were not good. So the Head Medical Officer Ueno directly explained to the Commanding Officer Asano that it was necessary to operate on these prisoners. Since Asano was very concerned about the prisoners he gave him permission to make the appropriate treatments. Then the Head Medical Officer Ueno operated on them, but the result of it was unfavorable. Nakase heard from Asano that the prisoners were dead. There was also a rumor that they were dead. But Nakase himself did not know about it without consulting Nakase. So Nakase did not say anything about it.

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

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The responsibility of the 41st Naval Guard Unit as to the prisoners in its custody was a temporary one, and the prisoners were being sent to Japan as soon as possible. So there was no special person who took charge of keeping the prisoners. The officer of the day, guards, and assistant officer of the guard took charge of it under the commanding officer. Since Nakase was an officer of the guard, he was naturally responsible for the duty of the guards. If there was trouble among the prisoners, he had a right to investigate and deal with the trouble. Theoretically, he would have a right to investigate the fact that the prisoners died after Ueno's operation. But Ueno was senior to him, and he operated on the prisoner after he talked directly about it with the commanding officer. Besides, operations were taken charge of exclusively by doctors, and he, a low ranking special service officer, could do nothing about it. Therefore, it is natural that Nakase never investigated the result of the operation. Under such circumstances, Nakase did not know anything about the fact of the case, until he was investigated on Guam.

Nakase continues to say: "But the Head Medical Officer Ueno said that I gave an order to execute the prisoners. Kodama and Kinoshita testified that they heard my cough or my voice outside of the air raid shelter. Kanai stated that he saw me at the scene of execution. Nagashima said in his statement that he was ordered by Ueno to execute the prisoner, and that he came to ask me and that I gave him my consent to do it. I regret these testimonies. They are all fabrications. They are plotting to involve me. I am willing to take any responsibility as an executive officer or an officer of the guard, but it is unbearable for me to be burdened with responsibilities by false testimonies."

This is the outline of Nakase's assertion. Now I shall cite a part of Ueno's statement to compare it with the former.

Ueno was treating and carefully watching the two wounded prisoners after the day of the air raid. One of them became pretty well, while the other prisoner became weaker and weaker though his wound was not so serious. He judged that there might be some trouble in his internal organs. So he reported the conditions of the prisoners to the commanding officer and explained the necessity of an operation. The Commanding Officer Asano seemed to understand and consented with warm, kind words that he hoped Ueno would take appropriate measures for them. Ueno kept watching the conditions of the prisoners, but they were growing worse. He thought that he could not discover the cause of their disease by external examination. Several days after the air raid, he decided to perform an operation and performed a surgical diagnosis, or diagnosis by operation, with Surgeon Kinoshita as an assistant. This was a normal operation often applied in case of stomach ulcer or cancer, and was not at all a dangerous one. He performed the operation for treatment as well as for diagnosis. He did it with a conscience as a doctor and had no evil intention. He explained his feeling saying that when a doctor performs an operation with a scalpel in his hand he only thinks of is to do it completely and can not have any evil intentions.

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James P. McNary
JAMES P. MCNARY,
Lieutenant, USN,
Judge Advocate

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I believe his words. From the beginning of the operation, he treated the prisoner as a patient. Even if he met with unexpected difficulties in the middle of the operation. He earnestly desired to complete the operation successfully. Not only Ueno but any doctor will desire to do so. When we observe him from the result of the operation, we might feel doubtful if he had such a feeling at that time. But, I think, to consider him in such a way is not proper. The death of the prisoner, and the conscience of Ueno toward the operation should be considered separately.

However, I can not accept all the words of Ueno's statement, either.

According to Ueno, he was suddenly relayed by Executive Officer Nakase an order of the commanding officer to dispose of the two prisoners about 10 a.m. on the day of the operation. As a navy officer, Ueno had a duty to execute the prisoners according to the order of his superior, and, on the other hand, he tried to perform medical treatment, or an operation for diagnosis, as a doctor. The judge advocate had a suspicion as to his point and doubted if Ueno had a conscience as a doctor. I can not help admitting that this is quite natural.

First of all, we can believe Ueno's statement that when he talked with Commanding Officer Asano, Asano said to him with kind words that he hoped that kind and appropriate treatment be extended to the prisoners, because Asano had a special concern with the prisoners and told them that he would send them to Japan when it was possible. Asano was fully aware of how to treat prisoners? It is hard to imagine that he suddenly broke the agreement and ordered them to be executed. Besides, Ueno talked directly with Asano and got permission to operate on the prisoner. If it had to be changed on account of inevitable circumstances, Asano should have explained the reason to Ueno. And although Nakase was an executive officer he was of a lower rank than Ueno, so we can not imagine that Ueno paid respect to Nakase. If Nakase had relayed such an order to Ueno, he would have questioned saying that he had no such duty. If Ueno had had any doubt about it, he would have directly asked Asano about it. Or as head medical officer, he would have directly asked Asano about it. Or as head medical officer, he would have rejected such an order. Or, at least, as a man who was in such an important position as the head medical officer, he would have objected to it at once. However, he did nothing of the kind, and only said that he had received an understandable order. If the commanding officer had had no such intention and Nakase had given the order of his own accord, it would have been still more unnecessary for him to obey such an order. Nakase was not senior to Ueno. Petty officers or enlisted men might be afraid of their executive officer. But for the head medical officer, Ueno it is not necessary to be overawed by Nakase. Besides, Ueno got the permission to perform the operation directly from Asano. He had the authority to perform the operation, and even the executive officer could not interfere with it. Therefore, he could have rejected the order.

Let us change our standpoint from Ueno to Asano and Nakase. If it was necessary to execute the prisoners, it would be easy for them

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

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to order it to the enlisted men under their control. There has been no grounds in which to order head medical officer to execute them. From any point of view, it is unnatural that Nakase relayed the order to Ueno.

Also, who can take and carry away the prisoners under the authority of Ueno without his permission? If there was a formal order from the commanding officer, it will be another thing. But a petty officer or an enlisted man can never do that. From this point, too, the testimony of Ueno is unnatural.

I believe that Ueno was intending to and did operate on the prisoner with a conscience as a doctor. But the operation was not successful. It is a disgrace as a doctor to be said that he killed the prisoner by his failure in the operation. Here is Ueno's agony, and thus he stated that he executed the prisoner by the order of the commanding officer and the executive officer.

As a defense counsel, I feel very regretful that these points are not made clear, but when I conclude the above said facts, I am convinced that the assertion of Nakase is true.

The last point is that Ueno holds that the execution was performed by general assembly, and Nakase and Asano denied that there was an assembly. From the testimony of the witnesses of both prosecution and the defense, we can not be lead to think that the general assembly was ordered and the execution performed. All spectators say that they heard about the execution and that they went to see it out of curiosity. And the testimonies agree that the people assembled there was about 20 or 30.

In the first place a general assembly will never be ordered unless there is an important matter necessary to order it. Of course, it can not be ordered without an order or permission by the commanding officer.

In case of general assembly, the OOD gives notice fifteen minutes beforehand. Five minutes before the time of the assembly, he notifies it to all the members and reports it to the commanding officer and the executive officer. He reports it to the commanding officer at the determined time, and at which time everybody assembles by the call of the bugle. "A general assembly of persons not on work" is ordered in a fleet but not in a unit on land. As Nakase testified, this kind of general assembly was not ordered in the 41st Naval Guard Unit. As human nature, people do not like to hold such events under the order of general assembly. They prefer to do it in secret. No matter how the leaders of the Japanese Navy were silly, they would not do it under general assembly.

But for the purpose of burdening the responsibility upon the commanding officer and the executive officer, it is much more convenient to affirm the fact of general assembly. By that reason, the judge advocate will believe the testimony of Ueno. But the testimonies of all other witnesses and the objective circumstances are too different from his testimony to believe it.

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James P. Kenny

JAMES P. KENNY,
Lieutenant, USN,
Indian Affairs

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As I have mentioned above, I believe it is made clear that there is no proof that Nakase, Shohichi did as alleged in specification 1 of charge I. There is no ground for the assertion of the judge advocate. It is a violation of the principle of criminal law to deal with an important case of murder with such weak evidences. I request the commission that specification 1 of charge I be found not proved and the accused Nakase be acquitted of specification 1 of charge I.

Specification 2 of charge I reads: "Nakase, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, Asano, Shimpoi, then a captain, IJN, and commanding officer of the 41st Naval Guards, Ueno, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, Tanaka, Sueta, then a leading seaman, IJN, attached to the 41st Naval Guards, acting jointly with Nagashima, Mitsuo, then a chief petty officer, IJN, and others to the relator unknown, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, wound, strike, kill and cause to be killed, by stabbing with a deadly weapon, to wit, a bayonet, an American prisoner of war, said prisoner of war being then held captive by the armed forces of Japan, this in violation of the law and customs of war," and alleged the crime under the charge of murder.

As to this specification, the prosecution witnesses testified to the following facts:

(1) Tanaka, Sueta and others unknown alleged to have killed an American prisoner by stabbing, on the orders of Senior Petty Officer Nagashima, their superior.

(2) The victim was injured by the air raid by the American forces, and was carried to the battle dressing station by Kinoshita, Haroshi with another prisoner alleged to have been operated on by Head Medical Officer Ueno in the first specification of charge I. And that he was then placed outside of the battle dressing station.

As to these two points, I have no objections.

(3) But it is not clear according to whose order Nagashima, ordered Tanaka to stab.

Concerning this point, the judge advocate introduced a statement of Nagashima. It states that Nagashima was ordered by the Head Medical Officer Ueno to execute the prisoner, and that Nagashima asked Nakase about it to make sure and that Nakase told him to do it.

As I stated in the beginning of my argument, Nagashima was a main actor in this incident. It can be seen that he made an intentional statement in order to evade or lessen his responsibility. Such statement should not be admitted as evidence without thorough cross-examination. It is a principle in the Anglo-American rules of evidence that documental evidence should not be accepted as evidence without a chance for cross-examination. Besides, Nagashima became insane

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JAMES P. KERRY,
Lieutenant, USN,
Judge Advocate

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after the investigation and is now psychiatric hospital in Japan. It can be seen that he was subject to a serious mental shock when he wrote the statement. I again hold that such a statement has no power as evidence.

However, so long as it has been admitted as evidence by the Commission, I must examine its contents.

My codefense counsel has fully argued about the point concerning Ueno, I shall examine the point concerning Nakase.

Nagashima only said in his statement that he was ordered by Ueno to execute the prisoner and that he asked Nakase to make sure of it and that Nakase told him to do it. However, it is not clear when and where Executive Officer Nakase said this.

However, this was an unexpected shock to Nakase. He knew nothing about it. He heard it for the first time from the investigator on Guam.

The investigator said, "According to Nagashima, he was given an order from Ueno. Then he went to the front of the executive officer's room and asked him from the outside what to do, and the executive officer said in a loud voice, 'Do it.' How do you explain this?" I guess that Nagashima said this when he was investigated in Tokyo. So this fact must be recorded in the investigation report of the judge advocate.

However, this fact is, according to our common sense, unnatural. It is not possible that a petty officer should call to the executive officer from the outside of his room to ask about a serious matter, because in the navy distinction between ranks was strictly maintained. Especially, Nagashima was in charge of an armory near the sick bay at that time and had little contact with the executive officer. A petty officer who has such little contact with the executive officer can not call to him with such impoliteness.

When Nagashima received the order from Ueno, why did he go and ask Nakase about it? Does he mean that he had doubts about the order of Ueno? If he had, he must have expressed this in his conversation. I can not think that Nagashima was such a careful person. Generally speaking, when an enlisted man was given an order from his superior, he would never ask about, of another superior. Nagashima was not a seaman. So it can be seen that he had some doubt about the order of the head medical officer in that he asked another superior about it. It does not matter if the superior is a doctor or paymaster attached to the different department. A senior officer, especially the head medical officer is a high ranking officer. If a petty officer or a seaman received an order from such a high ranking officer, he had to obey it then and there. Ensign Asamura in the 4th Naval Hospital Case was under a different chain of command from that of the hospital. Yet he beheaded the prisoner according to the order Iwanami. Ensign Asamura was a graduate of the Naval Academy and was a very thoughtful person, yet he had to obey the order. A mere petty officer like Nag-

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James P. Nenny
JAMES P. NENNY,
Lieutenant, USN,
Judge Advocate.

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ashima could not be so thoughtful as Asamura, nor could he have had an aggressive feeling toward his superior. Besides, he was in a battle zone. If he made sure of everytime he received them, how could he have preformed his duty in a battle zone. Orders of superiors should be obeyed then and there even if they are unreasonable or unjust. This is the military discipline of the Japanese armed forces. I think this is not the only case of this in the Japanese armed forces. Members of the Commission, as you are military officers, I think you are fully aware of this.

I conclude that the statement of Nagashima concerning the executive officer is untrue.

(4) Tanaka aid in his statement that when he was ordered by Nagashima he said that he could not do such a thing because he was weak due to illness. Then Nagashima popped his eyes out, bared his teeth and scolded with a frightful attitude, "Do you mean to disobey the orders of the commanding officer and the executive officer?" As any one knows, when petty officers gave orders to enlisted men, he is used to saying, "This is the order of the commanding officer or the executive officer," in order to give weight to his words. I think such a thing is common in the military forces of any country. If such words were used by people other to the commanding officer or the executive officer themselves, it has no value as evidence. I do not think that the judge advocate is trying to prove the responsibility of Nakase by these words.

There is no other evidence with which to prove the responsibility of Nakase.

If the order had really been issued from the commanding officer or the executive officer, Nakase, the executive officer, had to be present at the scene although the commanding officer might not be present. But no prosecution witness testified that Nakase was at the scene, and witness Hosaka, Kazuyoshi, of the defense clearly testified that Nakase was not at the scene.

From these facts, no one can think that Nakase was involved as alleged in this case.

I will cite again the assertion of Nakase which I referred to in my argument concerning specification 1 of charge I.

Nakase believed that both of the two prisoners died after they were operated on by Head Medical Officer Ueno, and he heard on Guam from the investigator that a prisoner was stabbed by Tanaka, for the time!

It is clear that Nakase had nothing to with the alleged fact of this specification, and the judge advocate could not prove anything against Nakase.

I hold that specification 2 of charge I has not proved and that Nakase should be acquitted of specification 2 of charge I.

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

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Specification 1 of charge II states: "Nakase, Shohichi, then a lieutenant commander, IJN, Asano, Shimpei; Ueno, Chisato; Kobayashi, Kazumi, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, unlawfully, inhumanely, and without justifiable cause, assault, strike, mistreat, torture, and abuse, an American prisoner of war, 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."

This is the charge and specification concerning the operation performed by Ueno which I argued on as the first specification of charge I. In order to avoid duplication, I wish to bring your attention to my argument concerning specification 1 of charge I. As I have already mentioned, the alleged facts of this specification were all done by Ueno, and Nakase had nothing to do with them. I also hold that Nakase did not give any order to Ueno.

Even if the statement of Ueno that he received Nakase's order to execution prior to the performance of the operation is admitted as evidence, the execution and operation are different acts as Ueno insisted. The execution was performed immediately after the operation, but the two have connection only of time.

On the one hand, Ueno received an order to execute the prisoners and was under mental pressure as a military man to obey the order. On the other hand, he had no intention to kill the prisoner patient whom he had treated from the day of the air raid, and he only hoped to complete the operation and with a conscience as a doctor. Even if it was the fate of prisoners to be executed, he desired to give them a complete operation and did it as best as he could. However, general assembly was ordered. One prisoner was taken away. He was also ordered to bring the other prisoner to the scene. Everything came to naught. Ueno states that if the operation and execution had taken place on different days, his state of mind would have been understood.

The order of execution had influence at all upon the mental state of Ueno when he performed the operation. It only gave him dark feelings. I can state that he did perform the operation on account of the order.

Of course Nakase insists that he did not give the order. Even if he had given the order, Ueno would have not performed the operation on account of that order. Ueno insists that an order and an operation is different. Then how can the judge advocate prove the responsibility should be proved by evidence. Punishment should not imposed by a mere imagination or presumption. It is another thing if the acts of Ueno himself is admissible as a doctor or if they violate the law of war. But so long as Ueno denies the causal relation between the order and the operation, the criminal responsibility of Nakase can not be proved only by the fact that there was an order.

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

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We hold that specification 1 of Charge II against Nakase not proved and Nakase should be acquitted of specification 1 and 2 of charge I and specification 1 of charge II against Nakase are not proved. Therefore, I request the Commission that Nakase be acquitted of charge I and II.

Lastly, I would like to state about the character and family condition of the accused Nakase and beg your special consideration.

As I stated at the beginning of my argument, Nakase is now 56 years old. After he graduated from grammar school, he entered the navy as a seaman. From a seaman he worked up through the ranks until he was promoted to a lieutenant commander. He is a person who may well claim that he is a self-made man.

It was because he was righteous, responsible, unselfish and reliable.

As you have noticed, he is a single-minded person. He has no two sides to his character. On the other hand, he was not social. He can not tune himself to toerhs, or flatter others. I am afraid that he may have hurt the feelings of the investigator. This was because he was too honest. In Japan there is an expression, "Stubborn honesty." I think he might fall under this category. But this is a good point. I am glad to find a single-minded and stubbornly honest man like he in our society where there are many flatterers and superficial persons.

I believe there is no lie in his words and behaviors. I hear that there was no one on Truk who spoke ill of Asano and Nakase.

He is also an old-fashioned military man, and is free from avarice. So he has no savings. His family consists of five persons, three of whom are children. One of the children is cripple on account of an injury. His family can not make their living without him. He came to Guam as a witness and was expected to stay here about two months. After he arrived on Guam, he fell in to the miserable fate of today, and he had never thought of it before. His family do not know how to make their living, and are in a very miserable condition.

Your Honor, the President and Members of the Commission, I beg that you will find him not guilty and that you will release him.

ARGUMENT IN BEHALF OF ASANO, SHIMPEI.

After the Meiji Restoration, sudden changes of government, society and economy greatly influenced the mental state of the Japanese. The Japanese of today are not the Japanese of the past. Defeat in the Pacific War caused revolutionary changes not only in the social system but also in the mental state of the Japanese people.

I am not intending to explain the general history of transit of the mental state of the Japanese.

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James F. Kennedy
JAMES F. KENNEDY,
Lieutenant, USN,
Judge Advocate.

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I would like to relate about a side of Japanese "Bushido" in connection with the character of the accused Asano. Since olden times, the spirit of Bushido was repeatedly explained by the scholars of Japan, but I hear that Europeans and Americans do not yet understand it. What is known by these people is suicide called "Harakiri." They severe by criticizing the Japanese, they think lightly of committing suicide and try to evade responsibility by committing suicide. But this is a irrational argument and is wide of the mark. Any human being, or any living creatures is afraid of death. Self-denial in Buddhism does not mean self-destruction.

There is a book called "Hagakure" in which it is stated that that the aim of Bushido is to die. This death does not mean to destruct oneself but to relaise oneself. The meaning of self-denial is self-realization.

I do not intend to explain the meaning of the phrase, "The aim of Bushido is to die" written by the author of Hagakure. I do not intend to explain the significane of Bushido. What I am going to explain is my belief firmly impressed in my heart as a Japanese and under the tradition of Japan. It is my philosophy that I am going to state.

I think that "to die in order to live" or "to realize life by death" means to live in spirit if the person is phisically dead. In Bushido, a mere death is despised as a "Dog's death," or death to no purpose." A saying, "If a lord is disgraced, his subjectes will die" might be misunderstood as a feudal and slavish thought. The literal interpretation of the saying is that if a lord is disgraced his subjects will wipe away the reproach by death. This is a one-sided expression. But there are many instances in the feudal age that a lord died when his subjects were disgraced. Whether lord or subject, if one of the two was disgraced by others and there is no way to wipe away the disgrace, the other will clear him of the charge even at the sacrifice of his life. The true meaning of the saying is "to honor the name."

Name does not mean vanity such as reputation. "A warrior honors his name." He dies because he honors his name. In order to protect the name, symbol of righteousness, he is not afraid to die, and is willing to die. This is the meaning of the phrase "The aim of Bushido is to die" in Hagakure. So he would rather die to protect his name than live in disgrace. In other words, he is a man of honor.

Minamoto, Yoshitsune dropped his bow in to the sea, and the enemy tried to capture it. Yoshitsune was the leader of the Genji troops. He valued the bow and tried to retrieve it even at the rish of his life. His subordinates tried to stop him and said, "why do you value your bow so much? You are the life of the whole troop. Please stop it." Yoshitsune replied, "I do not value my bow but my name." This episode will be hard to understand for Europeans and Americans. But if you change the "bow" for colors, the meaning will be clearer.

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

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In short, it means "to honor the name" or "to be a man of honor." In the New Testament there is words, "Thou may acquire the world and lose your life it does you not good." This is the spirit; I mean, the Japanese do not have a monopoly on this spirit. Christ had already explained it 2000 years ago. Life which Christ spoke means the name which is the symbol of righteousness.

I think even if the Japanese be reduced to beggary as the result of their defeat, this spirit will remain with them. As Defense Counsel Kuwata pointed out, the Japanese can not free themselves yet from the bonds of feudalism, and it is true that they have servile side which is apt to yield to the power and might. But, under that servilness, we can find an under current of this honorable spirit. I dare say that this spirit of the Japanese is their characteristic which makes distinctish the Japanese and other par eastern races.

This spirit was cultivated by the warriors of the feudal age, and remained up to now, especially, in the military spirit. Now the Japanese militarists have been overthrown and many militists have been exiled from official positions. They are hated by the people in general and are living under miserable conditions. Yet this honorable spirit still remains within them. I do not deny that some of them is like a peddler. But they are only a part of them. I can find a military man of honor among the defendants. His name is Asano, Shimpel.

He might have little political ability. He might not know how to get on by flattery. But he was a soldier who honors his name. Since he was a fine commanding officer, he had a good subordinate. The accused Nakase was also a fine soldier. However, if I speak ill of them, they are stubbornly honest. This character of the two persons might cause of this unhappy event was that they were so stubbornly honest that they could not avery the happening of the disaster.

If I use a candid expression, Captain Tanaka was too much of a fool to control his subordinates while Asano was too stubbornly honest to predict the happening of the incident.

However, Asano is a soldier who honors his name. He will not evade his responsibility for this incident which was caused by his subordinates. We can see in his statement how keenly he feels his responsibility for this incident and how he is worrying about the atonement of his crime for murdering two American prisoners.

Since he is in such a mental state that he has no intention of evading his responsibility in order to be acquitted.

But he honors his name. He is not afraid of death, but it is unbearable for him to take responsibility for untrue facts. If he is told that his subordinates caused this disaster and that he should take its responsibility, he is willing to accept any blame.

But he can not, on any account, admit the charges and specifications which allege that this disaster was committed because of his order or his permission.

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James P. Keany
JAMES P. KEANY,
Lieutenant, USN,
Judge Advocate.

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Commanding Officer Asano who is fully aware of Bushido will not desire to live in disgrace by quarreling with his subordinates. Asano earnestly desires to make the facts clear and to take his due responsibility. Your Honor the President and Members of the Commission, I request your appropriate judgement.

Now I enter my main argument in behalf of Asano.

Specification 1 of charge I, "Asano, Shimpai, then a captain, IJN, and commandant of the 41st Naval Guards, Ueno, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, Nakase, Chohichi, then a lieutenant commander, IJN, and acting executive officer of the 41st Naval Guards, Eriguchi, Takeshi, then a dentist ensign, IJN, attached to the 41st Naval Guards, Kobayashi, Kazumi, then a leading seaman, IJN, attached to the 41st Naval Guards, and others to the relator unknown, did, at Dublon Island, Truk Atoll, Caroline Island, on or about 20 June 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war" alleged the crime as murder.

In order to prove this allegation, the judge advocate introduced the following evidences:

(1) One of the codefendants Ueno testified that Executive Officer Nakase relayed to him an order of the commanding officer to execute the prisoners.

(2) Testimony of the prosecution's witness Kinoshita: Question 103, Witness thinks that Ueno was ordered by superior officer to dispose of the prisoners. Question 118, Witness recalls Asano on a small path leading to the scene of the execution. Question 316, Witness saw Asano when he, Kinoshita, washed his hands and headed for the scene along the small path. Question 323, Witness walked down the path to a point ten meters in front of the commanding officer and turned left toward the stretcher.

(3) There is nothing to argue about concerning the confessions of Ueno, and Eriguchi, that Eriguchi, beheaded the prisoner according to the order of Ueno.

(4) In the statement of Eriguchi, he states, "When I came back from the scene, the commanding officer said to me that I did well as a beginner." This is a mistake in his recollection and he corrected it on the witness stand stating that the conversation was in the mess hall several days later. I think you will understand this point.

The points that I wish to argue are, (1) and (2), and I shall examine them one by one.

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James P. Arny
JAMES P. ARNY,
Lieutenant, USN,
Judge Advocate.

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(1) This is the statement of Ueno and both Asano and Nakase deny it. I think that the statement of Ueno is incredible, because Ueno states as follows: "I had been treating these prisoner since they had been injured by the air raid. Their conditions are not good, and I thought it was necessary to operate on both of them to diagnosis and treat them. I reported the conditions to Commanding Officer Asano, and said to him that I could not find the cause of their sickness and that I wanted to get his permission to operate on them. Asano gave me his permission that I could give them the necessary treatment. I operated on them." Asano testified in the same way as this point. Asano had once talked with these prisoners and had concern for them. He intended to send them to Japan as soon as the transportation was available. As Asano believed that Ueno was an honest, and fine doctor, he gave him his permission.

However, Ueno states that, on the day of the operation, in front of the commanding officer's office, he was suddenly relayed by the Executive Officer Nakase an order of the commanding officer to execute the prisoners and that it was really an understandable order. If Asano had hanged his mind to permit the operation and ordered the execution of the prisoners, it was really an understandable order. If so, Ueno should have question Nakase about it and should have asked Asano why he changed his mind. Besides, the order was relayed in front of the commanding officer's office. He could have entered the room at once and asked Asano about it. However, he did not do that and after saying "Is that so?" to Nakase, he left. We can not understand according to our common sense. As a doctor, he could properly reject it. He might say that he had no intention to obey the order. But if the commanding officer thought it was necessary to execute the prisoners, he would order it to his enlisted men. It is quite unnecessary to order it to a doctor, still more unnecessary to order it to the head medical officer. From any view point, the statement of Ueno's is unnatural. It is really incredible.

Next is the testimony of Kinoshita. To question 163, he testified that he thought that Ueno was ordered by a superior officer to dispose of the prisoners. This testimony is entirely hearsay or the opinion of the witness, we feel that the witness was tuning himself to Ueno. Kinoshita did not hear the order himself, so this testimony has no value as evidence. To question 118, he testified that he recalls Asano on a small path leading to the scene of execution, but this is entirely a lie. Because banana trees were planted one meter a part along the border of the scene and, between these trees, haibiscus growing to about a mans height were growing between them in a form of a hedge. Many reeds taller than men were growing at the scene, so no one could see what was going on at the scene. Prosecution witnesses and a defense witness, Hosaka testified to this point.

To question 316 and 117, he answered that he saw Asano when he washed his hands and headed for the scene along the small path, and to question 323, he answered that he walked down the path to the point ten meters in front of the commanding officer and turned left toward the stretcher. These testimonies were made up intentionally

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

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in order to corroborate his testimony to question 163, as we can find in the following testimonies: question 326, Witness did not say anything to the commanding officer when he passed front of him. Question 328, He did not recall if he saluted the commanding officer. In the Japanese Navy, a subordinate should salute his superior even when he is on the road and another is in a car or its opposite. Then how could he have omitted the salut ten meters in front of the commanding officer. This is proof of his fabrication.

If Commanding Officer Asano had been on the path, everybody would have noticed him. But Ueno who said that he was with Kinoshita at the scene testified that he did not see Asano at the scene. Besides, none of the other prosecution witnesses testified that they saw Asano.

Lieutenant (junior grade) Hirata, a witness for the defense, had gone to the outlying islands on business on that day. He came back and went to the Officer of the Day's room to report his return. There he found a red mark on the name label of the commanding officer which meant that he was absent from the unit. So he asked where the commanding officer had gone, and he was told that the commanding officer had gone on an inspection tour of the outlying islands. So he did not report his return on that day. In the evening of that day he heard about the incident performed by Eriguchi and Tanaka. This is positive evidence to prove that Asano was not in the 41st Naval Guard Unit on the day of the incident.

(3) Was confessed Eriguchi and there is nothing to argue about it.

(4) Was corrected by Eriguchi himself in this court as his mistake of recollection, so it is unnecessary to explain about it.

Eriguchi testified that he had a conversation with Asano in the ward room several days after the incident. But as Asano himself testified Asano used to take meals in the room of the commanding officer, not with other officers. Member of the Commission, I think you have already noticed that this testimony of Eriguchi is incredible. Eriguchi was nothing but an dentist ensign who had just been commissioned. It is quite unnatural that such a low ranking officer could have talked with the commanding officer in the wardroom. Eriguchi did not have the courage to change the whole part of his misrecollection in his statement. It might be a lie of his that he had a talk in the wardroom, or he might have mistaken another officer for the commanding officer.

Then why did Ueno order Eriguchi to behead? He says that he was forced to execute the prisoner on account of the general assembly. As to this point I have argued in detail in behalf of Nakase and I will not repeat it here.

After all, I think that Ueno failed in the operation. Ueno thought that it was his disgrace as the head medical officer, if he was said that the prisoner died after the operation. He tried to escape from reproach, and he made up the order of the commanding officer.

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

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Asano testified, "Ueno came to me and said that the operation was not successful, that it was clear that the prisoner could not be saved and that he disposed of him and begged his pardon. This testimony corroborates my assertion.

Now it is up to you to determine whether the statement of Ueno or the statements of Asano and Nakase should be given weight as evidence. According to the evidence I have cited above, I hold that the accused Asano had nothing to do with the alleged facts of specification 1 of charge I, and that the judge advocate failed to prove the specification. Therefore, I request that the commission find specification 1 of charge I not proved and the accused Asano be acquitted of specification 1 of charge I.

Specification 2, charge I, "Asano Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, Ueno, Chisato, then a surgeon lieutenant commander, IJN, Nakase, Shohichi, then a lieutenant commander, IJN, Tanaka, Sueta, then a leading seaman, IJN, and others to the relator unknown, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, wound, strike, kill, and cause to be killed, by stabbing with a deadly weapon, to wit, a bayonet, an American prisoner of war, ten and there held captive by the armed forces of Japan, this in violation of the law and customs of war" alleged the crime of murder.

Asano did not know anything about this alleged fact. Asano Shimpei maintains, "I heard the alleged fact of this case for the first time from the investigator on Guam this year. I know nothing about it." As I stated in connection with specification 1 of charge I, all that Asano knows about it, is that Ueno operated on the two prisoners, that the operation was not successful and that Ueno had disposed of them. He heard this from Ueno, and believed it. So he never heard about Tanaka's stabbing alleged in this specification.

The judge advocate proved nothing against Asano as to the alleged fact of this specification. He only introduced the following evidence:

(1) Ueno's statement that he was relayed by Nakase, the order of the commanding officer to execute the prisoners. As I have already mentioned in connection with specification 1 of this charge, Ueno did not receive any order from Asano. Nakase also denies it, stating that he did not relay such an order.

(2) Tanaka testified that when he was ordered by Nagashima, Nagashima said that it was the order of the commanding officer. But he did not remember exactly whether Nagashima said it was the order of the commanding officer or he said it was the order of the chief of guard. This is also evidence, but in the statement of Nagashima himself he did not say that he was ordered by the commanding officer. He only states that when he asked the executive officer about it he was told to do it. So this can not be evidence to prove the responsibility of Asano. Besides, as I stated before, the statement of Nagashima is full of lies and weak as evidence. I claim what I mentioned in

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

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behalf of Nakase and refute this. No other fact is proved by the judge advocate.

(3) Besides, we have clear counter-evidence: 1. As I mentioned in connection with the first specification, witness Lieutenant (junior grade) Hirata testified that Asano was not at the unit on that day. 2. Witness Hosaka, Kazuyoshi clearly testified that Asano was not at the scene of the stabbing. 3. Prosecution's witness Kanai testified: (Question 131) that he does not remember seeing Asano at the scene of stabbing. Komechi testified (question 127) that he has no recollection of seeing Asano at the scene of stabbing.

In direct statements of Ueno and Asano have no value before these powerful direct evidences. I think that the Commission would fully understand my assertion without further explanation.

Therefore, I hold that specification 2 of charge I against Asano, not proved and Asano, should be acquitted from specification 2 of charge I.

Charge I.

Specification 1 of charge II states: "Asano Shimpei, then a captain, IJN, and commandant of the 41st Naval Guards, Ueno, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the 41st Naval Guards, Nakase, Shohichi, then a lieutenant commander, IJN, acting executive officer at the 41st Naval Guards, Kobayashi, Kazumi, then a corpsman warrant officer, IJN, and other to the relator unknown, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, wilfully, unlawfully, inhumanely, and without justifiable cause, assault, strike, mistreat, torture, and abuse, and American prisoner of war, 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 foot of the said American prisoner of war, this in violation of the law and customs of war."

As I have already explained in behalf of Nakase and Asano in connection with specification 1 of charge I, the alleged fact of this specification was performed by Ueno with a doctor's conscience for the purpose of giving a diagnosis and treatment for the prisoners wounded by the blast of the bomb. This is not a surgical exploration nor a mistreatment, nor torture. When a person is wounded by the blast of a bomb, frequently there is trouble in his internal organs, becomes weaker until death, though his external wound does not appear serious. In such a case, the cause of the disease can not be found by an outside diagnosis, and so the surgical diagnosis will be made. I think that Japanese doctors are not the sole agents of such a kind of diagnosis. The judge advocate insisted that the influence of shock (caused by blast) can be found by a blood-test. Of course, the blood-test will clarify whether there is shock. But there are various kind of shocks caused by blast. As Ueno testified, such disease as adherence of men-

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

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The two prisoners of this case were at the same place with the other three prisoners who were killed when they were wounded. So we can easily see that their wounds were very serious ones. Head Medical Officer Ueno was watching the conditions of these prisoners from the time when they were wounded. From their conditions, he decided as a doctor that operation was necessary, so he reported it to the Commanding Officer Asano and got his permission.

And Ueno testified, "When I take up a scalpel as a doctor, I only desire to perform the operation well, and I did not have any evil intention. I performed the operation according to my conscience as a doctor. But an unexpected obstacle prevented me from completing the operation."

I can not admit on any account the charges and specifications which allege that this is a surgical exploration on a live body, that this is a mistreatment and that this is a torture.

“NNN (26)”

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

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alleged in the specification. Their conversation was concerned only with a medical and a reasonable operation, and nothing else.

If there was a mistake in the acts of Ueno, Asano has no responsibility because he was not aware of it at the conversation and did not expect such mistakes. There is another indirect evidence; that Ueno testified that he was relayed the order of the commanding officer by Nakase. But as I explained in behalf of Nakase there are considerable grounds to deny it. I claim my former assertion to avoid duplication.

I hold that the alleged fact of this specification is not proved as far as it concerns Asano, and I request the finding of not guilty for Asano, in specification 1 of charge II.

Specification 2 of charge II states: "Asano, Shimpei, then a captain, IJN, commandant of the 41st Naval Guards, did, at Dublon Island, Truk Atoll, Caroline Islands, on or about 20 June 1944, unlawfully disregard and fail to discharge his duty as commandant of the 41st Naval Guards, to control the operations of the members of his command and persons subject to his control and supervision, permitting them to visit cruelties upon, and commit atrocities and other offenses, as hereunder specified, against American prisoners of war, then and there held captive by the armed forces of Japan, in violation of the law and customs of war."

"(a) The inhumane and wilful mistreatment, without justifiable cause, of an American prisoner of war, bayoneting and wounding him with deadly instruments, by Ueno, Chisato; Nakase Shohichi; Kobayashi, Kazumi, and others to the relator unknown.

"(b) The willful killing without justifiable cause, of an American prisoner of war, by beheading, by Ueno, Chisato; Nakase, Shohichi; Eriguchi, Takeshi; Kobayashi, Kazumi, and others to the relator unknown.

"(c) The willful killing without justifiable cause, of an American prisoner of war, by stabbing, by Ueno, Chisato; Nakase, Shohichi; Nagashima, Mitsuo; Tanaka, Suets, and others to the relator unknown.

This specification contains the same contents as the alleged facts of specifications 1 and 2 of charge I and specification 1 of Charge II which indict's principal offense, the alleged fact of this specification should be involved in the principal offenses. Therefore, this specification is unreasonable, as duplication, and should be rejected. But it was not rejected and exists here in the charges, so I shall go into it and state my opinion.

So called crime of "Neglect of duty" was not stipulated in the law up to this time. I think it appeared for the first time in the war crimes trials. Originally, delicta et poenae is a principle in the criminal procedure of the civilized countries. (That means:) No one will be punished without the law. Punishment should be clearly stipulated in the law. But I think it is unnecessary to go into these

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JAMES P. KENNY
Lieutenant, USN,
Judge Advocate

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matters.

Then, what law shall be applied to punish this "Neglect of duty"? This is a very important matter. Because the record of this trial will become a judicial precedent which is the foundation of the future judicial system. Formerly, the punishment for neglect of duty was admitted in civil laws and administrative laws. But this is outside the scope of criminal responsibility. We can not indict a man for his criminal responsibility unless the indictment is admissible according to the principle of criminal law. A man can not boundlessly be blamed for his responsibility for acts of persons under his control and supervision. Because a crime of a person is not affected by the acts of other persons. In other words, no one has to bear the responsibility for the acts of other persons. This is a principle in criminal law.

Therefore, in order to allege neglect of duty in the war crimes trials, there should be strict restriction. If not, those who are trying the criminal are apt to abuse this, and the rights of people will be unlawfully prejudiced.

I think that, at least, the following three rules are necessary in order to admit the act of neglect of duty as a crime:

1. The first rule is the one concerning criminal intent. A crime is an act and an act is an operation of will. No crime will exist without a criminal intent. Therefore, in the Japanese Criminal Code, it is provided that an act having no criminal intent shall not be punished. Therefore, when a person is charged for his responsibility for the acts of other persons, the determination of his intention should exist in connection with the acts of the persons. It is not necessary for anyone to take the responsibility for the acts of other persons who have no connection with the intent of the other person.

2. The second rule is the one concerning an act by mistake. It is when a person who has responsibility to prevent certain acts of other persons, recognized a part of the act, and knew that a certain result would be caused by the act but overlooked and failed to prevent the act by his negligence when criminal act was committed. Although mistake, presumes ignorance of the fact, it does not presume an entire lack of recognition of the fact. Therefore, when a person recognized a part of a certain act and could expect a certain and it means a case in which the result could have been foreseen had it not been due to that person's negligence. The standard by which discernment is measured is discernment which is involve a ordinary human being.

3. The third rule is the one concerning commission by noncommission. This is a person who commits a crime by making use of the factors of other persons, as Washenfield says, "Here is a person who has a legal responsibility to perform a certain act according to concrete circumstances. But he does not perform it himself but he made use of other persons or various physical causes to permit it. When we observe such a case from a social view point we can say that, he made use of other persons by his noncommitment. So he is responsible for the result of the act."

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JAMES P. KEARY
Lieut., USN
Judge Advocate

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Let us compare the case of Asano with the above mentioned three rules.

1. Acts of other persons in any paragraph of (a), (b) and (c) in specification 2 of charge II have no connection with the determination of the intent of Asano. Asano only came to know these facts after they had been committed, except in the case of paragraph (a) in which Asano gave Ueno permission to perform a reasonable act of diagnosis. But Asano did not know of any unlawful acts on the part of these persons. From any point of view, Asano has no criminal intent of the rule one.

2. Next, let us consider if he made a mistake. If these acts of his subordinates were repeatedly done, it can be said that it occurred because of his negligence in not foreseeing what he could of foreseen had it not been for his negligence. But, as this incident which occurred accidentally but once. He could not have foreseen even though there had been no negligence on his part.

Besides the motive of the incident was the operation of persons who were seriously injured by bombing, performed by Head Medical Officer Ueno. When Ueno said to Asano that he was going to do a necessary operation, it is quite reasonable that Asano trusted him. The reasonable grounds for it was already explained so I claim it again.

It is unreasonable that we insist he made a mistake in such a case. Because it would be asking for the impossible and logic will not permit it. I can not think that Asano made a criminal mistake in this case.

3. Concerning commission by noncommission. I have already explained that Asano did not nor did he try to perform criminal acts by making use of the acts of other persons. The judge advocate states in the specification that Asano permitted them to visit cruelties upon and commit atrocities and other offenses against American prisoners of war. I think that this word "permit" means "Commission by non-commission." Where did the idea that Asano gave his permission come from? The judge advocate did not introduce any evidence as to his permission.

It is possible to blame Asano's neglect of duty in view of civil and administrative law. But as you can see by the rules I have referred to there are no grounds in which to charge his criminal responsibility. I believe that he could naturally be acquitted of specification 2 of charge II.

Specification 3 of charge II has entirely the same contents as specification 2 of charge II though there are some differences in terms between them. One is alleging the names of persons while another is not. One explains a part of Asano's authority of supervision while another does not. But there is no legal difference between them.

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Lieut., USN
Judge Advocate.

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In short, the duty of supervision of a commandant is one, not two. This specification is unnecessary duplication.

As to this point, defense counsel KUWATA argued in his objection to the charges and specifications. So I will not repeat it here. My opinion concerning the contents of this specification is quite the same as the one concerning the foregoing specification, so I repeat the foregoing assertion. I hold that specification 3 of Charge II is not proved and the accused, ASANO, be found not guilty of specification 3 of Charge II.

As I have mentioned the judge advocate failed to prove any of the specifications 1 and 2 of Charge I and specifications 1, 2, and 3 of Charge II. As ASANO said in his final statement, he feels keenly his responsibility for the incident caused by his subordinates and regrets it greatly. I also would like to apologize for the incident as I am also a Japanese.

I think it is improper in view of principles and theories of criminal law to charge ASANO's actions with criminal responsibility or neglect of duty, not to speak of principal offense.

I beg your careful judgment and request that you will give him a verdict of not guilty.

AKIMOTO, YUICHIRO.

I hereby certify the above, consisting of thirty (30) type-written 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.

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Lieut., USN
Judge Advocate.

"NNN (30)"

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FINAL ARGUMENT FOR THE DEFENSE OF ASANO, SHIMPEI, UENO, CHISATO, NAKASE,
SHOHICHI, ERIGUCHI, TAKESHI, KOBAYASHI, KAZUMI, TANAKA, SUETA - DELIVERED
BY COMMANDER MARTIN EMILIUS CARLSON, USNR, AT GUAM, MARIANAS ISLANDS.

May it please the commission:

On July 20, 1947 these six accused were served with the charges and specifications which are dated July 15, 1947. Until that date they did not know why they were being held in confinement as war criminal suspects, although Asano, Shimpei has been held as a prisoner of war since the cessation of hostilities, August 14, 1945. Japan had waged a losing war but these six were only pawns in the game.

Asano was interned in the American war criminal stockade on July 31, 1946 and held there in close confinement until August 10, 1946. He was then sent to Guam where he has since been in solitary confinement. During all this time it is true that he has been questioned but not until July 20, 1947 was he ever informed that he was a defendant. Not until July 20, 1947 was he ever notified of the gist of the evidence that tended to implicate him, that is not until that date did he know or was he told that he was accused of the crimes of murder and neglect of duty as a Japanese naval officer, for what he did do and didn't do on June 20, 1944. Not until July 20, 1947 was he notified that he would have the benefit of counsel during his trial.

The person who investigated him during the long period of time that he has been held in confinement were never authorized in writing by the convening authority of this commission to investigate Admiral Asano.

Yet on July 20, 1947 Asano, Shimpei was served with charges and specifications and he was joined with five other defendants charged with the murder of another American prisoner of war by stabbing with a bayonet and the unlawful surgical operation upon the live body of an American prisoner of war. Then in specification two of Charge II Asano is charged with neglect of duty by permitting certain other accused, Ueno, Nakase, and Kobayashi and others to willfully mistreat an American prisoner of war, by permitting Ueno, Nakase, Eriguchi, Kobayashi and others to behead an American prisoner of war, and by permitting Ueno, Nakase, Negashima, Tanaka and others to kill by stabbing, an American prisoner of war. In specification three of Charge II Asano is charged with neglect of duty by failing to protect American prisoners of war by permitting the inhumane and willful mistreatment by cutting an American prisoner of war by beheading and the willful killing of an American prisoner of war by stabbing.

These offenses are all alleged to have been committed June 20, 1944, so we made a plea in bar of trial the first day of this trial, Monday, September 22, 1947. The statute of limitation as we pointed out in our plea expired two years after the offense was committed, or on June 20, 1946.

The rule regarding a statute of limitations is set forth clearly in 15 American Jurisprudence Criminal Law, sec. 357: "The running of the statute of limitations can be prevented only by the means or for the reasons specified therein. Hence, the fact that one accused of a crime conceals himself will not prevent the statute from running so long as it is not specifically provided therein that the statute shall not be in operation during such concealment. (citing in footnote 1, Rouse v. State, 44 Fla. 148, 32 So. 784, Kinn Cas. 317; Synott v. State 38 Okla. Crim. Rep. 200 P. 317 citing R.C.L.)"

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JAMES F. KENNY,
Lieut. JG
Judge Advocate.

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And in Section 354 of Ibid the rule is: "Generally speaking, a statute of limitations begins to run as soon as the offense is completed, and ordinarily there is no difficulty in fixing this point of time, because nearly every crime consists in a definite act or a definite result of some act."

On the first day of the trial, Monday, September 22, 1947 we also made a plea to the jurisdiction of this military commission to try Asano and the other five accused.

It is not our intention to repeat what we said in our plea to the jurisdiction but we merely wish to reemphasize what we said at that time by calling the commission's attention to C.M.O. 11-1937, p. 18.

C.M.O. 15-1917, p. 89 states that "The authority to convene the above-mentioned exceptional military courts vests only in the military commander or military governor of an occupied territory, and all such courts may be ordered only in the name of such commander or governor....."

Insofar as practicable the employment of exceptional military courts should as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations or otherwise in interference with the exercise of military authority."

We question the establishment of this commission and the jurisdiction of Commander Marianas to try Asano and the other five accused for offenses occurring on Truk, June 20, 1944.

In CMO 237-1919, pp. 15,17, the Attorney General gave an opinion that a person discharged from the naval service before proceedings are instituted against him for violations of the Articles of the Government of the Navy, except Article 14, cannot thereafter be brought to trial before a court martial for such violations, though committed while he was in the service.

We maintained in our plea to the jurisdiction and we held that all the evidence in the case clearly shows no jurisdiction in this commission to try Asano, Shinpei.

We objected to the charges and specifications on the first day of the trial and we will not repeat what we said at that time. We call the commission's attention to CMO 237-1919, p. 15, wherein it was held that the specification was not in due form and technically correct in that it does not conform to the sample specifications set forth in Naval Courts and Boards which should be used as a guide. The specification should allege the felonious infliction of a mortal wound of which mortal wound the said _____ died.

So in these two specifications against Asano for murder they do not allege that Asano inflicted a mortal wound of which mortal wound the prisoner died.

So in specification one of Charge II we objected and do object that the specification does not state a cause of action.

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James P. Kerry
JAMES P. KERRY
Lieut., USN
Judge Advocate

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In CMO 237-1919, pp. 16, 17, it was held: "It is not sufficient to allege in an indictment or specification that an action is unlawful, such a statement being but a conclusion of law. (State v Concord R.R., 59, N.H. 75; Commonwealth v Byrnes, 126 Mass. 248; In Re Coleman, 6 Fed. Cas., p. 49)If it is forbidden by a special regulation or order of the military government the specification should show on its face that the facts constitute a violation of the same." (CMO 33, 1914, 6-7; Naval Courts and Boards; 1917, par. 63.)

The JAG Navy Department stated further: "The accused was not adequately charged in the instant case with having the necessary 'knowledge or reason to believe', which the law establishes as an essential element of the crime."

J/G said in CMO 15-1917, p. 9: "Insofar as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority."

In our objection to the charges and specifications we specifically objected to the charging of identical facts and circumstances as the basis of specification 1 of Charge I and specifications 2 and 3 of Charge II as against Asano, Shimpei. So in specification 2 of Charge I and specifications 2 and 3 of Charge II.

We objected to specification 1 of Charge II in that it improperly alleged matter in aggravation as to specification 1 of Charge I as to Asano, Shimpei.

In CMO 8-1936, p. 7, the JAG, "Held, that if the convening authority desired that the averment as to arrest be considered by the court, it should have been alleged in the specification of the first charge as matter in aggravation (Sec. 202 and 203 NC&B; CMO 7, 1930, p. 8)" This was a case where the accused objected to the specification of the second charge on the ground that it was a duplicate of the specification of the first charge.

CMO 9-1937, p. 4, was the case where a SCM found two specifications proved. The first alleged theft, and the second, violation of a lawful regulation issued by the Secretary of the Navy (possession of wearing apparel belonging to another.) The evidence was sufficient to justify the finding of the court on the first specification; accordingly, the finding on the second specification was set aside.

CMO 12-1937, p. 4, was another case of aggravated matter improperly alleged. The specifications were repugnant in that case.

In our plea to the jurisdiction we pointed out that Ueno, Nakase, Eriguchi, Kobayashi, and Tanaka were all demobilized and yet they are joined together in trial with Asano who was never demobilized. Although the commission rules that they did have jurisdiction over these five civilians for an alleged crime committed on Truk June 20, 1944, we feel that the question of jurisdiction of American courts can not just be settled by a mere statement that the court has jurisdiction because the persons are here in court before them. Once having been demobilized we hold that this commission lost all jurisdiction over these five accused if they ever did have jurisdiction over them.

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JAMES P. KEANY,
Lieut. JG, USN
Judge Advocate.

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All of the accused objected to trial in joinder. Throughout the trial as the testimony and evidence showed the antagonistic clash of interest as between all the accused we made our plea in abatement. Although overruled we are still of the same opinion that there was misjoinder of parties in this trial.

All the accused objected to the charges and specifications for the following reasons:

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

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

CMO. 77-1919 states: Trial in joinder: When joint trial should not be had.

"The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge. Thus where two or more persons in the naval service take occasion to desert or absent themselves without leave, in company but not in pursuance of a common unlawful design and concert, the case is not one of a single joint offense, but of several separate offenses of the same character, which are no less several in law though committed at the same moment." "File 26262-5714, GCM Rec. No. 41468."

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

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

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

In footnote 3 of page 208, Winthrop quotes 2 Hawkins, c 25, S 89, as follows: "Where the offense indicted doth not wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant, without which it would be no offense,.....the indictment must charge them severally and not jointly."

Not only were these six accused joined in trial to the prejudice of each one individually but they were joined with "and others to the relator unknown," this joinder with other persons unknown was most prejudicial to the substantive rights of the accused because no one of these accused can properly prepare his defense not knowing who was included in the term other persons unknown.

There is a definite conflict of interest between the parties joined to the prejudice of all parties and to be joined with persons to the relator unknown as we have stated most prejudicial because the accused would like to call as witnesses in their behalf certain persons. All such persons are

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James P. KERRY
JAMES P. KERRY,
Lieut., USN
Judge Advocate.

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reluctant to testify on the grounds that if they were present at the scene of an alleged war crime they are as guilty as those persons charged with crime. The extent of the rule laid down in Section 332 of the U. S. Criminal Code is not applicable in time of war to persons who because of assignment to a certain group and because of orders issued to the group requiring the members of the group to be present. We hold that Military Law should be applied and not Civil Law in such cases.

CMO 4-1935 is quoted on this point: "The weight of authority is to the effect that due to the difference in legal relationship of the parties, the standard set by the civil courts should not be followed by military authorities much less be binding upon them."

The term "and others to the relator unknown" is further objectionable because this enabled the prosecution to evade the rule laid down in Wharton's Criminal Evidence, Volume 2 section 714 which reads: "Narratives of past events after the conspiracy is fully executed are to measures taken in execution or furtherance of the common purpose inadmissible against co-conspirators."

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

"When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirators is permitted by any subsequent action or declaration of his own to affect the others." From Wharton's Criminal Evidence, Vol. 2, par. 714, citing Logan v. United States, 144 U.S. 263:

Brown v. United States, 150 U.S. 93
Sorenson v. State (C.C.A. 8th) 143F. 820
Gall v. United States, 166F. 419
Hauger v. United States, 173F. 54
Morrow v. United States 11F. (2d) 256
Lane v. United States, 34F. (2d) 413
Collenger v. United States 50F (2d) 345
Minner v. United States 57F (2d) 506
Dandagarda v. United States (C.C.A. 10th) 64F (2d) 182
United States v. White, 5 Cranch (C.C.A.) 38F. Cas No. 16-675.

The accused, and particularly Admiral Isano, Shinpei, Commander Uono, Lieutenant Commander Nakase, Lieutenant Briguchi and Kobayashi, Kazumi, objected to specification 1 of Charge I. Charge I is labeled "Murder" but the specification does not follow the sample specification in Section 53 Naval Courts and Boards. Specification 1, Charge I contains many of the elements of Common Law Murder and several of statutory Murder.

In connection with sample specifications we call the commission's attention to CMO 237-1919. The JAG "In reviewing the proceedings of a military commission, it was noted that the specification in support of the charge of "murder" was drawn as follows: (then follows the specification.

The foregoing specification is not in due form and technically correct in that it does not conform to the sample specification set forth in Naval Courts and Boards, 1917, page 113, which should be used as a guide in such cases. The above specification in order to conform to said sample should allege the felonious infliction of a mortal wound, of which said mortal wound the said B died.

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JAMES P. KERRY
Lieut., JAG
Judge Advocate

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/s/ Tetsuo Morimoto
18 Shiba Kinsaku cho,
Minato ku, Tokyo

/s/ Tetsuo Morimoto
777, 4-chome, Sendagaya,
Shibuya ku, Tokyo.

I certify the above, consisting of two (2) typewritten pages, to be
a true and complete translation of the original petition to the best of
my ability.

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

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

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How does the prosecution prove this specification 1 of Charge I. Kinoshita, a doctor who himself should be charged as an accused testifies on the third day of the trial Q.118 "As I recall on a small path leading to the scene of the execution I saw Rear Admiral Asano. No other witness testified that Asano was there.

The judge advocate introduced into evidence the unsworn, unverified, undated statement of Eriguchi over our objection. However, when Eriguchi took the stand as a witness in his own behalf he repudiated that part wherein he stated that Asano was at the scene although this strange sentence appears in the statement: "Now I do not remember one of their names."

In answer to Q 55 on the 16th day Eriguchi said in speaking of both Asano and Nakase the executive officer (see answer to Q 54) I am also not sure whether they were at the scene or not."

Eriguchi also repudiated that part of his statement wherein he spoke of Asano (See Q56 on 16th day) by his answer to Q 57 "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.

In answer to Q 62 Eriguchi admitted that his statement contained many presumptions which were different from the facts. This has tormented his conscience and he took the stand he said to point out his mistakes and presumptions.

This was the extent of the testimony against Asano and the statement of Eriguchi unsworn to, are certainly not to be considered as evidence particularly when Eriguchi had to take the stand to explain the statement.

Even had Asano not taken the stand the testimony of Kinoshita, a self-confessed accomplice of Ueno would not convict Asano of murder when all that Kinoshita said was that as he did recall Asano was on a small path leading to the scene.

Asano took the stand as a witness in his own behalf, and to Q27 "Did you go to the scene when Eriguchi beheaded the prisoner?"

Answer "No, there is no truth in such a fact."

Q 29, "You testified that you were not at the scene, but Kinoshita testified that he saw you at the scene. Are you sure you were not at the scene?"

Answer: "I am sure of this."

Q30: In Eriguchi'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 Eriguchi took the stand and testified that he had been told this at the wardroom. Do you know of such an incident?"

Answer: "There is no such incident."

Q 32: "It is stated in specification one of charge one that you cut a prisoner with a sword. Did you kill or cut a prisoner with a sword?"

Answer: "Absolutely not."

Asano was also asked on Tuesday October 21, 1947, "Did you in any way aid and abet in the beheading and killing and stabbing of these two prisoners as you are actually charged with having beheaded and stabbed the prisoners in Charge I?"

Answer: "No."

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JAMES P. HARRIS
Lieut., JAG
Judge Advocate.

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Although the commission admitted into evidence the unsworn statements of Uono, Eriguchi, and Tanaka, not only as evidence against the makers of the statement but as evidence against the other codefendants in reviewing the evidence at this time we again point out certain defects in the statements which make them inadmissible as evidence.

In 2c of Affidavits Sec 1 an affidavit is defined as "a declaration in writing sworn to or affirmed by the party making it before some person who has authority to administer an oath." Citing among the many cases the following: U.S. Mitchell v National Surety Co. 206 Fed 807, 810 (quot eye); Greshaw v. Miller, 111 Fed. 450, 451.

Ill. Hertig v. People, 159 Ill 237, 240, 42 N.E. 879, 50 Am SR 162;
Hayes v. Loomis, 84 Ill. 18, 19;
Harris v. Lester, 80 Ill. 307, 311.
N.Y. People v. Sutherland, 81 N.Y. 1, 6

In section 48, Ibid, the necessity of an oath is clear. The rule is there laid down: "In order for an affidavit to be valid for any purpose, it must of course be sworn to or affirmed by affiant." Citing

U.S. U.S. v Mallard, 40 Fed. 151, S.L.R.A. 816.
Ill. Kehoe v Rounds, 69 Ill. 351;
McDermand v Russel, 41 Ill. 489
N.Y. O'Reilly v People, 86 N.Y. 154, 40 Am R 525.
Eng. Bourke v Davis, 44 Ch. D. 110;
Allen v Taylor, L.R. 10 Eg. 52;
Reg. v Turner, 2 C&K 732, 61 ECL 732;
Oliver v Price, 3 Dowl. P.C. 261;
Phillips v Prentice, 2 Hare 542, 24 Eng Ch 542, 67 Reprint 224;
Jacobs v Magnary, 7 Jur. 326.
Ont. Mann v Western Assur. Co. 17 U.C.Q.B. 190."

In Sec 85 of Ibid the rule is: "It has been held that it must appear from the body of the instrument that the affiant swears to the statements which it contains, (citing Kehoe v Rounds, 69 Ill. 351;
Cosner v Smith, 36 W.Va. 788, 15 S.E. 977. and several English cases hold it must be shown by the use of the word "oath" citing Allen v Taylor, L.R. 10 Eg 52; Oliver v Price, 3 Dowl. P.C. 261; Doe v Clark, 2 Dowl. P.C. N.S. 393; Phillips v Prentice, 2 Hare 542, 24 Eng Ch. 542, 66 Reprint 224.

In Sec 99 of Ibid, "It has been held in some cases that the jurit is essential to the validity of an affidavit." citing

Iowa McGillivray v Barton Dist. Tp. 96 Iowa 629, 65 N.W. 974.
Mo. Peters v Edge, 87 Mo. A. 283;
Sedalia Third Nat. Bank v Garton, 40 Am A. 113.
Mont. Metcalf v Prescott, 10 Mont. 283, 25 P. 1037.
N.Y. Ladov v Groom, 1 Den. 429;
Chase v Edwards, 2 Wend. 283.
N.C. Alford v McCormae, 90 N.C. 151
Texas Gordon v State, 29 Tex. A. 410, 16 S.W. 337;
Morris v State, 2 Tex A. 502
W.Va. Cosner v Smith, 36 W. Va. 788, 15 S.E. 977.
Eng. Haynes v Powell, 3 Dowl. P.C. 599.

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JAMES P. KENNY
Lieut., USN
Judge Advocate

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In Sec 110 Ibid: "In some jurisdictions, however, the courts have refused to take judicial notice of the officers authority (to sign the jurat) citing Frost v Heywood, 6 Jur. 1045; Babcock v Bedford Municipal Council, 8 U.C.C. P. 527, and have held that unless his official character is shown in some way the instrument is defective." citing Fla. Rumeli v Tampa, 48 Fla. 112, 37 G 563.

Ill. Peo v Nelson, 150 Ill A. 595.
Minn. Knight v Elliott, 22 Minn. 551
Or. Blanchard v Bennett, 1 Or. 328.
Eng. Reg v Bloxham, 6 O.B. 528, 51E.C.L. 528, 115 Reprint 197;
 Howard v Brown, 4 Bing 393, 13 E.C.L. 556, 130 Reprint 819.
N.J. State v Hutchinson, 10 N.J.L. 242.
Ark. Edmonson v Carnell, 17 Ark. 284."

In Sec 140 of Ibid: "In the absence of any statute or rule of court expressly authorizing it, (citing Pittsburgh's App., 79 Pa. 317, 323 (where the court said: 'Ex parte affidavits are, at best, but a very weak kind of evidence, and generally form but the ground of some preliminary or interlocutory action, but are never, unless it be especially so provided by Act of Assembly or rule of court, the foundation for final judgment or decree')) affidavits are not admissible as to controverted facts material to the issue, (citing Ala. Pickering v Townsend, 118 Ala. 351, 23 S. 703.

Ark. Western Union Tel Co. v Gillis, 89 Ark 483. 117 S.W. 749 131 AMER 115.
Ga. Maples v Hoggerd, 58 Ga. 315.
Ill. Murphy v Schoch, 135 Ill A. 550;
 Finkelstein v Schilling, 135 Ill A. 543;
 Austin State Bank v Morrison, 133 Ill A. 339;
 Plume etc. Mfg Co. v Caldwell, 35 Ill A. 492 (aff 136 Ill 163, 26NE 599.)

Quinn v Rawson, 5 Ill. A. 130.
Ind. Ohio etc., R. Co v Levy, 134 Ind. 343, 32 N.E. 815, 34 N.E. 20.
Kan. Johnston v Johnston, 44 Kan. 666, 24 P. 1098.
Ky. May v Williams, 109 Ky. 682, 60 S.W. 525, 22 Ky L. 1328;
 Phoenix Ins. Co. v Lawrence, 4 Metc, 81 Am D 521;
 Newton v West, 3 Metc. 24;
 Fallot v Pierce, 14 B. Mon. 158;
 Morton v Sanders, 2 J.J. Marsh. 192, 19 Am D 128.

Mo. Patterson v Fagan, 38 Mo. 70.
N.J. Stealey v South Jersey Realty Co. (Sup.) 90 A. 1042;
 Peer v Bloxham, 82 N.J. L. 288, 81 A. 659;
 Baldwin v Flagg, 43 N.J.L. 595;
 Cooper v Galbraith, 24 N.J.L. 219;
 Lummis v Strattan, 22 N.J.L. 245;
 Leyton v Cooper, 2 N.J.L. 62;
 Pullen v Pullen, 46 N.J. Eg. 318, 20 A. 393;
 Clutch v Clutch, 1 N.J. Eg. 474.

N.Y. In re Eldridge, 82 N.Y. 161, 37 Am R. 558.
Okl. Watkins v Grieser, 11 Okl. 302. 66 P. 332.
Pa. Hoar v Hulvey, 1 Binn, 145;
 Sturgeon v Waugh, 2 Yeates 476;
 Plankinson v Cave, 2 Yeates 370;
 Lilly v Kitzmiller, 1 Yeates, 28.

S.C. McBride v Floyd, 18 S.C.L. 209.
Texas Henke v Keller, 50 Tex Civ. A. 533, 110 S.W. 783.
Wash. Graham v Smart, 42 Wash. 205, 84 P. 824.
W.Va. Harold v Craig 59 W.Va. 353, 53 S.E. 466;
 Peterson v. Aukron, 25 W.Va. 56

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James P. Kenna
 James P. Kenna
 Lieut., USN
 Judge Advocate.

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In 1 Am Jur Cum Supp 1946 Affidavits Sec 30 "Ex parte affidavits to which the rules of evidence are not applied are not juridical evidence, and hence are incapable of supporting a judicial decision in a proceeding at law. Staley v South Jersey Realty Co. 83 N.J. Eg. 300, 90a 1042 L.R.A. 1917B 113, Am. Cas. 1916 B 985."

"The Constitution of the U. S. stands as a bar against the conviction of any individual in an American court by means of a coerced confession. Ashcraft v Tenn. 322 U.S. 143 88 Led. 1192, 64 Sec. 921." 14 Am Jr. Arm Supp Crim Law Sec 120 p 68.

If a coerced confession by the accused is introduced at the trial, a judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. Malinski v N.Y. 324 U.S. 401, 89 Led. 1029, 65 S. Ct. 781. Tennant v Divine, 24 W. Va. 387."

The case of Kellog v Sutherland, 38 Ind. 154 held that the records of courts cannot be proved by affidavit.

In Quinn v Rawson, 5 Ill. 2 130 it was held that the fact that an affidavit was part of the files in the case did not change its character nor make it competent evidence.

In the case of Smith v Ask, 5 U.C. QB. 497 the court ruled it would not try matters of fact on affidavits.

In Smith v Weaver, 41 Pa. Super. 253, 256, the ex parte affidavit was held not to be evidence because the affiant could have been called and would have thereby become subjected to cross-examination. It was held not to be the best evidence of the facts which the plaintiff endeavored to establish thereby. So in this present case the affidavits of Nagashima, Ueno, Eriguchi, and Tanaka are not the best evidence of the facts which the judge advocate has endeavored to establish thereby.

In 14 Am. Jur. Cum. Supp. Criminal Law Sec 148, p 73, "The privilege embodied in a constitutional provision that no person "shall be compelled in any criminal case to be a witness against himself" is not limited to criminal prosecutions but may be invoked in any legal investigation, whether judicial or quasi judicial, by any tribunal or body that has power to subpoena and compel the attendance of witnesses. Re. Hearing Before Joint Legislative Committee, 187 S.C. 1, 196, S.E. 164, 118 A.L.R. 591.

In the case of Veck v Culbertson, (Tex.Civ.A) 57 S.W. 1114 it was held that "An ex parte affidavit of one defendant is not admissible in evidence against his codefendant where the latter had no opportunity to file cross-interrogatories and the failure of the court to so restrict such an affidavit constitutes reversible error."

In Russel v Saunders, 7 B.C. 173, it was held upon the authority of Mansel v Clanricarde, 54 L.J. Ch. 982 (appr. Emerson v Irving, 4B.C. 56), that examination of a witness on affidavits before trial, that the cross-examination of the deponent is not a matter of judicial discretion but a right derived from the rule which provides a penalty for failure to produce, and even that penalty does not relieve from the obligation to attend, and that unless the deponent is produced for cross-examination his affidavit may not be used. To same effect Westphalen v Edmonds, 7 B.C. 175

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JAMES P. KERRY
Lieut., USN
Judge Advocate

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So Asano who wasn't there, who didn't kill by beheading, who didn't aid or abet, in short had nothing to do with the incident is nevertheless charged with murder.

Murder requires a specific intent. "In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as murder, larceny, burglary, desertion, and mutiny, etc.; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom, as rape, sleeping on watch, drunkenness, neglect of duty, etc. In cases of the former class, the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act."

Murder is well defined. Naval Courts and Boards defines it as follows: Murder is the unlawful killing of a human being with malice aforethought."

But does the judge advocate want such a clear, simple definition of murder? No! The judge advocate wishes to becloud the issue. He would have many persons found guilty of murder. He can show no precedents for his demand that a commanding officer be found guilty of murder simply because he was the commanding officer of a unit during the time when a killing took place.

The job of Commanding Officer of the Forty-first Naval Guards wasn't a little job especially during the year of 1944 when carrier and land based American planes bombed Truk continuously. It could well be compared to the present job of Island Commander, Guam. If the theory of the judge advocate prevails Admiral Pownall as Island Commander or Governor of Guam would be personally responsible for every crime committed on Guam including murders.

On what theory does the judge advocate hold that a commanding officer is guilty of murder because a killing occurs within his command?

He tries to stretch the definition of principal as found in section 332 of the U. S. Criminal Code: "Whoever directly commits any act constituting an offense defined in any law of the United States or aids; abets, counsels, commands, induces, or procures its commission is a principal." (R.S. 5323, 5427; March 4, 1909, c 321, 332, 35 Stat. 1152) as found in Sec 550, page 21, U. S. Code Annotated, Title 18.

Yet how can this be reconciled with the distinction between murder and manslaughter as found in CMO 5-1921.

Court Martial Orders, Volume 1, pages 710-711: MURDER: Distinguished from MANSLAUGHTER. Clark and Marshall in The Law of Crimes states the difference between murder and voluntary manslaughter to be as follows:

(Per. 257) "Voluntary manslaughter is distinguished from murder by the fact that it is committed, not with malice aforethought, express or implied, but in the heat of passion or heat of blood caused by reasonable provocation. When a man, in killing another, acts under the influence of sudden passion caused by a reasonable provocation, but not in necessary defense of his life, nor in order to prevent great bodily harm, the law does not excuse him because of the (P. 14) provocation; but it does not hold

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James P. Keane
JAMES P. KEANE
Lieut., USN
Judge Advocate

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him guilty of murder. The law recognizes the fact that a man, when greatly provoked, will lose the control of his reason, and, under the influence of the passion and excitement caused by the provocation, resort to violence of which he would not be guilty in the absence of passion. It therefore attributes the killing to the frailty of human nature, and not to malice, and while it does not excuse the killing altogether, it reduces it to manslaughter.

(Par. 260) "(a) Sufficiency in general. - To reduce a homicide from murder to manslaughter, the provocation must be adequate in the eye of the law, and to be so it must be so great as to reasonably excite passion and heat of blood. Passion without adequate provocation is not enough. If a man unreasonably allows his passion to control his judgment, he is responsible to the full extent for the consequence of his acts. The line which distinguishes provocations which will mitigate the offense from those which will not, cannot in the nature of things, be clearly defined. Reasonableness is the test. The law contemplates the case of a reasonable man - an ordinary reasonable man - and requires that the provocation shall be such as might naturally induce such a man, in the anger of the moment, to commit the deed. The rule is that reason should, at the time of the act, be disturbed by passion to an extent which might render ordinary men, of fair average disposition, liable to act, rashly, and without reflection, and from passion rather than judgment." (See also Johnson v. State, 108 N.W., 56; State v. Buffington, 71 Kan.; File 26262-8615, J.A.G., May 18, 1921, G.O.M. Rec. No. 53227.)

MURDER: Distinguishing Characteristic.

The court has apparently misunderstood the application of "Malice aforethought" to cases of the character of the one at bar. With reference to the subject of "malice," Clark and Marshall in The Law of Crimes, vol. 1, sections 240(a) and 241(a), inclusive, states as follows:

(a) "The distinguishing characteristic of murder is malice aforethought. When it exists, the homicide is always murder. When it does not exist, the homicide cannot be murder, but is either manslaughter, or else is justifiable or excusable. The expression 'malice aforethought' is very technical, and cannot be taken in the ordinary sense of the term 'malice.' It must be construed according to the decided cases, which have given it a meaning different from that which might be supposed. It does not necessarily mean anger, but, as we shall see in subsequent sections, includes many other unlawful or wrongful motives or conditions of mind. Chief Justice Shaw said in the celebrated Webster case that it is not confined to ill will toward one or more individual persons, but is intended to denote 'an action flowing from any wicked and corrupt motive - a thing done male (p.15) animo-where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent on mischief.'

(b) "Where, by statute, murder is divided into two degrees, deliberation and premeditation are generally made essential to murder in the first degree. The common law, however, recognizes no degrees of murder, and, to constitute murder at common law, deliberation and premeditation are not necessary. In other words, 'Malice Aforethought' required by the common law need not exist for any length of time before the killing, but it is sufficient if it exists at the time of killing. It may arise simultaneously with the act which causes death. Provoking language, as we shall see, is not sufficient provocation to reduce an intentional killing to manslaughter.

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

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Therefore, if a man, when provoked by insulting words, immediately revenges himself by the use of a deadly weapon and death ensues, there is malice aforethought, and the homicide is murder. It is none the less malice aforethought because the act is done suddenly and without deliberation or premeditation. 'The law,' said the Tennessee court, 'knows no specific time within which an intent to kill must be formed so as to make it murder. If the will accompanies the act, a moment antecedent to the act itself which causes death, it seems to be as completely sufficient to make the offense murder as if it were a day or any other time.'

(c) "From a very early day malice has been divided into express and implied malice. This distinction has been criticized on the ground that malice must of necessity always be inferred from the circumstances, and is therefore always implied. In a sense this is true, but it is not sufficient reason for not recognizing the distinction as it has been understood in the law of homicide. It is convenient and, if properly understood, it is not misleading. It is expressly recognized by the statutes in some States in dividing murder into degrees. By express malice is meant an actual intention to kill the person who is killed, or to kill some other person. Implied malice exists when there is no actual intent to kill any person, but death is caused by conduct which the law regards as showing such an abandoned state of mind as to be equivalent to an actual intent to kill. From such conduct the law implies malice.

(Par. 241) (a) "Whenever an accountable man kills another intentionally, he is guilty of murder with express malice unless the killing is justifiable or excusable, or unless there are such circumstances of provocation as will reduce the homicide to manslaughter. And if a man voluntarily and willfully does an act, the natural and probable consequence of which is to cause another's death, an intent to kill will be presumed."

(See also Navel Digest - Murder - 13, 19; *Hotema v. U.S.*, 186 U.S. 413; *Sperf v. U.S.*, 156 U.S. 51; *File 26262 - 8615*, J.A.G., May 13, 1921; G.C.M. Rec. No. 53227.)

The judge advocate Lieutenant Kenny in his closing argument states that Asano was an accessory. He doesn't define an accessory. Then he talks vaguely of Asano setting something in motion because he was the commanding officer. He tries to confuse the commission by citing the Yamashita case. That case he says imposed a duty on Asano to protect these American prisoners and since they were killed why then Asano is guilty of murder.

No, gentlemen, that isn't how a person is proved guilty of murder in an American court.

Remember there were two dissenting opinions by two famous and learned justices of the Supreme Court of the United States, Mr. Justice Rutledge and Mr. Justice Murphy who both dissented from the majority opinion.

Remember also the Yamashita case was tried by a military commission sitting in judgment on a defeated Japanese general for offenses caused by and made possible by American bombings and destruction and demoralization of General Yamashita's troops. Feeling was running high in the Philippines and as Mr. Justice Rutledge said: "Not with ease does one find his views at odds with the courts' in a matter of this character and gravity. Only

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James P. Kelly
Lieut. J.G.
Judge Advocate

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the most deeply felt convictions could force one to differ. That reason alone leads me to do so now, against strong considerations for withholding dissent - there can be and should be justice administered according to law. In this stage of war's aftermath it is too early for Lincoln's great spirit, best lighted in the Second Inaugural to have wide hold for the treatment of foes. It is not too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against inbridles power than due process of law in the trial and punishment of men, that is of all men, whether citizens, aliens, alien enemies or enemy belligerents. It can become too late.".....Rutledge continues and says, "I cannot believe in the face of this record that the petitioner has had the fair trial our Constitution and laws command."

And yet that gentlemen is the basis on which the judge advocates have conducted this present trial and on the basis of this Yamashita case they now come to you and say because Yamashita was convicted that all six of these accused should be convicted and particularly Asano.

More is at stake than the fate of these six accused. We differ sharply with the judge advocates and we urge you not to be guided by the Yamashita case. As Mr. Justice Rutledge said in his dissenting opinion. "But there can be and should be justice administered according to law."

We ask you to follow our great constitutional traditions. We are most happy to join issue as it were on whether the Yamashita case and what stands for should be the precedent which this commission is to follow. Mr. Justice Rutledge said in his dissent, ours is one of universal law, albeit imperfectly made flesh of our system and so dwelling among us. Every departure weakens the tradition, whether it touches the high or low, the powerful or the weak, the triumphant or the conquered. If we need not or cannot be magnanimous, we can keep our law on the plane from which it has not descended hitherto and to which the defeated foes never rose."

So we shall rely on Naval Courts and Boards, CMO and those great constitutional traditions reiterated by the well established cases on the high plane on which our law has always been: With Mr. Justice Rutledge we agree when he said in his dissenting opinion of the Yamashita case: "This trial is unprecedented in our history."

We wish to break no precedents. We want this trial to follow precedents and justice administered according to law.

Lieutenant Kenny as we said accused Asano of being an accessory but forgets to say that an accessory must persuade another to commit a crime.

In Rizzo v. U.S. (C.C.A. Pa 1921, 275 F. 51 it was held that "one cannot be convicted under those sections of aiding and abetting an offense of which he had no knowledge until after it was complete.

An accessory before the fact must not only be on the ground and by his presence aid, encourage, or incite the principal to commit the crime, but he must share the criminal intent or purpose of the principal. Morel v. U. S. C.C.A. Ohio, 1942, 127 F. 2d. 827.

Have the prosecution shown any criminal intent on the part of Asano who wasn't even present at the guard unit that day?

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

So we see that the distinguishing characteristic of murder is malice aforethought.

Asano as the commanding officer gave no consent to this killing. If he had been aboard that day it would never have occurred.

The defense do not have to offer any evidence but because of the irregular procedure by which the judge advocate introduces unsworn statements into evidence and introduces into the record the testimony of an accomplice who takes the opportunity to try to clear himself by self-serving statements and by testifying against senior and responsible officers.

It is ridiculous to think that Asano was standing on a path which led from the scene of the execution. Asano has testified that he didn't even eat in the wardroom with the other officers but had his own cabin mess. Would such an officer wander around by himself hiding his identity? Hardly! You are all military men. You know from just observing him here in court that wherever he went a staff officer went with him. You have heard testimony from many people to the effect that everyone came to attention and saluted Admiral Asano whenever he was even nearby.

So Kinoshita didn't see him, or he would have recalled it more clearly. Everyone would have seen Asano if he had been there.

We brought down from Japan a witness whose only idea was to testify as to facts and Hirata, Seizo, a former lieutenant (junior grade), IJN, did testify that he went to the construction corps on business in connection with bomb damage repairs and when he came back it was his intention to report to Asano but the marker which showed whether officers were aboard or away from the station indicated that Asano was not aboard. He asked the duty messenger where Asano was and was told that Asano had gone to inspect the defenses of Mai Jima or Kaede Jima. See answer to question 14 on the fourteenth day of the trial.

Only Hirata, Seizo could fix the date when Asano was absent because on that same day Hirata heard that the two surviving prisoners had been killed. So he could testify that Asano was not even aboard. Yet the judge advocate charges him with murder and says although he didn't inflict the mortal wound (by beheading as he is charged) yet he aided and abetted.

That isn't enough to make Asano even a principal because the important word in the Federal Statute is "directly." This the judge advocate wants to strike from the statute. But not even a judge advocate in a military commission or Supreme Commander Allied Powers can change a Federal Statute. To be a principal one must directly aid and abet.

Asano certainly never even indirectly aided because he left the guard that day on urgent business and therefore was miles and hours away when the killing took place.

No the judge advocate even if he didn't allege it must prove that Asano struck the blow, with malice aforethought and the prisoner died from the blow.

Someone took advantage of the absence of Asano and while he was gone the prisoner was killed. Whose idea it was, the prosecution must prove. They have utterly failed to prove Asano guilty of either murder of manslaughter in specification one of Charge I.

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JAMES P. KENNY
Lieut., USN
Judge Advocate

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We ask the commission to find the specification one of Charge I not proved and Asano not guilty of murder and ask the commission to acquit Asano, Shimpei of the charge of murder as laid in specification one of Charge I.

Specification two of Charge I is also labeled murder. Asano to be guilty of this murder must be proved to have inflicted the mortal blow of which the prisoner died. This specification is as the first specification in that it does not conform to sample specifications of murder in Naval Courts and Boards.

The prosecution could not even muster a single witness or wring out an unsworn statement from anyone that Asano was at the scene of this stabbing. Yet they charge him with murder and say he must have been an accessory because he was the commanding officer.

As before we point out that murder is different from manslaughter.

The accused are charged with murder under specification two of Charge I. The murder charged is common law murder otherwise the statute violated should be alleged and set out in full. There are no common law offenses against the United States and therefore there is no jurisdiction over the common law offense of murder. We quote from page 158 of the American Jurisprudence, Criminal Law:

"There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable. Citing 194 U.S. 205 Pettit v. Walshe; 18 U.S.A. Para 451 et s.

It is common knowledge that this Commission had no jurisdiction on Truk in January, February, or July of 1944. This commission should take judicial notice of this fact and also of the fact that there is no Act of Congress giving the Navy Department of the United States exclusive judicial jurisdiction on Truk in January, February, and July of 1944.

Murder as an offense is proved for as follows. Section 53 Naval Courts and Boards.

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

Section 336 N.C. & B. reads as follows:

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

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

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James P. Kenny
Lieut. JG
Judge Advocate.

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

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

Article 6, A.G.N. was amended by Public Law 245 on 4 Dec. 1945 and therefore none of these six accused can be tried under article 6, A.G.N. as amended by Public Law 245 on 4 Dec. 1945 for an offense committed on Truk July 1944.

Article 61, Title 34, U.S.C., Section 1200 reads: Limitation of trials; offenses in general. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or if some other manifest impediment he shall not have been amenable to justice within that period. (R.S. Section 1624 article 61, Feb. 25, 1895, c 128, 28 Stat. 680)"

Accordingly the specification shows no jurisdiction because there is no jurisdiction to punish any of these four or five for the crime alleged in specification two of Charge I. Even the three or four persons who were demobilized were always amenable to justice during the period in which they lived as civilians.

The burden of proving exceptions to the statute of limitations is on the state (citing *Stub v. Bilbao*, 38 Idaho, 82, 222, Pac. 785, *People v. Ross* 325 Ill. 417, 156 N.E. 303.

This commission should not consider any reference to the SCAP letter Regulations Governing the Trials of Accused War Criminals AG 000.5 (5 Dec. 45) IG, as applicable or conferring jurisdiction on this commission to try the accused. We call the commission's attention to paragraph 2 of the above SCAP letters which reads: "2. Jurisdiction a. Over persons: The military commission appointed hereunder shall have jurisdiction....." Certainly this commission is not appointed by the Supreme Commander Allied Powers.

This commission is convened by the Commander Marianas Area by Serial 3785 dated February 21, 1947.

This commission should carefully consider what was said in the case of *Pettit v. Walshe* 18 U.S. C.A. paragraph 451 et seq as cited on page 153 American Jurisprudence Criminal Law.

"There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable."

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

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We again ask this commission and the prosecution: What law are these accused being charged with having violated? Is it the Hague Convention No. IV, of 18 October 1907, Article 23c, which reads as follows: It is expressly forbidden.....(c) to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion? If it is, then we cite Article 2 of the same convention which provides that the provisions do not apply if all of the belligerents are not parties to the Convention. Since neither Italy nor Bulgaria has ratified the 1907 Convention, these accused claim they are not bound by Article 23c, although Japan did sign the Convention.

Section 27 of Naval Courts and Boards says: To constitute a crime both criminal intent and a prohibited act must concur. Where the offense specified is one which requires a specific intent and the act, both must be set out. For example, a specification alleging that the accused "did feloniously have in his possession with the intention of removing same from said ship" certain government property, fails to state an offense. The criminal intent is properly alleged, but the word "feloniously" is a mere conclusion of the law, and the only facts alleged are that the accused had government property in his possession and had the intention of removing it from the ship. The mere possession of government property is not in itself a violation of any law; regulation or custom of the service, nor is it illegal in itself to take government property from the ship."

We cannot know with any certainty just what these four or five accused are charged with in specification two of Charge I, but if it is the Geneva Prisoner of War Convention of 1929 we ask what article?

In the Geneva Prisoners of War Convention of 1929, Article 2 provides that prisoners of war "must at all times be humanely treated and protected, particularly against acts of violence,...." Article 3 of the same convention provides: "Prisoners of war have the right to have their person and their honor respected."

We point out however that Japan has not ratified or formally adhered to it. The mere fact that Japan has through the Swiss Government agreed to observe these provisions makes no difference legally. This case is being tried by a judicial commission and all its findings must be legal, and the sentence imposed only if there has been a legal violation or crime. This commission must not try these accused only because their morals may have been different than ours at the time they committed the alleged acts. There must be another legal basis for the charges. It is not clear to the accused upon what law the charges and specifications are based.

Mr. Justice Rutledge in the dissenting opinion in the Yamashita case said: "It is not our tradition for anyone to be charged with crime..... in language not sufficient to inform him of the nature of the offense or to enable him to make defense."

In specification two of Charge I the prosecution will not doubt state that all four or five accused are charged with murder as principals. They will probably cite section 332 of the U. S. Criminal Code as defining a principal: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." (R.S. 5323, 5427; Mar. 4, 1909, c 321, 332, 35 Stat. 1152) as found in Sec 550, page 21, U. S. Code Annotated Title 18.

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JAMES P. HENRY
Lieut. J. USN
Judge-Advocate.

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Then they will state that a man may be guilty of murder even though he did not strike the fatal blow, but if he aided, abetted, counselled, commanded, induced, or procured its commission. They will even go so far as to say a man is guilty of murder if he has done no more than encouraged or advised one to commit the crime. But they fail to define murder as it applies to the individuals of warring nations.

If the act which constitutes an offense in specification two of Charge I is a Federal offense it should have been set out or at least the statute referred to. It is necessary to look closely at this section 332 of the Criminal Code and also see what decisions if any there have been.

First we note that this statute says: Whoever directly commits any act constituting an offense defined in any law of the United States. The person must therefore directly commit the act.

Second, the act must be an offense defined in any law of the United States, that is it must be a statutory offense. Note 4 on page 23 of Ibid says: "4. Who are aiders, abettors, etc., within section.- One who persuades another to commit a crime is an accessory under this section. *Ackley v. U. S.* (Mo. 1912) 200 F. 217, 118, cc.A. 403....."One cannot be convicted under this section of aiding and abetting an offense of which he had no knowledge until after it was complete. *Rizzo v. U.S.* (C.C.A. Pa. 1921) 275 F. 51."

Note 6 on page 23 Ibid reads: "6. Accomplice defined. - An 'accomplice' is an associate in guilt in the commission of a crime, a participant in the offense as principal or accessory. *Senger v. U.S.* (C.C.A. N.J. 1922) 278 F. 415 certiorari denied (1922) 42 S. Ct. 272, 253 U.S. 620, 66 L. Ed. 795.

Section 908 of the District of Columbia Code defining persons who may be charged as principals, and not as accessories, and this section do not fully define accomplices and anyone who knowingly and voluntarily cooperates with, aids, assists, advises, or encourages another in the commission of a crime is an "accomplice," regardless of the degree of his guilt. *Egan v. U.S.* (App. D.C. 1923) 287 F. 958.

In the Cumulative Annual Pocket Part Title 18 U.S. Code Annotated page 11 Section 550 (Criminal Code, section 332 "Principals" defined we read: "The concept of an 'accessory before the fact' presupposes a pre-arrangement to do the criminal act, and to constitute one an 'aider and abettor' he must not only be on the ground and by his presence aid, encourage or incite the principal to commit the crime, but he must share the criminal intent or purpose of the principal. *Id. Morel v. U.S.* C.C.A. Ohio, 1942, 127 Fed 827.

In this trial you have heard the evidence which the prosecution introduced against Asano and the other accused charged under specification 2 of Charge I and none of the evidence showed that either Asano or Nakase or Ueno by his not being present at the scene of the execution aided, encouraged, or incited Tanaka to commit the crime. But the prosecution must also prove that these accused shared the criminal intent or purpose of the principal. This the prosecution failed to do. The defense does not have to prove Asano innocent but he did go on the stand and he testified on the twentieth day of the trial that he knew nothing of the stabbing at that time (See answer to questions 24 and 25.)

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JAMES P. KERRY
Lieut., USN
Judge Advocate.

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The first time he was even questioned about it by American investigators was in March of 1947. To question 33 "It is alleged in specification two of Charge I that you bayoneted. Did you bayonet and kill a prisoner as alleged?" Answer: "Absolutely not." Asano testified he didn't know that this prisoner was stabbed until an American investigator told him so in March of this year 1947.

Asano testified that he did not in anyway aid and abet in the beheading and the killing and stabbing of these two prisoners as he is charged with actually having stabbed and beheaded in Charge I. The evidence is clear that he did not even aid or abet directly or indirectly.

The prosecution have failed to prove that Asano inflicted a mortal wound upon the prisoner of which wound the prisoner died.

We ask that the commission find the second specification of Charge I not proved and that Asano is of the charge of murder not guilty and the commission does therefore acquit Asano of specification two of Charge I and of the charge of murder.

In specification 1 of Charge II Asano is charged with performing an unlawful operation on an American prisoner. The specification is objectionable because it is only matter in aggravation of specification 1 of Charge I. The specification doesn't even allege an offense and the allegations are mere conclusions of law on the part of the pleader.

Matter in aggravation should not be alleged as a separate offense but should be alleged in this case in specification one of Charge I as matter in aggravation. See CMO 8-1936, p. 7.

In CMO 12-1937, p.4, it was held that a specification which alleged matter in aggravation was repugnant.

Matter in aggravation is introduced after the finding. (See Sec. 166 N.C.B.

Asano wasn't present at this operation and yet he is charged with it.

We do not admit that the operation is an offense but whatever the offense has been able to prove in this regard it is certain that Asano never gave Ueno permission to perform an unlawful operation. Asano testified that he never knew even once that it was such an operation. He testified that he did not in any way approve either by innuendo or silence or positive declaration the operation alleged in specification one of Charge II.

Asano was asked, "Did you in any way aid or abet in this operation?" He answered, "No."

No doctor in the Japanese Navy or in any other navy ever gets permission to operate on a patient by asking permission from a line officer for detailed authority to do an operation step by step. Even if Asano said he would leave the medical care of the prisoners up to Ueno by no means of the imagination can it be said Asano approved what Ueno did. Even Ueno admitted he did not originally plan to take all the steps he did in this operation. How could he then have asked for and received permission from Asano when he did not even know what he was going to do himself?

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

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Asano said that he cannot remember giving Ueno permission to perform the operation. Yet the prosecution say Ueno knew he was performing an illegal operation and yet he goes to his commanding officer, and mind you Asano had only been at the Forty-first Naval Guards and asks Asano for permission to do an unlawful operation. The prosecution cannot blow both hot and cold. A doctor might possibly make an honest mistake on operating he might want to cut a little more than was necessary but he would certainly never admit it by first asking his commanding officer. In the Japanese Navy as in all other Navies the doctor is responsible for what he does as a doctor and not the line officer commanding. That is one province no line officer never invades and no doctor ever relinquishes is prerogatives as a doctor. In fact it is common knowledge in our own navy that the medical officers have tried to take over the commanding including the navigation of our navy hospital ships. Medical officers in our navy and in all navies are very jealous of their right and prerogatives as medical officers and all line officers as far as I know respect the knowledge and skill of a medical officer. They realize he is a specialist and no prudent man would step in and try to tell a licensed practicing physician and surgeon how to operate or would they venture to pass judgment on what the surgeon should do and when.

No gentlemen of the commission, put yourself in Asano's place as commanding officer of the guard unit at Truk. The Americans are bombing every day and night. Would you for one minute divert your energies and your attention to duties that were pressing and urgent to interfere with the duties of a medical officer. The answer is of course, no!

The marvel is that Asano found time to discuss the health and welfare of the prisoners with his medical officer at all. Would the judge advocate have us believe that the reason the Japanese lost the war was because their commanding officers were doing the duties of a medical officer. Asano was the commanding officer. He knew full well what his duties as a commanding officer were (although the judge advocate has not shown what those duties were) and they did not include any of the duties of a surgeon medical officer.

This court and the trials held here are for serious matters. Let us not trifle with such matters as an operation and allege that and ask this court to find either Asano, a line officer, the commanding officer and Nakase, a line officer and acting as executive officer, guilty of performing an operation upon a prisoner patient, particularly when neither Asano or Nakase were present. We will admit that someone performed these operations but it wasn't Asano or Nakase.

Would the judge advocate charge the medical officer of a ship by joining him with the captain and the navigator in case the ship grounded? Why do they charge the commanding officer and the executive officer with performing an unlawful operation when the medical officer admits that he performed the operation. Just to provide for the exigencies of proof. Charge everyone with everything and so confuse the court that perhaps they will find everyone guilty of something. The judge advocates know that Asano and Nakase had nothing to do with this operation.

We ask that the commission find specification one of Charge II not proved and Asano, Shimpei is of the specification and charge not guilty and the commission does therefore acquit him of this specification one of Charge II.

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James P. Korman
JAMES P. KORMAN
Lieut., USN
Judge Advocate

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Now we come to real charges against Asano. In specifications two and three of Charge II Asano is charged with neglect of duty for the identical acts he is charged with doing in specifications one and two of Charge I and specification one of Charge II, which specifications have been put in just to provide for the exigencies of proof. We wish that the judge advocate would follow the navy precedents in this matter and not duplicate the same offense under another charge. In CMO 1-1939 the policy of the Navy Department was set forth clearly. The policy is not to duplicate charges where the identical facts are made the basis of both.

Admiral Asano is charged with disregarding and failing to discharge his duty under specification two of Charge II. In specification three of Charge II he is again charged with disregarding and failing to discharge his duty. Both of these specifications are founded upon the same incident. From reading these specifications it is difficult to determine just what Asano did do.

CMO 2-1932, p.13, holds that "Negligence and wilfulness are the opposites of each other. They indicate radically different mental states." The same distinction between negligence and wilfulness was made by the U.S. Circuit Court of Appeals, Seventh Circuit (64 Fed 823) where the court held that - "Negligence is negative in its nature, implying the omission of duty and excludes the idea of wilfulness. Wilfulness or intentional injury implies positive and aggressive conduct and not mere neglect or omission of duty." Also see 135 Fed 74; 89 Fed. 374; 173 Fed 431.

The words "wilfully and knowingly" cannot be rejected as surplusage in the above specifications. An indictment which is repugnant in a material part is altogether bad (Clark's Criminal Procedure, p. 171.) It has been held (see 24 S.W. 1015) that an indictment is bad which charges that the defendant wilfully and with culpable negligence did kill. In that case the court, affirming a judgment quashing the indictment said: "If the killing was 'wilful' as charged in the indictment, then it could not have been accidental, or by 'culpable negligence.' The terms are inconsistent as they cannot both be true. If the killing was by culpable negligence, then it is not intentional."

The evidence shows that both of the charges, specifications one and two of Charge I and specification one of Charge II and specifications two and three of Charge II are based on the same act and they are drawn to provide for the exigencies of proof.

If the court considers Asano guilty of specifications one and two of Charge I and specification one of Charge II it must then acquit him of specification two and three of Charge II or vice versa. See CMO 2-1932, p.11. (File: MM-Breland, Euclid W/A17-20(311208), Jan. 22, 1932, approved Feb 1, 1932.)

CMO 1-1930, p.12 clearly shows that in case of multiplicity of charges and specifications that the findings on one charge and the specifications thereunder are set aside. In that case it was held: "Accused was tried and convicted inter alia of "Scandalous conduct tending to the destruction of good morals," (embezzlement) and "Theft". These two charges were based upon the same circumstances and were so drawn to provide for the exigencies of proof. As the evidence adduced at the trial clearly (P.12) established the fact that the offense committed was embezzlement and not theft, the findings on the latter charge and specification thereunder were set aside." (File: MM-Reader, Howard /A17-20 (290918) Jan. 27, 1930.) See also CMO 3-1930, File: MM-Cates, Lorwin, /A17-21 (300308, March 8, 1930.)

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JAMES P. KENNY
Lieut., USN
Judge Advocate

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In CMO 4-1925 - p.22 "Inasmuch as the offense of theft includes the conversion of the property alleged to have been stolen as expressed in the specification of Charge I by the use of the words "and did then and there appropriate the same to his own use," it is apparent that the specification of Charge II alleges merely a constituent element of the offense of theft set out in the specification of Charge I. It was therefore the duty of the convening authority to have disapproved the finding on the less serious charge upon his taking action in this case."

The JAG went further in this case and we continue to read: "In view of the foregoing the finding of the court on Charge II and the specification thereunder is set aside." (File 26262-11605 A.G.C.M. Rec No. 62522, April 8, 1925.)

This we hold to be most important (and yet the judge advocate did not include this in his memorandum to the President Military Commission, Commander Marianas dated September 27, 1947.) Instead in his memorandum on that case the judge advocate said: "The only duty which the commission can be held is to weigh the evidence presented to determine the facts and to apply the law to those facts to reach its findings of guilty or not guilty." Why would the JAG set aside the findings of the court if it had done its duty? No, the court, this commission, has a further duty. This is the same commission as tried the Tachibana case although some members are changed. What did the JAG, Navy Department say in that case? We do not know although the case has been passed upon by JAG.

In CMO 1-1939, p.14 in the case of multiplicity of charges and specifications it was held: "Held that when the specification of one charge alleges merely a constituent element of the offense set forth under another charge and there is a finding of guilty on both, it is the duty of the convening authority to disapprove the finding on the less serious charge upon his taking action in the case, citing CMO 4-1925, pp 21, 22. Therefore, the findings on Charge II and on the first specification of Charge III were set aside. (File MM-Lefka, John J. A17-20 (390206), Apr. 8 and 27, 1939)

Then there follows a statement of Policy of Navy Department which we note the judge advocate did not include in his memorandum to the President Military Commission, Commander Marianas, Lt. General Tachibana, et al case. I continue to read from CMO 1-1939 - "Policy of Navy Department - Where an accused was convicted of 'Leaving his station before being regularly relieved' and also of the less serious charge, 'Neglect of duty,' both offenses being based upon the same act and no aggravating circumstances being set forth under the second charge to distinguish it from the first, the proceedings and findings on the latter charge and specification thereunder were set aside. Remarks that, while there is no rule of law which prohibits making identical facts and circumstances the basis of more than one charge, it has long been the policy not to do this when the offense falls clearly within the definition of a specific article of the Articles for the Government of the Navy and there are no aggravating circumstances to be set forth under one charge that will distinguish it from the other. (File: MM-Fray, Reinhold/A17-2 (390203), April 6, and 26, 1939) citing CMO 1-1926, p 8; 8-1927, p 6; 1-1937, p 6, and sec 457 NCMB.

CMO 10-1926, p.8 holds: "As a matter of policy the use of two or more charges is not approved where the identical facts are made the basis of both, and where there are no aggravating circumstances set forth under one charge which distinguish it from the other. (Sec. 188 NCMB.)

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

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In CMO 8-1927, p 6 the policy of the Navy Department is again reiterated. We read: "The Navy Department's instructions merely mean that as a matter of policy the rule which permits such duplication of charge is not available of when the offense falls quite clearly within the definition of a specific article, where there are no aggravating circumstances distinguishing it from the ordinary case contemplated by such article, and where there is no necessity to resort to multiplicity or plurality of charges." File: MM-A17-20(270527) G.C.M. Rec. No. 67447, August 2, 1927)"

The judge advocates failed to introduce a single bit of evidence on the duties of Asano as commanding officer. They only have one thought on this question of neglect of duty. They allege two prisoners were alive one day, what day or month they have not proved and then by several witnesses who testified that they saw certain persons stab and behead, the judge advocate maintains he has proved that someone is guilty of neglect of duty and it must be the commanding officer. But they forget because they must know that is not the way to prove a person guilty of neglect. There is just as much of a presumption of innocence in such cases as there is in the case of any crime. There are many navy cases of neglect of duty.

CMO 1-1930, p.16 held that the prosecution failed to establish a prima facie case. In CMO 5-1932 the JAG held, it is not unreasonable to assume that the law does not subject a person to punishment for his failure to do the impossible." It isn't our duty to offer any evidence but we did prove Asano was not present at the guard duty the day the offenses are alleged to have occurred.

In CMO 141-1918 JAG held to support charge of neglect of duty it must be shown that duty was assigned and entered upon. This the prosecution failed to do in this case. They introduced no evidence to show what Asano's duty was with regard to prisoners of war.

In CMO 316-1919 the JAG laid down the rule, "Where a specification is drawn under a charge of 'neglect of duty' it must be shown that the duty neglected by the accused was one which was required of him by reason of certain specified naval orders or regulations. The judge advocate must prove the charges. He must prove that it was Asano's duty as commanding officer to protect these two American prisoners.

CMO 3-1931, p. 13 held that where an accused is tried for neglect of duty it must be shown that such duty was imposed upon him. (CMO 6, 1929, p.9).

The prosecution allege that Asano neglected his duty, "in violation of the law and customs of war."

And what do we find in the so called law and customs of war. Not until his closing argument did the judge advocate reveal to the accused just what he had violated in neglecting his duty. Lieutenant Kenny said, It is Article 2 of The Geneva Prisoners of War Convention.

Gentlemen of the commission, read this article again: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited."

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

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So according to this Article 2 of the Geneva Prisoners of War Convention these two prisoners were not in the power of Admiral Asano as the commanding officer of the Forty-first Naval Guards; they were in the power of Japan.

This Geneva Prisoner of War Convention provides neither courts or punishments for violations of any of the provisions.

Japan didn't formally ratify it. On the face of it therefore Asano who was only the commanding officer of the Forty-first Naval Guards certainly is not legally responsible for any violation of a convention which his own country didn't even formally ratify. On the other hand Asano testified he wanted to accept the responsibility which was his. He testified that he honestly tried to protect American prisoners. He testified that due to constant American bombings prisoners could not be sent to the rear area, now Japan but it was done whenever possible. It is true that the defense need offer no evidence but Asano did go on the stand.

Asano testified he gave orders that no mistakes be made concerning the handling of prisoners at the Forty-first Naval Guards. Yet three prisoners were killed by American bombs and two were injured. These two it is charged he failed to protect.

Asano was asked if he knew international law and how prisoners were to be handled but the question was objected to as immaterial and irrelevant.

The judge advocate offered no evidence as to what the duty of Asano was as commanding officer and yet when Asano was asked whether he neglected his duty the question was objected to by the judge advocate. Asano testified he received daily reports every evening and he never did receive any reports but that everything is all right and Asano therefore thought it was all right.

Asano further testified that he had no responsibility for sending the prisoners to Japan. Does International Law as the judge advocate says impose on a commanding officer a duty to act and is his neglect of duty a war crime.

Captain James J. Robinson in his address before the joint meeting of the Military and Naval Law Committees of the American Bar Association and the Federal Bar Association at Washington, D.C., on April 20, 1945 said: "A war crime is an act forbidden by the law of war and committed in any place in time of war by a person who is connected or acting with a belligerent nation and who acts with intent unlawfully to injure a person or property or government connected with an opposing belligerent nation or with a neutral nation."

As we have said before this charging of a navy officer with failing act is most unprecedented. The prosecution must show a duty imposed upon Admiral Asano because he was Commanding Officer of the Forty-first Naval Guards and the prosecution has not brought out any evidence as to what his duties as commanding officer were. Neglect of duty is an omission rather than act. Section 105, Naval Courts and Boards says: "A duty may be imposed by a law, regulation, order, or custom of the service in force at the time of the commission of the offense."

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

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

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability the vengeance will form the major part of the victor's judgment is an unfortunate but unescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits, indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct." How applicable this logic of Justice Murphy's is to the present situation. The Commanding Officer of the Forty-first Naval Guards is primarily concerned with the defenses of Truk. American bombers carrier and land based attack Truk continuously. There was a particularly heavy attack and many installations were badly damaged in fact were knocked out all together. Asano had a duty in connection with the defenses of Truk that was paramount to all other duties he had. He went out to inspect the bomb damage done by the American bombers to the outlying islands and while he was gone two prisoners are killed. Asano is charged with murder and also neglect of d:

In General Orders No. 264, Hq. Div. of the Philippines, September 9, 1901, it was held that an officer could not be found guilty for failure to prevent a murder unless it appeared that the accused had the power to prevent it. Can Asano under such circumstances be held personally liable as neglecting his duty? Remember international law makes no attempt to define the duties of a commander under constant and overwhelming assault nor does it impose a liability under such circumstances for failure to meet the ordinary responsibilities of a command.

You members of this military commission are sitting in judgment upon the military actions of a defeated enemy and you are to determine the criminal liability of a commanding officer for failure to act not as a commanding officer charged primarily with the defenses of Truk but as a commanding officer who decided that first things come first and left his headquarters one day to see to it that the guns and defenses of Truk were still functioning so that when the enemy came again the next day that some sort of semblance of a defense would be in operation. Duties as well as ability to control troops vary according to the circumstance of battle. International law refuses to pass judgment whether Asano committed a crime when he left headquarters that day and went out on strictly military duties. But the judge advocate insists that you gentlemen of the commis-

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

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sion find Asano guilty. Why? Well he lost against the overwhelming odds and now his very life is made to depend upon you.

How will you judge him? Will you dare to judge him objectively. This is all that we ask you to do. If you do judge him objectively we know you will find these two specifications, specifications two and three of Charge II not proved and Admiral Asano not guilty of neglect of duty and that you will acquit Admiral Asano of the charge of neglect of duty.

What of Nakase? Nakase was demobilized and one day a request was made upon him to go to Guam as a witness in the war crimes trials. He came here December 20, 1946. He did witness and yet the Americans didn't send him back to his family in Japan. Instead they threw him into solitary confinement on May 8, 1947.

Nakase had been an enlisted man in the Japanese Navy since 1910. The war came along and he was made an officer. After thirty-one years in the Japanese Navy he was sent to duty at Truk. But he was an officer. You have seen him here in court and on the witness stand. By a queer quirk of fate he found himself in a position of responsibility, he was the executive officer of the Forty-first Naval Guards. And by that same quirk of fate he finds himself in the court as an accused not because he did anything but because he was the executive officer.

Asano is the commanding officer and there isn't enough evidence to convict him so the executive officer must be charged with the same crimes.

Poor old Nakase! He knew all that an old sailor should know and when he was given a job to do he did it. They made him executive officer until they could get an educated officer. But Commander Okagawa who arrived on May 3, 1944 had a nervous breakdown in June and was hospitalized and repatriated to Japan in July 1944.

Among the many jobs Nakase was assigned to do was that as officer of the guards. There were prisoners at the guard unit and while Asano was away and Nakase was working on confidential records two prisoners were removed from the guard cell.

Nakase was an ex-enlisted man and he no doubt was rather blunt in his dealings with officers who had just come into the service as it were. The doctor performs an operation on one of the prisoners and it goes badly. The doctor's assistant, Lieutenant Kinoshita, is a suspect, Kodama an enlisted man in the medical division witnessed the operation. The American said the operation was a crime. So the prosecution produce Kodama who was present at the operation and heard someone cough outside the battle dressing station. It couldn't happen in any other American court unless it was a movie scene but this pharmacist's mate easily identified the cough as the cough of Nakase. And on that evidence, mind you he didn't see Nakase, but he just heard someone cough back there on Truk in June or July of 1944 but it was Nakase. The witness Kodama had sworn on oath by our Christian God to tell the truth. That is all the evidence the judge advocates need and Nakase is charged with doing an operation. Nakase after thirty-four years continuous service in the Japanese Navy as a sailor man is now charged with performing an operation, an unlawful operation. We agree that if Nakase an old sailor man had as much as touched a scalpel while there were doctors present he should be charged with something above and beyond his assigned duties.

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JAMES P. KLEIN

Lieut. J. G.

Judge Advocate

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But gentlemen, Nakase didn't cough that day nor did he perform an operation. He had been sick in January of 1944 and if you know old sailor men as I do you will know they fight shy of doctors. Nakase was such a sailor man and believe me he never went back to that sick bay after his discharge March 4, 1944.

In this military court Nakase a sailor man with thirty-four years service is being charged with performing an operation which according to the evidence was a major operation because one of the corpsmen heard a cough outside.

We ask that the commission find according to evidence. Nakase took the stand and testified he never went near the battle dressing station.

You can't be found guilty of performing operations every by coughing outside the operating room and so we ask the commission to find specification one of Charge II not proved and Nakase not guilty of the specification one of Charge II and the court does therefore acquit him of the charge and specifications of violation of the law and customs of war.

This prisoner who was operated upon was taken out and beheaded and Doctor Kinoshita who assisted with the operation and had the prisoner brought to the place of execution heard a voice outside the operating room. The voice according to Kinoshita's recollection was Nakase's and so the judge advocate charges Nakase with murder. We have heard as it were a voice murder a song but never until now have we ever heard of a voice committing murder. Kinoshita even thought that Nakase was talking to him and the others who were operating. War does funny things, this doctor and a corpsman heard a voice and a cough.

Another doctor, Kuno, heard neither a cough or a voice. So it was with all the other witnesses, they heard neither a cough or a voice.

Nakase is charged with beheading a prisoner. Uchihira didn't see Nakase at the scene of the execution. Tsuboi had no recollection of Nakase at the scene. But the prosecution can always produce one witness who testifies other than everyone else and in this case it was Kanai who recalls Nakase standing toward the rear of the spectators. He didn't see Nakase stab because Nakase wasn't even there. But the judge advocate must get Nakase in in this stabbing so they introduce the statement of Nagashima, a notorious liar who is now insane. Nagashima said he went to the executive officer so if we are to believe the unsworn statement of Nagashima, notorious as a liar, then Nakase was not at the scene of the stabbing. Nakase didn't know that a prisoner was stabbed until after the end of the war. See answers to questions 68, 69 and 83. Not until July 20, 1947 did Nakase know that Tanaka had stabbed a prisoner. We ask that the commission find specification two of Charge I not proved and Nakase not guilty of murder by stabbing and the commission therefore acquits Nakase of the charge of murder.

No one ever testified that Nakase beheaded the prisoner who was operated upon and yet he is charged with murder by beheading and he wasn't even there. How can the judge advocates even justify charging him with murder of this prisoner?

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

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To question 101 Nakase testified on the 19th day that he did not kill a prisoner by beheading him. We ask that the commission find specification one of Charge I not proved and Nakase not guilty of murder and the commission does therefore acquit him of murder.

Kobayashi is another of the unfortunate caught up in the net of war criminal suspects. He knew little or nothing about what took place that day but he is charged with performing an operation that day although he was only there a few minutes. Well I suppose if Asano and Nakase are to be charged with performing an operation and they were never even there that it is just as easy to justify charging Kobayashi with performing the operation because he looked in to see how things were going because he felt it was his duty to do so as head warrant cornman. Kobayashi who only stayed a few minutes is charged with performing the operation whereas Ueno who performed the operation is charged with acting jointly with Kobayashi but in specification four of Charge II Ueno is charged with neglect of duty, failing to protect them. Kobayashi took the stand on the fourteenth day and testified that he only went to the battle dressing station because it was his duty to do so and that he did nothing while there. He was only there four or five minutes. (See answer to questions 22 and 23.)

Then while working at the office he heard that Eriguchi was going to behead a prisoner and he went to see. Kobayashi didn't behead the prisoner and yet he is charged with murder. The judge advocate asked him if Tsuboi had told the truth and if Saito had told the truth, and if Kodama had told the truth. To all these questions Kobayashi said that these persons lied about him.

Both Ueno and Eriguchi repudiated their statements about Kobayashi. We asked for a directed acquittal in the case of Kobayashi on the grounds that there was evidence to prove Kobayashi performed the operation or had anything to do about it or that he had anything to do about the beheading.

Kobayashi should be acquitted of performing the operation and of the charge of murder. He testified he did not show Eriguchi how to behead the prisoner.

The prosecution have not proved the case against Kobayashi and we ask that the commission find specification one of Charge II not proved and Kobayashi not guilty of the charge and the commission does therefore acquit Kobayashi of the charge of violation of the law and customs of war.

We ask that the commission find specification one of Charge I not proved and Kobayashi not guilty of murder and the court does therefore acquit Kobayashi of the charge of murder.

Eriguchi took the stand and admitted that he beheaded a prisoner on the orders of Ueno the head medical officer. If we are to understand why Eriguchi did this we must consider the ideological differences between the Japanese and the western world as well as the other facts in the case.

"The educational system of Japan, to which American scholars have substantially contributed, is thorough and efficient. When one realizes that all learning has to be superimposed on the cumbersome system of character writing used by the Japanese, it is amazing that they have accomplished so much, and that the percentage of literacy is one of the highest in the world. Education is compulsory through the sixth grade, even though there are no free schools.

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JAMES P. KERY
Lieut., USN
Judge Advocate.

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This educational system is directed toward creating a state of individual repression. From the primary schools on, everything is regimented. The children are little automotons, and the principal orders his teachers about as a general does his officers. Even the sports are cut and dried, and entered into with deadly seriousness.

The people themselves are dominated by two forces - tradition and repression. The heavy hand of tradition may be illustrated by their capital city. The census of 1940 gave Tokyo a population of well over 7,000,000. It has large business districts and several large newspapers with a daily circulation running into the millions. It's modern subways are cool and clean, have indirect lighting and are decorated with vases of artificial flowers. The railroad trains coming into its three large stations arrive and start with such promptness that people set their watches by them. Yet, in this great city, the street with a few exceptions are not named, and the houses in a given area are numbered in the order of erection, without regard to their relative position. The hold of tradition is also evidenced in the written language.

There is no such thing as individualism in Japan. From the time the child is old enough to go to school, he ceases to be an individual and becomes a unit in a group - a cog in a machine. First he belongs to the family. All his doings are decided for him by family council - his education, his subsequent occupation, his marriage, his future. If he fails he may commit suicide - not because of discouragement, but because through his failure his family has lost face. If his parents lose money and cannot see him through his education, it becomes an obligation upon the whole family or clan, not because of sympathy with the young man, but because the family would lose face if one of its members started something that he could not finish. If a Japanese businessman in a foreign city is about to become insolvent, the other Japanese merchants in the city will unite to help him out, for the same reason. These impersonal relations held in all areas of life - family, school, university, place of business and state.

In Tokyo there is a great shrine, the Yasukuni, where the names of all Japanese soldiers who have given their lives in battle are inscribed. They are thus deified, and, according to general belief their spirits help the living in their struggle against the enemy. On the eve of battle, comrades fill their canteen cups with cold water and drink the toast, "Till we meet at Yasukuni!" Then they charge the enemy. It is all part of a pattern that was set for them centuries ago, and from which the Japanese people have not deviated. Nor will they, until the military power of Japan is destroyed and the people develop or are exposed to a new philosophy of life.

We see a people sheeplike in their enthusiasm to follow, amenable to propaganda, who believe with fierce fanaticism that they are the seed of the sun, the beloved of the gods, the predestined saviors of civilization."

These quotations and references could be multiplied considerably, but it would seem that these were sufficient to point out clearly and unequivocally that the defendants in this case should not and cannot be judged in their conduct by general standards. In a civilization over 2600 years old, they have had contact with the western world for only approximately 90 years. I have seen Samurai swords which were over 500 years old, handed down from father to son throughout the generations. Do you

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JAMES P. KEENE
Lieut., USN
Judge Advocate

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realize that those swords were forged before America was even discovered. Can you expect a people who have followed a completely alien philosophy and way of life for that period of time to suddenly reverse entirely and immediately assume the standards - and the responsibilities - of the newer nations. Because we have conquered them, we now are in the process of judging their deeds - not by the code which they know and to which they conform, but by our own code, which we have imposed upon them after the act. I have heard the Christian doctrines cited as a basis for condemning their deed; unfortunately, possibly, the Christian doctrines have not yet been accepted to any extent in the Orient. Execution by the sword has been condemned in this court as a particularly heinous form of death - yet it is the warrior's death in Japan, and the accepted mode of execution - so much so that Kenjo experts are looked up to and revered for their ability, as we award medals for marksmanship.

If this commission is to act in an impartial manner in judging these defendants then it should take into its consideration the ideological differences between the Japanese and the western world, as well as the other actual facts in each case. It may be at some future date that their way of thinking will conform to our way of thinking. To quote the "Guide to Japan" again, "The peace-loving nations of the world must cure the Japanese habit of mind which is dangerous to peace and the rights of other peoples." In time, the Japanese nation can be taught to think that other people have rights -- but until that time, we should not judge past events by future expectations.

The SCAP rules state that "action pursuant to order of the accused's superior, or of his government shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires." Quite properly under these rules, the defense might well introduce testimony as to obedience to orders after the findings of the commission. Nevertheless, the defense has taken the position that those SCAP rules are only permissive, so far as this commission is concerned, and that the defense will be presented in accordance with the rules and regulations of our own military forces. And does this commission realize just what the difference is between the rules set up in SCAP for the trial of war criminals and those set forth in the rules of our own army. I refer the commission to the Rules of Land Warfare Basic Field Manual FM 27-10 and particularly to section 345.1 of chapter 11, "Penalties for Violations of the Laws of War." In this section it is stated: "Individuals and organizations who violate accepted laws and customs of war may be punished therefore. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished." This was a change that was added to our Rules of Land Warfare in the War Department Manual EM 11, G-1 Roundtable Series, "What Shall be Done with the War Criminals we read on page 27: "One of the most difficult problems to be faced in trying war criminals is that of determining the guilt of men who claim that they were acting under orders of their superior - that they did not commit offenses of their own free will. You will find in paragraph 347 of the Rules of Land Warfare the following statement: 'Individuals of the armed forces will not be punished for these offenses (violations of the customs and law of war) in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.' Notice that under the rule the ordinary soldier is excused but his commander or government is liable."

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JAMES P. KENNY
Lieut., USN
Judge Advocate

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This rule entered the American Rules in 1944. Before that, the Rules failed to mention "superior orders" and American courts martial upheld the principle that a soldier obeying his commander's orders is not protected if the order is unlawful?

What is this commission to do regarding "superior orders." Must not this commission follow the American Army rule established in 1914 which excuses the ordinary soldier. Even the rule promulgated by order of the Secretary of War signed by General Marshall, November 15, 1944 still excused the ordinary soldier.

If we try Japanese military in our military courts we should extend to them all the benefits which our own soldiers have in being tried by a military court.

We have explained the difference between murder and manslaughter. Eriguchi had no intent to kill; he had no malice toward the prisoner who was dying. Superior orders had to be obeyed and so blindly and without any premeditation free of any malice, the only thought and intent to carry out orders Eriguchi did what he did.

What he did that day has troubled Eriguchi much because he is a religious man. Eriguchi has suffered a thousand deaths since that day in 1944 when he beheaded a dying prisoner.

Eriguchi is not a criminal. He is but a victim of circumstances. He was one of a small class of dentists to enter the Japanese Navy. He had only recently graduated from dental college, had entered the navy as a dentist and after a short course of military training came to Truk. He had only been on Truk a matter of weeks when he was ordered to put the prisoners at ease. We ask your consideration in the case of Eriguchi and that you not find him guilty of murder.

Then there is the case of Tanaka. Fate dealt him a bad deal that day. He had been conscripted in the Japanese Navy many years ago in 1924 and served three years. He didn't like the navy. In 1943 however, he was conscripted. He didn't like the navy any better in 1943 than he did in 1927. And he didn't like duty on Truk and war with all its horrors.

Tanaka is 43 years old and he is a farmer. In July of 1943 when he arrived for duty at Truk the Japanese garrison was in sore straits but conditions were nothing compared to what they were to be in 1944.

In June of 1944 Tanaka was stricken with amoebic dysentery and hospitalized. But the hospital was being bombed and there were many patients there so Tanaka although he still had amoebic dysentery was sent back to his own unit, the Forty-first Naval Guards. He could barely walk so for a few days he reported to the dispensary and was allowed to sleep and rest at his quarters.

But that didn't last long. Nagashima an ambitious chief petty officer drove him out to work. You heard Tanaka describe this little tyrant Nagashima who wanted to be boss of all enlisted men at the guard unit. So Tanaka dragged himself out to work at farming. It was necessary to farm because Truk was a by-passed island which was being used by our bombers as a sitting duck target. The American bombers were trained in bombing and strafing on helpless Truk.

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Lieut., USN

Judge, Advocate

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When Tanaka got out to where he was ordered to work the others there were all kindness because they realized he was too sick to work. Tanaka was resting.

Then suddenly Nagashima came upon Tanaka sitting there resting. All right if that was the way Tanaka and the other light duty patients worked he would take care of that.

"Line up and follow me!" You will be the ones to dispose of the prisoner," he scouted at them. These four or five sick persons objected but of course the die was now cast and Nagashima marched them away to the execution.

How Nagashima ever got hold of this American prisoner of war we do not know because the prosecution have produced no witnesses. Tanaka took the stand but he could only tell that after he arrived at the swamp there for the first time he saw Nagashima come back with a prisoners. There were twenty or thirty persons there and Nagashima took charge of things. He saw the prisoner tied to a pole and with two men holding the pole, Nagashima gave the four or five men and the spectators a talk on how to kill helpless prisoners. Unlucky Tanaka! He was the tallest of the small group and Nagashima shoved the rifle with its fixed bayonet into his hands and shouted, "Start stabbing!" Poor Tanaka! What could he do. He had been hounded for days by Nagashima. He had objected when Nagashima just ordered them to follow him and now he stood there frozen with terror and fear. Tanaka said on the witness stand, "I thought it was not right to stab the prisoner." (See question 40) Listen to him on the witness stand as he answers question 38. "As I was standing hesitating and thinking what to do Nagashima shouted 'You coward, hurry up and stab, what are you hesitating for?' and grabbed my arm and shoved me toward the prisoner." "Q.41. Did you stab him?" Answer: "I was grabbed by the arm and shoved toward the prisoner, I did not like to do it and I had no intent at all to kill him. As I could not help it I stepped into the swamp, my foot sank into the swamp about eight inches. I said to the prisoner, 'Forgive me, I have to do what I do on orders. I will not kill you.' Keeping my eyes closed I put out the bayonet toward the thigh of the prisoner."

So Tanaka went through the motions of stabbing. No blood came from the prisoner. There was no blood on his bayonet. But Nagashima was not to be denied his diabolical scheme so he took the rifle and bayonet from Nagashima and shoved it into the hands of another one of his executioners, his little group of sick sailors. He had a job for them that day and he would see that they did this job. Tanaka didn't kill the prisoner. He didn't even stab him although he was forced to go through the motions. He had no intent to kill. Yet Tanaka is indicted for murder because the prosecution can find no other persons who were that day except Nagashima. And where is Nagashima? He is said to be in an insane asylum in Tokyo. We asked that he be brought to Guam in order that the accused may be given their constitutional right to meet the witness against them and cross-examine each witness against them.

The court and the judge advocates denied our request although an unsworn statement of Nagashima, now insane was admitted into evidence against Tanaka and all these accused.

Tanaka although he went through the motions of stabbing had no intent nor malice. He did not strike the mortal blow from which the prisoner died. Tanaka is not guilty of murder and he must be acquitted of the charge of murder. Tanaka must not be forced to take the responsibility for this murder only because Nagashima is said to be insane.

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Lieut., USN
Judge Advocate.

We ask that the commission find specification two of Charge I as to Tanaka, Sueta not proved and Tanaka, Sueta not guilty of the charge or murder and the commission does therefore acquit Tanaka, Sueta of the charge of murder.

But the judge advocates both say that there were two Americans alive that morning of June 20, 1944 and that night both of these Americans were dead. Someone killed them and we charge all these accused with murder. They were all at the guard unit, weren't they?

We have proved they are wrong even in that because Isano was away from the headquarters on an inspection trip and Nakase was in the office all day working on confidential papers.

The judge advocates have the burden of proof. They must prove the corpus delicti. They must produce the remains of the bodies of these two Americans and they must produce the deadly weapons, the sword and the rifle and bayonet which these two Americans were killed with that day.

The judge advocate has failed to do all these things. What has he done? He has introduced as witnesses several witnesses all just as much involved and in the case of Kinoshita more involved and more responsible than anyone of those accused except Ueno. The judge advocate has introduced into evidence unsworn statements of Nishizima, an insane person, and the statements of Eriguchi, Tanaka and Ueno. All these statements were made while those persons were confined at Sugamo Prison, Tokyo. Lieutenant Tremayne who offered them into evidence wasn't the custodian of these statements, he wasn't authorized to take them, he wasn't present when they were written and therefore was an incompetent witness as far as these unsworn statements were concerned.

The judge advocate didn't prove their case against these accused. All the accused wanted to tell their part in the incidents and all want to accept their full responsibility for what happened to the two Americans that day. This can especially be said of Ueno. Ueno is a well educated and skillful surgeon. He was running a hospital in Japan after he was demobilized when Lieutenant Tremayne seized him and had him placed in Sugamo Prison, Tokyo.

Ueno is the key to this whole incident because as he admits it all started when Kinoshita brought the two patients to the bottle dressing station. Ueno started to operate on the right big toe of one patient. The patient was one of two survivors after three others in adjoining cells had been killed by American bombs.

You have heard Ueno's story. You have heard the argument of his counsel Mr. Kuwata, in his behalf. You gentlemen of the commission must judge Ueno according to how he is charged.

Ueno performed an operation. He had done thousands of operations before and never had a patient of his died on the operating table or as a result of his operations. Ueno was highly skilled. He operated that day as a surgeon. Yet the judge advocates charge him with malpractice. Ueno on the witness stand testified under oath that the operation that day was performed by him as a surgeon in order to diagnose a very sick patient.

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JAMES P. KERRY,
Lieut., USN
Judge Advocate.

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Whatever Ueno did in the operating room that day was only done as a doctor and surgeon. It should be shown as a matter in aggravation after the findings on specification one of Charge I not as a separate charge.

The operation went badly that day. Ueno who had never before lost a patient, Ueno lost all control of himself. What Ueno did afterwards he cannot explain try as he will.

Ueno is no murderer at heart. From early days as the child of a father who was a doctor Ueno grew up in an atmosphere where his father's influence was great. To save life was all important. One day Ueno's mother left the home and went away to the hospital. When she came back Ueno heard the terrible news that his mother had a cancer but she was now safe because a great surgeon had operated upon her and she would now be well.

That day the boy Ueno made up his mind to become a surgeon. He would repay the debt he felt he owed to the surgeon who had saved his mother's life. Ueno too would become a famous and skillful surgeon. He did become a surgeon. His father suggested Ueno enter the navy in order to know something of the hardships of life and in order to serve his country. Ueno did enter the navy. He would have served only two years but Japan was on the march. Ueno stayed in the navy. War was declared by the United States on Japan after Japan attacked Pearl Harbor December 7, 1941.

Ueno didn't get out into battle ground until May 17, 1944. Truk was then a by-passed island but the American bombers attacked day and night.

Ueno tried to tell what he was going through. Ueno became sick soon after he reported. He was still not well at the time when these American prisoners were killed by an American bomb which destroyed the guard house. Two other prisoners were seriously injured. Ueno observed these two prisoners from day to day. In his mature judgment, and as he explained on the witness stand, he sent for these two patients. He started to operate. We ask that the commission judge Ueno objectively. This isn't difficult to do even if none of the members of the commission are doctors. What he did he did as a surgeon. Then the operation went badly. Ueno had made an honest mistake in judgment and had misjudged the strength of the patient to withstand the operation. The patient was more seriously effected by the bomb blast than Ueno realized. The commission must now realize that Ueno is not guilty of specification one of Charge II. We ask that you find specification one of Charge II not proved and Ueno not guilty of that charge and do therefore acquit Ueno of that charge.

Ueno went on to the dispensary. Near the dispensary this dying patient was beheaded. Ueno was there. He could have allowed him to suffer but with only a feeling of pity for this patient he ordered Eriguchi to put the patient at ease. Ueno had no intent to commit murder; he had no malice in his heart, only pity. You members know the difference between murder and manslaughter. We ask that you find Ueno not guilty of murder as he is charged in specification one of Charge I.

As to specification two of Charge I, Ueno wasn't at the scene, he didn't have a thing to do with the execution. Even under the Federal rule of principal Ueno cannot be made a principal. He cannot be guilty of murder as he is charged in specification two of Charge I. Unbeknown to Ueno while he was operating on one patient someone took the other prisoner away and Nagashima had him killed.

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Lieut., USN
Judge Advocate.

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The prosecution hasn't proved how this was possible. There is a great gap in their case. They rely on their theory one prisoner alive in the morning and at night the prisoner dead. Everyone who even saw the prisoner during the day is a murderer and must be found guilty; if it were not so they would have saved the prisoners lives. Is this the way to prove defendants guilty of murder. We think not.

Since the prosecution has not proved their case against Ueno as regards specification two of Charge I we ask that the commission find specification two of Charge I not proved and Ueno not guilty of the charge of murder and the commission therefore acquit Ueno of the charge of murder.

To provide for the exigencies of proof the judge advocates have added specification four of Charge II. Ueno is charged with neglect of duty. The prosecution have offered no proof that Ueno had such a duty as is charged in this specification four of Charge II. Their pleading an allegation in this specification is but a conclusion of law on the part of the pleader.

Because there is no proof that Ueno had a legal duty toward these two prisoners we ask that the commission find the specification four of Charge II not proved and Ueno not guilty of neglect of duty and the commission does therefore acquit Ueno of this charge.

What we have said in this closing argument about these six accused we have said in order to bring to the attention of the commission the defenses of these six Japanese accused of war crimes in this American military court.

We know that there can be and is justice administered according to law for these six accused.

Mr. Justice Rutledge said in his dissenting opinion in the Yamashita case, "In this stage of war's aftermath it is too early for Lincoln's great spirit, best lighted in the Second Inaugural to have wide hold for the treatment of foes." We know that it is not early here on Guam this day for Lincoln's great spirit to be exemplified in our treatment of these six accused.

So here on Guam this day in the words of Mr. Justice Rutledge in his dissenting opinion in the Yamashita case we say: "It is not too early, it is never too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against unbridled power than due process of law in the trial and punishment of men, that is of all men, whether citizens, aliens, alien enemies or enemy belligerents."

Respectfully,

MARTIN E. CARLSON,
Commander, USNR

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

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FINAL ARGUMENT FOR THE PROSECUTION, DELIVERED BY LIEUTENANT COMMANDER
JOSEPH A. REGAN, U. S. NAVY, JUDGE ADVOCATE.

Once again, we have come to the end of a trial - and once again the arguments of defense counsel have been lengthy and verbose and in some instances, not relative.

As my colleague, Mr. Kenny, pointed out in his opening statement for the prosecution - the pattern of defense has been the same in this case as in the prior War Crimes cases held in this area. It might also be pointed out that the same is true concerning the arguments of defense counsel.

First there is the argument that their clients did not do the deeds complained of, and then the argument that they lacked criminal intent, and then the third argument of Superior Orders, and then the concluding argument that the Japanese Nation as a whole is responsible for the crimes alleged rather than the few specific individuals present in court.

It is the contention of the judge advocate that all of the accused are guilty as charged. It may well be that there has not been a sufficient showing of guilt in the case of Kobayashi with specific reference to Specification one of the second charge. It may be that the commission has a doubt that Kobayashi had guilty knowledge that the operation to be performed was an illegal one. If he possessed such knowledge then his acts are culpable, if he did not then all of his acts concerning the operation are to be excused, for there is no evidence that they were other than ordinary acts. The judge advocate does not believe that Specification one of Charge II has been sufficiently proved and so advises the commission. However, the judge advocate does believe that Specification one of Charge I has been sufficiently proved against Kobayashi and so advises the commission.

Kobayashi though he be excused for his participation in the training operation cannot be excused for his participation in the ultimate beheading of the victim of the operation. His solicitous act of counselling Eriguchi and showing him how to cut so that he wouldn't endanger himself is murder and he should be held responsible for it.

Sec. 452 - of Title 18 of the U. S. Code Annotated defines murder as follows: "Murder is the unlawful killing of a human being with malice aforethought.".....Murder is defined in exactly the same way in Naval Courts and Boards.

Sec. 550 of Title 18 of the U. S. Code Annotated defines Principals as follows: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." This section did away with the distinction between an accessory before the fact and a principal and made an accessory before the fact a principal.

While it is true that the laws violated here are International Laws, still we can look to the everyday laws of the United States which exemplify and carry out the International Law. The two sections quoted above are all the law on murder needed to judge the first charge in this case.

We hold Kobayashi falls within the definition of a Principal for he aided by arranging for the prisoner to be carried to the scene - he aided and abetted by having a board brought and the prisoner propped into a comfortable cutting position, comfortable for Eriguchi rather than the

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Lieut., USN
Judge Advocate

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unfortunate prisoner. He counselled - for he instructed Eriguchi how to place his feet and how to swing his sword so that only the prisoner would be fatally injured - as he was.

The prosecution has proved the complicity of Kobayashi - Kodama testified as to seeing Kobayashi instruct Eriguchi - Saito heard Kobayashi bragging about his deed and even Eriguchi admitted as did Ueno that Kobayashi was the man with the knowledge and that he imparted it to Eriguchi. Kobayashi of course denies his proud act, but then remember, he even denied having anything at all to do - however innocently - with the operation. His denials are understandable though not believable.

Kobayashi was more than a spectator and now he must be held to account for his acts which furthered the beheading.

I shall not take up the commission's time with any lengthy argument concerning Eriguchi and Tanaka. They have each admitted doing as they are charged. They claim however to have lacked malice and to have been the unwilling slaves of superiors and blind followers of superior orders.

Eriguchi is guilty of murder for he struck off the head of a living prisoner. Tanaka is guilty of murder for he first thrust a bayonet into the living body of a prisoner. It matters little that the prisoner was not killed directly by this thrust. Sec. 255 of Wharton's Criminal Law, page 340 states, "Where one assailant strikes a blow which is not fatal and a confederate follows it up with a fatal blow, both are principals in the homicide."

Eriguchi and Tanaka are not the only accused in this case to attempt to shield themselves behind the claim of superior orders. Note the claims: Tanaka acted because Nagashima who had his orders from Ueno, Nakase and Asano, commanded him.

Eriguchi acted because Ueno commanded him and Ueno acted because of the relayed orders of Asano, orders relayed through the Executive Officer, Nakase.

The defense of superior orders can be dismissed quickly. We know it was not acceptable in the Nuremberg trial, it was not acceptable in the SCAP trials, it has not been acceptable in other trials in this area and it should not be acceptable to this commission. Let me quote from the Decision of the Nuremberg Tribunal: "The charter specifically provides in Article 8: 'The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment.' The provisions of this article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law has never been recognized as a defense to such acts of brutality, though, as the charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible." Mr. Justice Riddle in reading the decision of the High Tribunal at Nuremberg said: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

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Lieut., USN
Judge Advocate.

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All of the accused have insisted that they acted without malice - though to be honest, Nakase and Asano have insisted that they didn't act at all - yet the persons who acted intended to kill their victims. "When a man presents a gun or a pistol at another, and shoots it at him, the law says he intends to kill him, because the killing is a result of what is natural or probable or reasonable." U.S. vs Boyd 45 F. 851.

It isn't difficult to understand that the principle is the same even if the weapon used is different. Here a sword and a bayonet were used rather than the more merciful gun.

Under Sec. 452, Page 327 of the U. S. Criminal Code Annotated, it is said, "When it is shown that a person was intentionally killed, the law implies malice. U.S. vs Travers c.c. Mass. 1814. Malice is defined in a general way to be the "doing of a wrongful act without just cause, or excuse, in such a way and under such circumstances as to show that it was done wrongfully, and that it was done in the absence of that which would give the party the right to defend against it; or that it was done in the absence of mitigating circumstances." U.S. vs Boyd 142 U.S. 450.

Malice as applied to murder, need not denote spite or malevolence, hatred or ill will to the person killed, nor that the slayer killed his victim in cold blood, as with a settled design; but a killing from an evil design and malignant spirit may be of malice, implied by law from the absence of legal excuse. U.S. vs. Mcagher 37 F. 875. Again the circumstances attending a homicide may be such that the law deems it malicious. U.S. vs Alstall c.c. Mass. 1855.

"The crime will be considered to be committed with malice aforethought however sudden the occasion, when the act is done with such cruel circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit. U.S. vs Cornell c.c. R. 1 1820.

In the present case there has never been made the defense that the killing of the two prisoners was legal or justifiable.

Surely the means used here - a sword and a bayonet - and the details surrounding their use - are within the purview of the term "cruel circumstances" as would indicate a malicious spirit.

Let me read a final quotation on malice: Vol. 34 American Jurisprudence: Sec. 4, "Since malice in law is predicated upon the doing of an unlawful act or the doing of a lawful act in an unlawful manner, it follows that malice in contemplation of law cannot exist where the thing done is lawful and the means employed are lawful. Malice need not exist for any definite period of time, nor does the law fix any time in which it must exist to be recognized in law. For instance, malice, if clearly formed in the mind of an individual, even though it exist only an instant, is as clearly defined and constitutes malice in law as much as though that evil intent had been cherished or entertained a much longer period of time." State vs. Lovell 34 Cal. 120.

The accused have all denied possessing malice yet their actions belie their words. They killed without legal excuse and they killed in a cruel and malignant manner. Let them be judged for their deeds rather than for their words. Here malice can be clearly implied - regardless of their denials.

CERTIFIED TO BE A TRUE COPY

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

"PPP(3)"

1377

Tanaka and Eriguchi are not the only ones to whom malice can be implied. Kobayashi, Ueno, Nakase and Asano can also be held responsible in an ascending scale. All of them played a part in the two murders. While they all did not cut, stab or behead still each acted and as a result of their collective and individual contributions, the deaths of two prisoners were brought about.

Defense counsel took up much of the commission's time with having each accused deny every word of the various specifications. Asano and Nakase were asked - as was Kobayashi - if they used a scalpel on the prisoner and Ueno was asked if he beheaded or bayoneted a prisoner. The defense was pleased at their ready denials but their denials did not aid the commission. The defense knew - not only from the opening statement of the judge advocate - but also from the testimony of the various prosecution witnesses that it was never the contention of the prosecution that these mentioned accused, Asano, Nakase, Ueno and Kobayashi had had in their hands the sword that beheaded or the bayonet that was thrust.

Asano, the commanding officer, and Nakase, the executive officer and custodian of prisoner, are guilty of the murders because they ordered them carried out. Ueno is guilty of the murders for he carried out his orders - although he also performed an operation along the way. Kobayashi is guilty of murder because he "aided, abetted and counselled," the final actor, Eriguchi.

The prosecution admits that although they produced nine witnesses, no complete and detailed account of the doings of each accused was given. In very few murder cases is the prosecution fortunate enough to have informative and willing witnesses. In this case, each of the witnesses told but a piece of the story - yet, what they told, taken with the confessions of the accused are sufficient to spell out the guilt of these accused.

The defense early gave up on Eriguchi - they had him take the stand, not as a witness in his own behalf but as a stalking horse to take the blame from Kobayashi, Nakase and Asano. Eriguchi made a sorry witness and his sacrifice was in vain for I'm sure the commission can understand that his confession taken months ago was the truth rather than the pitiful statements made on the stand in answer to defense counsels' leading questions.

Eriguchi told how Kobayashi showed him how to behead and how Asano, the commanding officer, complimented him upon his skill in getting the head off in one blow. The witness Kinoshita testified to seeing Asano, the commanding officer, at the scene where Eriguchi exhibited his reluctant prowess.

The defense has made much of the fact that we produced no witness to testify concerning the orders given Nakase by Asano, and we admit that we never came across such a witness. However, the defense themselves produced witnesses to testify as to Asano's part. Ueno told of receiving direct orders from Nakase to dispose of the prisoners and was told that these were the orders of the commanding officer. Eriguchi told of being congratulated by the commanding officer, and Kinoshita also told of seeing the commanding officer at the scene. No, we have not one witness but the commission has the testimony of these three witnesses and their own good sense to show them that the chain of circumstances which resulted in two deaths originated with the commanding officer, Asano.

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JAMES P. KERRY
Lieut., JAG
Judge Advocate

"PPP(4)"

1378

Nakase was the executive officer, the commanding officer of the guards, and the custodian of prisoners at the 41st Naval Guards. He denied being the custodian - but then he denied most everything else. He gave the orders to Ueno "after receiving them from Asano and it was his voice that rang out at the Battle Dressing Station saying, "We'll do the other one now." The other one being the unfortunate prisoner who was bayoneted by Tanaka and bayoneted in Nakase's presence according to the witness, Kamei - who is a co-national of Nakase and served with him at the 41st Naval Guards.

Ueno is a murderer - and the evidence clearly shows it. True, that he received orders from Nakase and Asano but he was not limited by those orders to a particular method of disposal. He elected to perform an experimental operation and he finally, after tiring of cutting into the live body of the prisoner had him beheaded by Eriguchi.

The commission has heard the evidence concerning the operation. The commission has heard the witness Kinoshita who was there and the witness Kuno - who stayed but for a while and then hurried away lest he be called upon to aid in the so-called operation. Kuno described the operation as one in which, to use his own words "true treatment was not administered." This operation in which an artery was exposed so that sulphur drugs could be administered but there were no sulphur drugs present in the operating room. This operation where Ueno testified the prisoner had but one testicle - yes, one testicle when Ueno finished, for witnesses testified to seeing him remove one and place it on a tray.

The most conclusive evidence that this was not a proper operation is the fact that Ueno knew before he started that he was under orders to dispose of the prisoner and when he grew tired of using his knife, he turned the prisoner over to Eriguchi who used a much larger piece of steel.

Ueno has insisted that he acted as a humanitarian - for that matter, all of the accused have testified that they had nothing but affection and prayers for the prisoners and yet strangely enough - the prisoners died and died of violence.

Note another interesting aspect of this case. All of the accused except Nakase and Asano insist that discipline was so strong in the Japanese Navy and superior orders so compelling that they were forced to act. Yet Nakase and Asano insist that Ueno alone is the culprit - Ueno alone took the prisoners - and Ueno alone gathered many members of the 41st Naval Guards and caused the prisoners to be killed. In fact, Nakase would have you believe that this incident which occurred in a tightly run, military command of which he was executive officer did not even come to his attention till after the end of the war, many months after it took place. Asano, the commanding officer, would have you believe that a mere lieutenant commander, and a medical officer at that, had hoodwinked him out of his prisoners, had used his entire area as a vast operating room and had given commands to Asano's subordinates contrary to Asano's wishes. Let the commission decide if any subordinate officer would be so brazen and would do such enormous things unless he well knew that he was carrying out the orders of his superiors.

Let the commission remember that at common law no accused could take the stand in his own behalf - for it was thought that because of his self-interest he could do naught but distort the facts into his own favor.

CERTIFIED TO BE
JAMES P. KERRY
Lieut., USN
Judge Advocate.

"PPP(5)"

Only now can an accused testify and because of his self interest his testimony is to be carefully scrutinized. After hearing these accused, particularly Kobayashi, Nakase and Asano, one can well appreciate that the common law rule was based on sound reason and since perjury can be so easily and unblushingly committed, possibly the common law rule should again hold sway. For no truth came from these accused.

There is no duplication in these specifications and each specification should be separately judged by the commission. It is the duty of the commission to weigh the evidence presented to determine the facts, and to apply the law to those facts to reach its findings of proved or not proved, guilty or not guilty. If the facts and the law so applied by the commission warrant a finding of guilty under any specific specification and charge that specification must be found proved, as must all other charges and specifications which meet the same test. The commission cannot properly set aside a charge and specification which it believes has been proved.

This is sound law and is merely mentioned for the guidance of the commission in considering Charge II. The judge advocate believes that with the exception of Kobayashi - the evidence is so overwhelming against the other named accused it would be bootless to argue their guilt. Who could argue that Asano either restrained his men or protected these prisoners - who would argue that once Ueno had these prisoners at his battle dressing station, he protected them properly? The commission well knows that the prisoners are dead - dead as the result of the violence of various members of the 41st Guard Unit and more particularly dead of violence of these accused.

It is Japan - the nation that is responsible for the crimes and not these individuals. This is no argument of the judge advocate but rather one futilely put forth by defense counsel. Let the commission remember that not all American prisoners of war were murdered - but also let the commission remember the deed of these six individuals who now cry mercy when they showed no mercy.

The trial is over - the accused have had their long day in court. The pleading and argument is at an end. Now let them be judged.

Respectfully,

JOSEPH A. REGAN,
Lieutenant Commander, USN.

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

"PPP(6)"

1380

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 motion in arrest of judgment to prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations has run against all offenses charged and the Statute of Limitations is a bar to the trial of Asano.

The allegation that the offense charged in all specifications, was committed "on or about June 20, 1944" is insufficient in law.

The specifications do not on their face show nor is there any jurisdiction in this commission to try Asano, Shimpei.

There is duplicity and multiplicity of the specifications and charges.

Specification 1 of Charge II does not on its face constitute a public offense within the jurisdiction of this commission. It appears on the face of the specification 1 of Charge II that no judgment can be legally entered. The facts stated in this specification 1 of Charge II do not constitute a crime.

In CMO 15-1917 the JAG laid down the rule: "Insofar as practicable, the employment of exceptional military courts should as a general rule be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority. None of the offenses charged against Asano, Shimpei are in violation of any of the above enumerated class of cases.

The accused Asano, Shimpei was deprived of his constitutional rights guaranteed by the Constitution of the United States of America because there was introduced as evidence against him the unsworn statement of Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric Hospital Tokyo, Japan and the unsworn statements of the codefendants Ueno, Chisato, Eriguchi, Takeshi and Tanaka, Sueta.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

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JAMES P. KENNEDY

Lieut., USN

Judge Advocate

"QQQ"

1381

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 motion in arrest of judgment to prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations has run against all offenses charged and the Statute of Limitations is a bar to trial of Ueno, Chisato.

The allegation that the offense charged in all specifications was committed on or about June 20, 1944 is insufficient in law.

The specifications do not on their face show nor is there any jurisdiction in the commission to try Ueno, Chisato.

There is duplicity and multiplicity of the specifications and charges

Specification 1 of Charge II does not on its face constitute a public offense within the jurisdiction of this commission. It appears on the face of the specification 1 of Charge II that no judgment can be legally entered. The facts stated in this specification 1 of Charge II do not constitute a crime.

In CMO 15-1917 the JAG laid down the rule. Insofar as practicable, the employment of Exceptional Military Courts should as a general rule be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority. None of the offenses charged against Ueno Chisato are in violation of any of the above enumerated class of cases.

The accused, Ueno, Chisato was deprived of his constitutional rights guaranteed by the Constitution of the United States of America because there was introduced as evidence against him the unsworn statement of Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric Hospital Tokyo, Japan and the unsworn statements of his codefendants, Eriguchi, Takeshi and Tanaka, Suota and his own unsworn statement admitted into evidence against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

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

RRR

1382

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 motion in arrest of judgment
to prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations
has run against all offenses charged and the Statute of Limitations is a
bar to the trial of Nakase, Shohichi.

The allegation that the offense charged in all specifications was
committed "on or about June 20, 1944" is insufficient in law.

The specifications do not on their face show nor is there any juris-
diction in this commission to try Nakase, Shohichi.

There is duplicity and multiplicity of the specifications and charges.

In CMO 15-1917 the JAG laid down the rule: Insofar as practicable,
the employment of Exceptional Military Courts should as a general rule, be
restricted to the trial of offenses in breach of the peace, in violation
of military orders or regulations, or otherwise in interference with the
exercise of military authority. None of the offenses charged against
Nakase, Shohichi are in violation of any of the above enumerated class of
cases.

The accused, Nakase, Shohichi, was deprived of his constitutional
rights guaranteed by the Constitution of the United States of America
because there was introduced as evidence against him the unsworn statement
of Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric
Hospital, Tokyo, Japan, and the unsworn statements of the codefendants
Ueno, Chisato, Eriguchi, Takeshi and Tahaka, Sueta.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR

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

SSS

1383

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 motion in arrest of judgment to prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations has run against all offenses charged and the Statute of Limitations is a bar to trial of Eriguchi, Takeshi.

The allegation that the offense charged in all specifications was committed on or about June 20, 1944 is insufficient in law.

The specifications do not on their face show nor is there any jurisdiction in this commission to try Eriguchi, Takeshi.

There is duplicity and multiplicity of the specifications and charges.

In CMO 15-1917 the JAG laid down the rule: Insofar as practicable, the employment of Exceptional Military Courts should as a general rule be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority. None of the offenses charged against Eriguchi, Takeshi are in violation of any of the above enumerated class of cases.

The accused Eriguchi, Takeshi was deprived of his constitutional rights guaranteed by the Constitution of the United States of America because there was introduced as evidence against him the unsworn statement of Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric Hospital, Tokyo, Japan and the unsworn statements of his codefendants Tanaka, Suets and his own unsworn statement admitted into evidence against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR

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

111

1384

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 motion in arrest of judgment to prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations has run against all offenses charged and the Statute of Limitations is a bar to the trial of Kobayashi, Kazumi.

The allegation that the offense charged in all specifications was committed "on or about June 20, 1944" is insufficient in law.

The specifications do not on their face show nor is there any jurisdiction in this commission to try Kobayashi, Kazumi.

There is duplicity and multiplicity of the specifications and charges.

In GMO 15-1917 the JAG laid down the rule: Insofar as practicable, the employment of exceptional military courts should as a general rule be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority. None of the offenses charged against Kobayashi, Kazumi are in violation of any of the above enumerated class of cases.

The accused Kobayashi, Kazumi was deprived of his constitutional rights guaranteed by the Constitution of the United States of America because there was introduced as evidence against him the unsworn statement of Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric Hospital, Tokyo, Japan, and the unsworn statements of the codefendants Ueno, Chisato; Eriguchi, Takeshi; and Tanaka, Sueta.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR

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

"UUU"

1385

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 Tanaka, Sueta makes this motion in arrest of judgment to
prevent an entry of judgment.

All specifications show on the face that the Statute of Limitations
has run against all offenses charged and the Statute of Limitations is a
bar to trial of Tanaka, Sueta.

The allegation that the offense charged in all specifications was
committed on or about June 20, 1944 is insufficient in law.

The specifications do not on their face show nor is there any juris-
diction in this commission to try Tanaka, Sueta.

There is duplicity and multiplicity of the specifications and charges

In CMO 15-1917 the JAG laid down the rule: Insofar as practicable,
the employment of exceptional military courts should as a general rule be
restricted to the trial of offenses in breach of the peace, in violation
of military orders or regulations, or otherwise in interference with the
exercise of military authority. None of the offenses charged against
Tanaka, Sueta are in violation of any of the above enumerated class of
cases.

The accused Tanaka, Sueta was deprived of his constitutional rights
guaranteed by the Constitution of the United States of America because
there was introduced as evidence against him the unsworn statement of
Nagashima, Mitsuo, now said to be insane in Matsuzawa Psychiatric Hospital,
Tokyo, Japan, and the unsworn statements of his codefendants Eriguchi,
Takeshi and his own unsworn statement admitted into evidence against him.

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.

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

"VVV"

1386

ORIGINAL DIAGRAM DRAWN BY KODAMA, AKIRA, CORPSMAN PETTY OFFICER
FIRST CLASS, IMPERIAL JAPANESE NAVY,
(appended to the original record)

1387

STATEMENT OF HAKASHIMA, Mitsuo.

Address: Tsuchi-gi-hon, Hago-gun,
Shigaki-cho, Awa, Shigaki 21-1

Born: 10 January 1907.

DUTY

1. Inducted 3 March 1941.
2. Sailed on special service vessel "Shiridoko" 21 April 1941. Arrived Dublon Island, Truk Atoll in the South Seas about 30 April of the same year. Landed on Takajima very shortly after that and was engaged in the construction of barracks, the installation of one set of 13 mm machine guns and two sets of 12 mm guns.
3. Became chief petty officer on 1 November 1942.
4. Assigned to 41st Naval Guard Unit arsenal on Dublon Island about January 1943.
5. Became senior petty officer about January 1944.
6. Became a warrant officer about the end of the war.
7. Boarded the special-service ship, "Soga" which left Dublon Island, Truk Atoll for Japan about 3 December 1945.
8. Entered port of Kure-Otake on 12 December 1945.
9. Discharged 13 December 1945.

ADDITIONAL

1. I do not remember exactly what year it was but I heard a rumor that Lieutenant Commander DANBARI beheaded some prisoners. I heard that it was carried out on the seashore in front of the 41st Naval Guard Unit but I know absolutely none of the circumstances of the affair.

2. I don't remember the date very well but about January of 1944, early in the morning I saw thirty or forty prisoners come to the guard unit in trucks. According to all the stories all we heard was that a submarine sank and those still swimming were brought in. I think the officers probably knew what was done there but I know absolutely nothing about it. As the majority of them were naked, I saw a supply-man bring clothes from the warehouse and have them get dressed. I also saw when I think were high-ranking officers of the 4th Fleet Headquarters question them one by one. Sometime about two or three days later there wasn't a single prisoner in the stockade. When I questioned some of the people in the vicinity they said that the prisoners were sent to Japan on the destroyer "Amaguro" or some such ship. I believe that Rear Admiral HIRAKAWA was the commanding officer of the 41st Naval Guard Unit at that time.

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

3. I don't remember whether it was the big air raid of February 1944 or not, but all the bombs hit inside the guard unit and at that time, of three prisoners two were blown up. A few days later another prisoner came and then there were two. A few days after that, I believe it was in the morning, Lieutenant, Junior grade KINOSHITA, I think, along with three or four corporals carried /TH-these prisoners/ in stretchers in the direction of the dispensary. Therefore, wondering what they were going to do, I followed along after them. They carried them into the air raid shelter alongside of the dispensary. The head medical officer (CWO) /TH-UNO/ and three or four corporals were also there but I do not know their names. Besides myself, Ensign YOSHIMURA and four or five others were there but I do not know their names. I could not see very well from outside the air raid shelter. Suddenly while I was outside the head medical officer came out and said, "The senior petty officer will take care of the other one." However, as I thought I could not do it I reported this matter to the executive officer. When I did this I was ordered by the executive officer also to dispose of the prisoner. Therefore, as I had no other choice I told the men who were nearby. When I left it up to them to stab, one of their own free will wanted to stab, TANAKA, Senta yelled, "I'll do it," and hurried off in the direction of the dispensary. TANAKA and twenty or thirty others quickly brought the prisoner to a field. Ensign YOSHIMURA and some other officers besides were included in the group but I don't remember exactly who they were. Because I watched this from the rear I do not know their names but two men bound the prisoner's hands behind him, passed a pole between /TH-his arms/ and held him up. I definitely heard the voices of many people shouting, "Hurry up and stab." Following their example I also said this but because I left it up to their own free will I never gave any orders. As lots of men were yelling this with one accord, those who had the will to stab stabbed first. After TANAKA three or four persons (I do not know their names) stabbed and when the /TH-prisoner/ fell I returned to the barracks.

4. Around the beginning of 1944 the rumor went around that there was a decapitation by the KATO Unit of Bean Island, but I absolutely do not know the circumstances. Nor do I know anything at all concerning the 4th Fleet Headquarters. There was also a rumor about some kind of dissection at the 4th Naval Hospital but I know nothing about the truth of the matter.

5. Around the end of 1944 inside the barracks I saw an air-corps enlisted prisoner standing in front of headquarters. He was in the stockade for two or three days. Early one morning I was ordered by the executive officer, "You take the prisoner to the coast patrol base." I immediately led him there.

However, as he hadn't been fed, I thought that he must be hungry and, as going to Japan by airplane was quite a trip, when we reached the coast patrol base I immediately spoke with a staff officer and fed him until he was full. Moreover, when I asked him if he smoked he said he would like a cigarette. Therefore, I looked around here and there for some and gave them to him. And again, there were many juries on the way

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JAMES P. KERRY,
Lieut., USN
Judge Advocate.

- 2 -

EXHIBIT 2(2)

1389

on account of the rain. Taking advantage of the fact that there were no senior officers around I led him by the arm around the back spots. He was very grateful for this. I also was moved by a very friendly feeling. We conversed quite a bit and I hoped in my heart that we would become friends.

NAGASHIMA, Mitsuo.
Formerly Warrent Officer, IJN.
Senior Petty Officer,
41st Naval Guard Unit.

I hereby certify the above to be a true and complete translation to the best of my ability of the original statement written in Japanese.

Frederick F. Tremaine
FREDERICK F. TREMAINE,
Lieutenant (jg), USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY.

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

ORIGINAL STATEMENT BY NAGASHIMA, MITSUO, CHIEF PETTY OFFICER,
IMPERIAL JAPANESE NAVY.
(appended to the original record)

MY HEART

by

TANAKA, Sadao.

What I have been feeling all the time I have been in the allied prison camp.

It has been apparent that American military personnel have deep spiritual regard for the rights of man.

Superior officers and their subordinates, bound by ties of love and affection even like father and son. I have nothing but the deepest respect and admiration for the lofty spiritual character and most gentlemanly attitude of each and every one which is the manifestation of the peaceful and harmonious condition of their country.

The spirit of the former Japanese military forces had absolutely no regard for the rights of man. Low ranking men were looked upon as slaves. Between the high and low ranking men, there was no spirit of love towards those of low rank and the base attitude was held that they were just as common as animals. Everyone was selfish and cared only for their own personal gain. There was no love lost between the men and little understanding between the high and low ranks. In everything everyone was stingy and generosity was non-existent.

The American military men are generous in every way and their magnanimity is apparent. The Japanese people are very happy and grateful to the Americans for receiving leadership and for changing the national spirit to democracy and I think they want to ask a thousand times over to be given leadership that they may become a peaceful nation.

TANAKA, Sadao.
Formerly Leading Seaman, IJN.
BORN: 25 May 1905.
(At the time of the incident
forty years old.

- | | |
|----------------------------------|--|
| 1, December 1925: | Passed conscription physical and entered the
Maizuru Naval Barracks. |
| 7 December 1928: | Completed term of conscription and returned
home (actual term of service - 3 years and
7 days.) |
| 28 April 1943: | Entered the First Naval Barracks at Yokosuka
in accordance with general conscription. |
| 7 July 1943: | Started to Truk Atoll - South Pacific for
duty. |
| 11 July of the same year: | Returned Rabon Island, Truk Atoll. |
| | Served with the battery on Rabon Island. |

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

"Exhibit 4 (1)"

1392

From 30 November until
20 January:

Served on the patrol boat "Eamon", of the
Dublin Guard Unit.

From 20 January 1944 until
20 March:

Served as a telephone operator at the 4th
Fleet Headquarters.

From 21 March until 15 May:

Was in charge of farming at the Guard Unit.

17 May 1944:

Entered the hospital as an amoebic dysentery
patient.

20 June of the same year:

Left the hospital as a case excused from
duty as the hospital was filled to its
capacity with patients.

I left the hospital as a patient excused from duty and took my
medicine with me. I was excused from duty for about three days. The
Kampunkhuri and Senior Petty Officer came and at this time had a petty
officer take charge of farming. The senior petty officer can also tell you
this. As the weather was fine and as the petty officers and seamen who
were patients on light duty went out to farm I was told, "You too must go
out and work." For more than one month afterwards I was on a liquid diet
and also ate gruel and did not even once receive any ordinary food. Being
on a liquid diet and also eating gruel without once receiving any ordinary
food we were sent out and returned in trucks. As I was exhausted in mind
and body two or three days later I requested to be put on light duty. The
senior petty officer left me with the cold reply, "No matter how many
days you rest it is always the same. Rest one or two months if you want
to." What kind of words were those? The duty of the senior petty officer
was to look out for us as parent and brother for the unit. Thinking that
these words were the words of a very harsh superior officer for a person who
was in the position to give counsel, I recalled the love of parent and
child in my home and wept for a long time. I was incapacitated to the
extent that I could hardly walk. I thought this senior petty officer
certainly had no consideration but as it was an order there was nothing I
could do about it.

Mustering all the strength in my weakened body I got out of bed and
went to the field where the petty officer and seamen patients were farming.
I didn't see any petty officers or men that I knew. The No. 1 Division
was the clerical division and the petty officers and men rotated every
two months and most of the time they were dispatched or on detached duty.

I too, returned after being dispatched and the work of the men in
charge of farming was also separated from that of the division.

I had just returned after being in the hospital for forty days and the
great number of changes in personnel was surprising. When I went to the
farm fields the men there who were new to me, all said very kindly, "You
look quite ill." "I feel sorry for you." "It is unreasonable that you
should work." "Take care of yourself." "Rest over there." What kind
hearted words these were. These were expressions of compassion on the
part of the seven or eight men who were there, all of whom were patients.

CERTIFIED TO BE A TRUE COPY
James P. Kenney
JAMES P. KENNEY,
Lieut., USN
Judge Advocate.

Exhibit 4 (2)

1393

I expressed my appreciation by saying, "Thank you, thank you," many times. About an hour later the senior petty officer appeared.

On the morning of June 23 at nine o'clock he came to the field where we patients were farming and gave us orders to stop our work, leave our utensils where they were and for all of us to fall in here. As I was the largest in stature I fell in on the right end. When everyone was lined up the attitude and face of the senior petty officer who appeared before us was very excited and he appeared to be completely different than usual.

We were uneasy when we lined up thinking that something unusual had happened.

The senior petty officer spoke in a loud voice as follows:

"I have just received an order from the executive officer and the commanding officer. The order is to execute one prisoner right away. As I am responsible for carrying this out you men come with me and do it." We were actually flabbergasted at this awful order. We were only patients who didn't know anything about it. At this strange and awful order we who were lined up all spoke up together and said that we were patients and that we couldn't do such an awful thing. I said further, "Even if it is an order of the higher authorities I cannot do such a fearful and inhuman thing." Those who were lined up also said, "Absolutely! This is unnecessary."

Everybody became pale and trembled at the fearfulness of the thing. When everybody grumbled about the order the senior petty officer's eyes popped out of his head, he bared his white teeth and made a frightful face like he was going to take a bite out of some one. Raising his voice he scolded everybody with the fearful words, "You fools!!! With such lack of courage do you call yourselves members of the Japanese Navy? What do you understand orders of the higher authorities to mean? Orders of the higher authorities are obeyed absolutely. Do you say that you will not obey the orders of the commanding officer and the executive officer? You probably know that if you do not obey the orders of the higher authorities you will become criminals when it is not easy to pardon. Can a military organization be built on such practices?"

In the imperial mandate for military personnel handed down from the emperor to military personnel is the strict rule, "Orders of higher authorities, no matter what they are, should be understood at once to be my orders. When lower ranking men receive orders from higher authorities, they should be understood to be my orders. Those who do not obey the orders of higher authorities will be criminals who cannot easily be forgiven by their country." Japanese military men obeyed orders absolutely.

There were many high ranking officers who mis-used their rights to give orders. When a high ranking officer said white was black, you could not oppose him. The inside story of the Japanese armed forces was that if you opposed an order you were treated like a lower animal, you received punishment and you had to feel unhappy about it.

Hundreds of low ranking men almost died from malnutrition. I also was demobilized as a malnutrition case. As I have related above, there was absolutely no being excused from orders. Fleeing on the battle field

CERTIFIED TO BE A TRUE COPY

JAMES E. [Signature]
Lieut., USN
Judge Advocate

"Exhibit 4 (3)"

was an offense punishable by execution. There was absolutely nothing we could do about the orders of the senior petty officer. There was nothing else to do as we were only used as a machine. The senior petty officer said follow me and grumbling, we followed. We went to the marshy area in back of the dispensary where bombs had fallen. Suddenly one prisoner who was blindfolded and wearing summer clothes, was brought to a spot in front of a pool of water in the marshy area. The senior petty officer turned to two people on the left end of the line and ordered them to tie the prisoners hands behind him and the two tied them. They passed a medium sized pole which was nearby between his arms and the two of them held it. The senior petty officer gave the order to those of us who were lined up, "You have probably never killed a man yet. We don't know when the enemy will land on Iruk. All of you will stab once to test your courage for that time /When the American forces will land/." The senior petty officer brought a bayonet and placed himself at the head of the column. He said to us, "You will each take a turn at stabbing," and he made me take the bayonet. He said, "You timid fellow, what are you dilly-dallying about," and he gave me a push. For forty days until that morning I had been a patient confined to my bed. I felt dizzy and could hardly walk. This important order appeared before my eyes and I was trapped by fate into having to do some thing that was not in my heart to do. It was all fate that the terribleness of the order was such that it was a crime not to do it, even if you did not want to. My feet sinking seven inches into the water in the marshy area, I went to the spot with the bayonet. I started to make a stab at the prisoner but I stopped at a spot which I think was just a little too far away. Carrying the heavy rifle in my weakened condition I shook all over. With my eyes closed and praying to the prisoner for forgiveness for what I had to do according to orders but which I did not have any desire to do, I thrust the bayonet forward. The prisoner let out a loud yell and when I opened my eyes to look I had stabbed him the large hip bone. I immediately took the bayonet and handed it to the senior petty officer. With that I received permission to return and went back to the barracks. I washed my legs and shoes, made my bed and lay down. I clasped my hands and prayed to the prisoner over and over from the bottom of my heart to please forgive me for what I did according to the orders but which I opposed in my heart.

Suddenly it was time to eat. However, a horrible feeling filled my breast and I did not have the courage to eat. I did not go to work in the afternoon either but remained in bed.

As I have stated above I was an unfortunate person who was forced by orders to do what I did not want to do.

YAMAKA, Sato.

I hereby certify the above, consisting of four (4) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

Frederick F. Tammone
Frederick F. Tammone,
Lieutenant (jg), USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 4 (4)"

ORIGINAL STATEMENT, "MY HEART," BY TANAKA, Sudo, PETTY OFFICER
FIRST CLASS, IMPERIAL JAPANESE NAVY.
(appended to the original record)

JOHN T. MURRY,
Lieut. Col.
1941

1396

1396

STATEMENT BY

ERIOUCHI, Takashi, Lt(jg) (DC), IJN.

1. Itinerary.

Reported for duty to the 41st Guard Unit Dispensary, Truk Island, on 7 June 1944.

Transferred to the Abukima Branch Hospital of the 4th Naval Hospital in May 1945.

In the early part of December 1945, as the war was over, I went back to the 4th Naval Hospital.

Departed from Truk Island by ship on 18 December 1945, returned to Japan and was demobilized.

About one o'clock in the afternoon on about 6 July or 6 August 1944, as one American prisoner of war had been brought to the dispensary, Head Medical Officer UENO immediately ordered Head Corporal KOBAYASHI to make preparations for an operation in the air raid shelter next to the dispensary. He also ordered Lieutenant KURO (Medical Corps) and Lieutenant KINOSHITA (Medical Corps) to assist in the operation. He didn't give me any orders at all.

When I went from the officers quarters to the air raid shelter where the operation was going on, the operation was well under way. Inside the air raid shelter Head Medical Officer UENO was holding the operating knife and Lieutenant KURO (Medical Corps) and Lieutenant KINOSHITA (Medical Corps) were assisting. Head Corporal KOBAYASHI and Senior Petty Officer UCHIHARA were watching the operation. Hospital Apprentice first class HOSHINO was passing the instruments. There were two or three other corporals present besides these but now I do not remember who they were.

As for the vivisection itself, when I entered the shelter a median incision had already been made in the abdominal region, the large and small intestines had been brought out and wet gauze had been applied.

On the inside of the right thigh an incision about three inches long had been made and gauze had been passed underneath the femoral artery. The tip of the right foot had become quite pale. One testicle had been cut off.

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. Then the anesthetic wore off a little bit and the prisoner groaned.

About this time outside the order was given for all personnel to assemble. Thereupon, Head Medical Officer UENO ordered me, who was standing right in front of him, to cut off the head. The prisoner was only one step away from death. At the orders of the head medical officer I trembled from head to foot. I had absolutely no desire to kill a prisoner but I had to obey the orders of my superior officers. Lieutenant KURO (Medical Corps) and Lieutenant KINOSHITA (Medical Corps) put simple bandages on the wounds of the prisoner. After, that, while I was in the lavatory, under the

CERTIFIED
JAMES P. KERRY,
Lieut., USN
Judge Advocate.

"Exhibit 6 (1)"

direction of Head Corporal KOBAYASHI the prisoner who was operated upon was placed in a stretcher and was taken to the rear of the Guard Unit Dispensary. When I returned to the dispensary from the lavatory, Head Medical Officer UNO said to me, "Learn how to cut the head off properly from Ensign YOSHINUMA." Ensign YOSHINUMA who was right besides me showed me how to cut the head off.

When I went to the rear of the dispensary a hole had already been dug in the marshy area. Alongside of that hole the prisoner who was operated upon was holding on to his intestines. However, he was unable to sit up by himself and once or twice it looked as if he were going to fall backwards. Then Head Corporal KOBAYASHI raised the body of the prisoner up and sat him down on the stretcher. Then Head Corporal KOBAYASHI showed me how to cut the head off by telling me, "You do it this way from about here." The prisoner was still slightly conscious. Then I swung the Japanese sword as I was told to do. I cut through about the thirds of the neck. Immediately after that Head Corporal KOBAYASHI put the prisoner in the hole and had the seamen fill it up.

ASANO, the commanding officer, Lieutenant Commander HAKASE, Head Medical Officer UNO, Ensign YOSHINUMA, Lieutenant KURO (Medical Corps), Lieutenant KINOSHITA (Medical Corps) and more than half of the personnel at the Guard Unit were there and saw this. Now I do not remember one of their names. When it was time to return ASANO, the commanding officer said to me, "For your first time you did fine." I became faint and returned to the officers quarters at the dispensary.

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.

About November 1944, I heard from Head Medical Officer UNO that an American aviator, Lieutenant, junior grade, /TS- or first lieutenant in the Army/ was sent to Japan from Truk in an airplane.

Other than this I did not see or hear how many other prisoners there were or what happened to them. This is because I went from island to island giving treatment.

On 17 December 1945, the day before I was demobilized from Truk I was called by Captain IWAMOTO, (Medical Corps), head of the 4th Naval Hospital. He said, "You must never speak about affairs concerning prisoners of war."

I thought that something concerning prisoners had probably happened at the hospital too. Even now I do not know what happened.

I swear by God that this is all I saw, heard and did.

Commanding Officer of the 41st Guard Unit: ASANO, Shinsai, Rear Admiral, USN.

CERTIFIED TO BE A TRUE COPY

James F. Keady
JAMES F. KEADY,
Lieut., USN.
Judge Advocate.

"Exhibit 6 (2)"

1398

Executive Officer: Lieutenant Commander HAKASE, IJN.

Head Medical Officer of the 41st Guard Unit: UENO, Chieato,
Commander (Medical Corps), IJN.

ERIGUCHI, Takashi.
Lieutenant (jg) (DC), IJN.

Fukuoka-ken, Kabe-gun,
Yamada-machi, Mitsubishi,
Kariyama, Tanaka-horinshataku.

I hereby certify the above to be a true and complete translation to
the best of my ability of the original statement written in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg), USN.
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 6(3)"

1399

ORIGINAL STATEMENT BY HIRAGUCHI, TAKESHI, DENTIST LIEUTENANT, (JUNIOR
GRADE), IMPERIAL JAPANESE NAVY.
(appended to the original record)

1400

AFFIDAVIT

IN THE MATTER OF THE
Disposal of Two American
Prisoners of War at the
41st Guard Unit in June, 1944.

} IINO, Chiato
(Formerly) Commander (MC), IJN.
(Former) Acting Head Medical Officer,
41st Guard Unit Dispensary.

On about 20 June 1944 (an estimate), when I left the mess hall to go from the officer's mess hall to the dispensary after the noon meal I was called to a halt by Lieutenant Commander HAKAGE, the executive officer of the 41st Guard Unit who had just come out of the office of the commanding officer. He conveyed to me the order of the commanding officer of the 41st Guard Unit, Captain Shinsai ASANO, IJN, saying, "As it is a matter of disposing at the dispensary of the two prisoners who survived the recent bombings, - ". At the time I was a lieutenant commander. This happened about twenty days after Commander IINO (later Captain), the former head medical officer had left for Japan. It was the second or the third day after I had finally gotten up after contracting dengue fever.

On the way to the dispensary I thought about what was best to do. 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." At that time the battle dressing station was at a spot fifteen meters away from the dispensary. It was a small place about two and one-half meters by three and one-half meters and about two and one-half meters high.

About thirty minutes later Lieutenant, junior grade KINOSHITA (Medical Corps) brought two prisoners to this place, placed one on the operating table and left one waiting outside. I examined the physical condition of the one inside. I did not see any large wounds when I made an external examination. His entire body seemed to be bruised from head to foot. Changes in his skin to this extent were noticeable. Besides these there were light swellings over the entire body. I noticed that about one-third of the tip of the big toenail of the right foot had turned black. Even today that is all I remember clearly.

I decided to examine only the places where the changes were apparent.

1. First I started to remove the big toenail from the right foot. Then I had Corporal UCHIKURA apply ether anesthetic. When I removed the big toenail of the right foot I explained that when operating for whitlow, the nail should be removed at an early stage as possible while the infection is still limited to the nail.

2. Next, I explained that when such infections have become advanced and bad, intravenous injections of sulphanilamide are used. I made an incision in the skin about three centimeters long in the upper part of the right thigh and slowly reached the femoral artery. After I showed the position of the femoral artery I closed the wound and applied gauze.

3. Next, when I examined the testicles this man had only one testicle. Thinking I would like to probe into whether the other was torn off or whether it was in some fold up inside the clothing, I made an incision and reached the testes but only saw one. Then I explained in detail the operation of removing the testicles. It is true that I held the testicles with my fingers but I absolutely do not remember cutting them off.

CERTIFIED
JAMES P. KENNY,
Lieut., USN
Judge Advocate.

4. Fourthly, I thought I must make an examination for the existence of changes in the intestinal canals from blast pressure. I thought this would be as these prisoners had been exposed to strong blast pressure in the air raid of a few days before and I heard the story that after the other three died they were always sleeping.

I cut open the abdomen over an area of about twelve centimeters from the upper abdominal region to one centimeter below the navel. Through the incision I examined the lower half of the stomach, the bottom of the liver, the intestinal canals and other visible organs but there were no special changes. Then I moved the appendix and brought out the worm-like projection and displayed it. I did not perform the operation of cutting it off. Lieutenant, junior grade KINOSHITA (medical corps) was the one who assisted me here and there and those who looked on were Lieutenant KURO (medical corps), head corporals HORAYASHI, and others, particularly two or three corporals whose names I do not remember.

I remember that Ensign YOSHINUMA (Construction) looked in from the entrance once in a while.

Just at that time the command was given, "All personnel assemble alongside the dispensary." I thought to myself that the first time they herded the prisoners over to the dispensary and now the giving of a second command is probably on account of some special measure. At that time the command was given the one prisoner who was outside was taken away when it was said, "Take him away."

I announced the end of the operation and had temporary bandages applied. Head Corporal HORAYASHI gave the directions and they carried the prisoner out. I absent-mindedly went to a spot about thirty meters behind the dispensary. The figure of the prisoners who had previously been brought to the scene was no longer to be seen. I think that the people present were only a number of seamen.

At the scene there was a hole about two meters in diameter. I think Lieutenant, junior grade KINOSHITA (medical corps), Ensign YOSHINUMA, (Construction), Lieutenant KURO (medical corps), Head Corporal HORAYASHI, Ensign KIKUCHI (Dental Corps), and four or five other petty officers and men were there.

When I went to the scene Ensign KIKUCHI called, "Hey, I'll cut off his head," and went to the dispensary to get his own sword. I tentily consented. That I did not give the order to cut off the head and the fact that I did not stop him was probably due to the fact that by a quirk of fate the order from those above me to "get rid of them" had possessed my mind and the second order for a general assembly already suggested more decisive results.

Learning the method of cutting off the head from Ensign YOSHINUMA and being advised as to the position of his feet by Head Corporal HORAYASHI, Ensign KIKUCHI cut the prisoner down and cut off his head.

Head Corporal HORAYASHI took care of the final details at that spot.

I reported the results to the executive officer. I learned immediately that another prisoner had been stabbed to death. As to who

CERTIFIED TO

JAMES P. HENRY, JR.
Lieut., JCN
Judge Advocate.

+ 2 +

"Exhibit 5(2)"

1403

stabbed the prisoner, after the war was over I remember hearing from Head Carpenter HIRAYASHI that it was the then senior corporal of the guard (I don't know his name.) I think he later advanced to Warrant Officer.

During the clean-up within the unit, receiving orders from the higher authorities (fleet headquarters + commanding officer), Head Carpenter HIRAYASHI chiefly dug up the bones and burned them.

The reason the name of the man involved in the incident at that time or the people who were near us are vague in my memory is because it happened very shortly after I arrived for duty at the guard unit, I was not in good health, and I was excited myself. Consequently, I absolutely cannot recall them.

24 March 1947

USPO, Chisato

I hereby certify the above to be a true and complete translation to the best of my ability of the original statement written in Japanese.

Frederick F. Ismayne
FREDERICK F. ISMAYNE,
Lieutenant (jg), USN,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

• 2 •

USPO 5(3)

1404

ORIGINAL STATEMENT BY UENO, CHISATO, SURGEON COMMANDER, IMPERIAL
JAPANESE NAVY.
(appended to the original record)

1405

1405

Personality Certification
of Susta Tanaka,

To: U.S. Military Commission Marianas Area.
Date: 3 Sept. 1947.

By: Seta Tanaka
(Susta's mother)

of Hiraoka, Shiozaki Village, Sarashina Gun, Nagano Prefecture.

Sirs;

I am the mother of Susta Tanaka, former naval petty officer first class. It was 18 years ago when Susta married my daughter and came to live with us. During those 18 years I have lived together with him but I have not quarreled with him, not even once. It was because he had always respected me as his mother-in-law and did everything just as I told him to do. He spoke little and today he is the father of four children. From morning till night he worked hard at a rather monotonous farm work and was building up a happy home. Our neighborhood people used to call him, honest or sincere, and many village-office positions were offered to him.

His sense of responsibility was very strong and once he accepts any requests he never gave up until it was fulfilled. He was the type who could not rest in peace until a thing was completely done.

He was also very sympathetic. Sometimes I saw him listening to pathetic stories of some unfortunate people with tears in his eyes. Shall I say he was susceptible? I thought he was a possessor of a really tender-heart.

Susta is to face a trial as a war crime suspect. Should there be evidence of offense which may be termed war-crime. I think the act was involuntary and that he had only carried out orders received from his superiors.

I, who know thoroughly the really character of Susta can only think it to be so.

Simple as it is, I certify that the above statement is a certification on the character of Susta Tanaka.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

TESTIFIED TO BE A TRUE COPY

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

HUGH E. HERRICK, Jr.,
Lieutenant, USN.,
Interpreter.

"EXHIBIT 10 (a)"

1406

Personality Certificate

For Susa Tanaka.

Susa Tanaka is a pure farm operator of our village. Being a graduate of an agriculture school he has designed a versatile farm project, cultivating fruits beside the ordinary rice, wheat and vegetables. He was a model farmer working hard for increase in food production.

He is a possessor of a quiet, gentle and steady character and very earnest in everything. He spoke little and modest in his ways, but he was very sympathetic and won the friendship of many. He was the kind who could not refuse a request to do a favor.

At the village, he held public offices such as statistical-research worker, farmland committee member, deputy-assistant for provision supervision, section-chief of a fire squad, etc. The accuracy in his investigations and the faithfulness in carrying out the instructions of his seniors was his outstanding virtue. Aging he was very polite, respecting his seniors, associating on good terms with his neighbors and friends. He possessed the virtues which won the respect of the village folks.

When we were informed about his apprehension as a war crime suspect there wasn't a single person in the whole village who wasn't distressed at the unexpected news.

But the village people who fully know his character are confident that his innocence will be proved and that he will again return to us.

We certify that the above is a true description of Susa Tanaka's personality.

Date: 1 September 1947.

Signed,

Tatsuji Kabe,
Village-head of Shionaki Village
Sawashino-Gun, Nagano Prefecture.

Countersigned by,

Suteno Ito,
Chairman, Agrarian Association Shionaki Village,

Saburo Nakayama,
Principal, Shionaki Grammar School.

Toshio Takayama,
Principal, Shionaki Middle School.

Katsuo Arai,
Chief, Fire Department of Shionaki Village.

CERTIFIED TRUE COPY
James P. Kenny
JAMES P. KENNY,
Lieut., USA
Judge Advocate.

"EXHIBIT 11 (a) (1)"

1407

Sadayoshi Hoshino,
Master, Boy Scout Association of Shionaki Village.

Shigeroku Masuda
Head of Shionaki Village Post Office.

Representing friends,

Hitaro Higuchi,

Representing neighbors,

Ume Hatanaka,

To: Marianas Military Commission.

I certify the above, consisting of two (2) typewritten pages, to be
a true and complete translation of the original petition to the best of
my ability.

EUGENE E. HERRICK, Jr.,
Lieutenant, USMC.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

FORM 11 (a) (2)

1408

Identification of Personality

Re - petty officers: Santa Tanaka,
To: Chairman of Military Affairs.

I am the uncle of Santa Tanaka. I have known him since he became a member of Tanaka's family. He is very obedient and very affectionate to his wife and children. He is religious and very sympathetic, and has very strong sense of responsibility and is a owner of strong character.

He is a very diligent farmer and started the cultivation of fruits soon after he became the member of Tanaka's family.

He was drafted and left the home with heavy heart but fortunately when the war ended, he returned safely in the fall of 1945.

He tried to restore the dilapidated fields and orchards with the help of his mother and wife when he was unexpectedly taken as a suspected war criminal. It broke my heart when I saw him grieve and apologise for his unworthiness to his mother and wife at his departure.

As I know him the best, I would like to certify that Santa Tanaka is an owner of strong sense of responsibility and sympathy and is an honest and upright farmer.

Santa's uncle: Yosimasa Yamagishi

Hikage, Shinonoi-machi, Serashina
gun, Nagano-ken.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

IDENTIFIED BY: TRUE COPY
JAMES P. KENNY,
Lieut., USN
Judge Advocate.

"EXHIBIT 12 (a)"

1409

Character Witness

For: Susta Tanaka
To: Marianas Military Commission.

Ex-naval petty officer first-class Susta Tanaka was married into my branch family from Aomiyagata Mura, Nishinagun, Nagano Prefecture. He is very gentle and sympathetic as well as an earnest and honest man. Therefore he won the confidence of many people and was frequently recommended to public office positions.

The village people used to call him a very fine man and we were also proud of him.

We were very sorry to learn that he was recently interned and wish he would soon be released.

Date: 6 September 1947.

Signed: Inuye Tanaka

Shioakimura, Sarashinagun, Nagano Prefecture.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"SECRET 13(a)"

14 10

Character Certification

Santa Tama

The above named graduated from Course One of this school in 1920. When he was a student of this school, he was sincere and quiet. He was very popular among his classmates and favored by his teachers. After graduation from school he operated a farm. He is a character which we cannot think could be a war crime suspect. I certify the above to be correct.

Signed,

Shoichi Sato

Principal, Sarashina School of Agriculture.

Dated: 4 Sept. 1947.

To: The Chairman of Military Commission in Marianas.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. HERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE TRUE COPY.

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

"EXHIBIT 14(a)"

1411

Petition for Mitigation

To: The President of the Commission.

I heard here on Guam that Tanaka, Susta stabbed and killed a American POW with a rifle with fixed bayonet.

Since 1924 to the end of the war for 22 years I was in the military service. I believe it is the same in any country, but in a military service orders are absolute. We have been taught all along that one is not permitted to do what he thinks against any orders, and if one does such a thing, he is charged with a server penalty. Every action even the smallest things should be done under orders. The function of the Japanese military does not recognize individual will. I do not think that a mere enlisted man, Tanaka, Susta, could not have acted on his own account under such strict discipline without an order. I do not know what kind of a person Tanaka, Susta is, but I believe he acted under orders. In thinking as above, I beg of you to consider his being as one enlisted man, and ask for leniency.

10 Oct., 1947.

/s/ Yoshinuma, Yoshiharu.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

BURKE E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

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

"Exhibit 15 (a)"

14 12

Character Witness by Kiniko Eriguchi, Kani-Yanada, Yanada-machi, Fukuoka Prefecture.

To : Allied Military Commission Marianna.

Date: 5 September 1947

Sirs:

I am the wife of Takashi Eriguchi who was confined in February 1947. I wish to state my observation of his character.

He lost his father in childhood and was brought up by his mother. He grew up to be a possessor of a gentle and noble character. Of the five boys in the family he was the one who prayed most for his mother's happiness. When the war ended he was greatly worried about his mother's welfare who had been living for the past thirty years in Port Arthur, Kwantung Province. The territory was under Soviet control. If she ever came back to Japan, he was saying he would bring her to live with us so that he may return the debt he owed her. He became a father in April and before that he used to talk about pleasant dreams. When he grew up to attend college, he chose a profession which suited his character. He was fond of dogs and cats and was always wanting to help others. He used to say that, "medicine is a benevolent art," and in the future hoped to help the poor. From September 1946 he became the dentist for the Mitsubishi Kani-Yanada Hospital and worked for the miners who worked day and night. Once he started working he forgot about his own personal affairs and when he could have left the office at four o'clock he stayed till seven or eight in the evening. Even on the four days a month holidays he was entitled to, he went to the office, saying somebody might be needing the only dentist in the hospital. When he had a patient who was a rare case he would come home and look up books without even eating supper. So when we were walking in the town his patients when we met on the street would say, "thank you Doctor Eriguchi I'm much better now." I was very happy to hear it.

It is already half a year since he has been arrested and the hospital has not officially employed a dentist. The three thousand or more mine-workers of Kani-Yanada coal mine anxiously wait for his return. It proves how earnest he was working for them. He also studied together with his colleague doctors on surgery etc. As a sportsman he played table-tennis, lawn-tennis, baseball etc. I am confident that he will help the people who are in need of dental care with the spirit of human love.

The above statement is the solemn truth.

Kiniko Eriguchi
Kani-Yanada, Yanada-machi, Fukuoka Prefecture.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 16 (a)"

**AFFIDAVIT OF CHARACTER OF KIKUCHI, Takashi, former DENTIST,
LIEUTENANT (JUNIOR GRADE), IMPERIAL JAPANESE NAVY.**

I am the elder brother of the above named person, and we were brought up together since the time we were very young. We lived with our parents in the city of Port Arthur when we were children and when we were school-boys in grammar school and the junior high school. After that we went up to Tokyo and lived in the same house to go to the Tokyo Dental College.

Therefore, I know the character of my younger brother better than anyone else.

I would like to think of him as I recall, and to state about his character.

My brother had a deep affection and was very righteous.

We had Manchurian employees in our store, and it was my brother who was respected and loved most among these people. He was bright, benevolent and chivalrous, so he was loved by everybody.

My brother loved creatures and plants, especially ^{the} former. In summer when night stalls opened, we used to go out with our father to buy gold fish and carp. We always teased my father into buying big ones. After we came home, we put them into the pond or the basin, and it was always my brother went to the pond with biscuits in the morning, they rose up to the surface as if they knew my brother. Our dog was also his dear playmate.

My brother loved gardening, too, and he planted many flowers in the garden. One day, when I was a student at junior high school, I picked cosmos while rambling in the garden thinking to decorate my study with it. When I met my brother and he said that he was very sorry for the flower because it was blooming very beautifully and freely. I can still recall these words.

My brother liked sports, too. Like our father, he had a very bright nature and enjoyed all sports. He often played baseball and ping-pong with me. Skating in winter is our dearest recollection, and my brother was the best skater in our school.

In short, he was bright, righteous and affectionate.

When he left Japan he said to us delightfully, "I am a doctor. If I have a chance to visit barbarian islands of the South, I shall treat the inhabitants of those islands with deep affection as the European priests did in Africa or in South America." And he went to the front.

My brother is such a person as I have mentioned, and I can not believe that he should violate righteousness and humanity.

I have just stated the true character of my brother and I would like to submit it to your kind consideration.

CERTIFIED TO BE A TRUE COPY

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

July 1947

(Signed and sealed)

KIKUCHI, Takashi.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability and belief.

WILLIAM H. HANSEN, JR.
Lieutenant, USN,
Interpreter.

EXHIBIT 17 (4)

Character Witness for Takeshi Higuchi, former Naval Medical Officer
Lieutenant Junior Grade Dental Surgeon.

To : Marianas Military Commission.

Date: 5 September 1947.

Sirs:

Mr. Takeshi Higuchi was employed by this mining firm on 24 September 1946 and for half a year served at the hospital of the coal mine firm as the only dentist in charge of the hygiene of three thousand coal miners. His self-sacrificing service to approximately fifty patients every day and his excellent skill and cheerful, kind, efficient manner as well as his strong sense of responsibility with impartial spirit of love to all together with his sincere attitude soon became the object of his colleagues and patients respect. As a dentist he was an indispensable man to the coal mine.

Besides his regular duties as a dentist, whenever our coal mining firm held a sports meet he volunteered to offer his service. In the games he showed the real spirit of sportsmanship he acquired in college. While being modest nevertheless he fought fair and square. He was also faithful to his friends. In watching him playing sports he gave the impression of a good sportsman. Therefore we were very surprised to learn he was taken into custody.

The undersigned certify that the above statement is true and correct.

Kami-Yamada, Yamada Hachi, Fukuoka Prefecture.
Mitsubishi Mining Works Ltd., Iizuka Branch,
Kami-Yamada Mining District.

Mine Director:

Iasuma Tsukiyama

Hospital Director:

Tatsu Tsukiyama

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KENNEDY, Jr.,
Lieutenant, USN,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 18 (a)"

14 15

Witness Camp, Guam.
10 September 1947.

From: TANEDA, Tameo, former Surgeon Captain, Imperial Japanese Navy.
To : Your Honor, the Presiding Judge ROBINSON, Military Commission for the War Crimes Trials.

Subject: Petition in behalf of Dentist HIGUCHI, Takachi.

Sir:

I would like to submit this petition respectfully. Dentist HIGUCHI, Takachi, who is confined as a war criminal suspect now is very mild and sincere, faithful to his duty, and is a kind, fine young gentleman. If he did actually commit a war crime, I am firmly convinced that he did it against his will being unable to resist the superior orders of the Japanese Armed Forces, because I know his character. I beg that you will consider the circumstances in his trial and that you will deal leniently with him. I would like to state what I know about his character on Truk as follows:

1. He was very kind not only to the patients but to everybody.

When he cured dental patients, he treated them with utmost kindness, so he was often forgetful of his sleep and other comforts. On account of that, he was visited by many patients. I heard many words of thanks from the patients and natives for his kindness.

2. He had a strong sense of responsibility toward his duty.

After the end of the war, everybody tried to go home as soon as possible even taking no heed of other people. But he had no such irresponsible intention. He proposed to me that he wanted to stay until the last so that he would treat his patients. Of course, I used to respect his character, but when I heard this proposal, I was very thankful and admired him very much.

3. He never speaks ill of others. Although he is young, he is a man of culture. He took bad words and behavior from others in good part and had no bad feeling toward anybody. I have many instances of that but I would like not to cite them, because they concern other persons.

4. Needless to say, he had the best reputation among his classmates, subordinates, officers and officers of other sections and natives.

I have just stated a part of his character. I certify with confidence that he was a man of really fine character among the young officers of the Japanese Forces.

Respectfully,

TANEDA, Tameo.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

CERTIFIED TO BE A TRUE COPY

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

ROBERT E. HARRIS, JR.
Lieutenant, U.S.N.R.
Interpreter.

Exhibit 19 (a)

AFFIDAVIT FOR THE CHARACTER

/s/ Oishi, Tetsuo,
Former Surgeon Lieutenant,
IJA.

Toward June, 1945, Fusan Branch Hospital of the 4th Naval Hospital was established on Fusan Island Truk Atoll, and Mr. Higurashi came to the island as a member of the hospital. Just at that time, I had a duty at the Fusan Detachment of the 4th Naval Construction Corps. I thus came to know him and was close to him for six months. Although we were together for only a short period, I think I could know what kind of person he was. Sworn by my conscience, I would like to testify the character of Mr. Higurashi, Tetsuo.

Mr. Higurashi, Tetsuo is an affectionate, person, or a warm-hearted person. Love is his dominant character.

When I talk to him, I feel something warm coming out from himself though I feel it is difficult to express in words. He does not speak in a different way from an ordinary person, but he uses the same words which common people speak. Yet there is a warmth in his words which I can not feel in the speech of other persons. That is why I came as close to him as if I had been his brother. Not only I but also many other persons loved Mr. Higurashi.

At that time, Truk Atoll was entirely isolated in the Pacific Ocean, and our provisions were very short. On that account, we all felt uneasy, desperate and hopeless, and we were spiritless and absentminded. When we had a meeting, the atmosphere was apt to become gloomy. But whenever Mr. Higurashi was with us his warm sentiments eased and comforted our melancholy. I had experienced this many times.

He is very polite, and is never impolite even among very friendly terms. As a navy officer, he obeyed orders of his superiors and loved his subordinates.

When I visited him at the Fusan Branch Hospital, I often found him outwitting the field of sweet-potatoes with enlisted men. At that time, the only food for us was sweet-potatoes. As I approached the field and looking at him working he noticed me. He used to say, "I've got to work one more hour. Please wait in my room. He had a clear distinction between official and private affairs and carried out what responsibility he had to discharge. He was an honest young officer.

I know one instance in which he met a special occasion and behaved accordingly to a right judgment. It was immediately after the end of the war when ammunitions were being thrown into the sea by the order of the American forces. At that time, the ammunition piled up near a pier of Fusan exploded spontaneously and more than ten persons were killed or injured. Mr. Higurashi was then intending to go to Dublin and happened to be near the pier, and met this incident. He immediately ordered his men to carry the dead and injured to the dispensary of the military supply center which was located near the pier. Then he gave them first-aid treatment and telephoned the matter to all surgeons of Fusan. I arrived at the place first. After

CERTIFIED TO BE A TRUE COPY

JAMES P. KERRY,
Lieut., USN
Judge Advocate.

"Exhibit 20(a)"

explaining to me all about the incident, he said to me, "I would like to help you if you allow me to do so," and he treated the injured person according to my direction.

From this incident, I knew that he was a man who does anything positively if it was good.

I believe that a man like Mr. Higuchi is necessary for the society which seeks liberty and love.

He is a young man who is affectionate to others, attaches a great weight to his responsibility and carries out his duty diligently.

Sworn by my conscience, I certify that the above is true.

14 October 1947.

/s/ Oishi, Tetsuo.

To Your Honor, The President and Members of the Military Commission,
Marianas Area.

I hereby certify the above, consisting of two (2) typewritten pages, to be a true and complete translation of the original petition to the best of my ability.

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

COPIED TO 24 & TRUE COPY

James P. KERRY
JAMES P. KERRY,
Lieut., USN
Judge Advocate.

Exhibit 20 2(a)

14 18

Personality Certification of
Kasumi Kobayashi.

of Oyama Clinic, No. 995, Oyama,
Oyama, Naka-gun, Kanagawa-Prefecture.

To: U.S. Military Commission Marianas Area.
Date: 3 September 1947.

Sirs;

Mr. Kasumi Kobayashi began working at the Oyama Clinic since July 1946 when it was first established. During the time I had known him I shall state here my impressions of Mr. Kobayashi.

The town of Oyama is located on a mountainous and rocky road. It did not have a doctor and due to delay or lack of adequate medical care there were many unfortunate cases.

Mr. Kobayashi was touched by this condition and inspired by love for his own people he worked day and night, unselfishly devoting himself in pursuit of his duties as a doctor. He excelled in prophylactic medical science. Assisting the head doctor of the clinic he worked diligently.

Mr. Kobayashi possessed strong will power. He was faithful to his work and very obedient. He was also quiet and very sympathetic and the whole people of the town sought to receive his treatment.

Again in January this year when a person was found dead on the road he braved the cold and snowstorm and proceeded to the spot. His conduct was really honorable and even today the people who went with him on that day praise him.

In this way, the fact that Mr. Kobayashi, stayed at the Oyama Clinic served as a source of strength for the people of the town. It lighted a warm glow in the hearts of the people. Today, Mr. Kobayashi is a character which this town cannot afford to lose.

In private life Mr. Kobayashi's family is just his wife. He is a man of integrity and sociable as well as a refined man of good character and not once have I heard any bad rumors about him.

It is my conjecture but judging from Mr. Kobayashi's personality as I have just stated here, I cannot think he could have violated laws or regulations of war during his years in military service. Should there be an offense I am confident that it was not the voluntary act of Mr. Kobayashi's.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

VERIFIED TO BE A TRUE COPY

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

HENRY E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

"Exhibit 21 (a)"

1419

Personality Certification

For Kazumi Kobayashi

By Kiyoshi Naguro
(High Priest of Aizu Shrine)
Location: Oyama, Oyama Village
Naka-gun Kanagawa Prefecture.

Date: 3 Sept. 1947.

To: Marianas U.S. Military Commission.

Kazumi Kobayashi was an obedient and diligent man who faithfully served long years in the navy. In land hospitals and on board hospital ships his diligence and skill as a nurse was recognized and he gradually rose to the rank of an officer. Especially, through his long years of experience, his skill at diagnosis of the sick was outstanding and contributed not only to the promotion of medical practice in the navy, but for the general public as well.

When the war ended and he was demobilized, he fully demonstrated his self-sacrificing spirit and outstanding skill and established a clinic in Oyama village which was without a doctor for a long time. He continued a self-sacrificing activity in calling on patients, nursing them regardless of how far away they lived. Therefore, he was respected and an object of gratitude of the town people. There are many beautiful episodes about his good deeds. He was somebody the town could not do without in promoting the welfare and health of the people. Moreover, the locality of the town is a sacred area where tens of thousands of religious devotees in the Kanto District come to pray and visit shrines. To some unfortunate devotees who fall ill, it is customary for this town, being the center of a religious area to nurse such people by doing all we can. The town has therefore won the praise of many devotees.

I hereby certify that the above statement describes Mr. Kobayashi's character.

I certify the above to be a true and complete translation of the original translation petition to the best of my ability.

DURHAM E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Form 22 (a)"

1420

**Personality Certification of
Kazumi Kobayashi.**

Date of birth: January 7, 1911.

Courteous and sincere, a possessor of a noble and true character, as well as being very abedient and cherishing strong sense of responsibility. Never subdued by difficulties, he had the courage to never falter until a thing was accomplished. He never hesitated to sacrifice himself for the benefit of the society and his willingness to work for the happiness of others won the heartfelt confidence of a very great many people.

At the request of the people of Oyama, our hospital decided to set up a clinic in Oyama. Mr. Kobayashi was chosen to the post of head-secretary and assistant-doctor. Practically all the work was managed by him along. His noble character, strong sense of responsibility and unselfish service together with his kindhearted ways contributed greatly to the success of the clinic. He was truly a fine pattern of a good character.

Signed;

**Wataru Kobuchi
Head of Hiratsuka Fraternity
Hospital.**

To: Marianas Military Commission.

Date: 5 September 1947.

**I certify the above to be a true and complete translation of the
original petition to the best of my ability.**

**EUGENE E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.**

CERTIFIED TO BE A TRUE COPY
James P. Kenny
**JAMES P. KENNY,
Lieut., USN
Judge Advocate.**

23(a)

1421

PETITION IN BEHALF OF FORMER COMRADE HENSON HIRAYASHI, Kazumi, I.J.N.

TO: The President of the U.S. Military Commission.

Since I entered the navy in 1941, I have been taught and guided by him, as his junior and subordinate. After completing training in boot camp, I entered the practical course for corporals for three months, at the Contagious Ward Yokosuka Naval Hospital, where he was the assistant chief of the ward. While in the regular course and higher course of six months each, he was our barracks master or the assistant, and received from him detailed practical training. Then, when I became one of the personnel of the above hospital for one year, he was a petty officer and guided us. After that we were separated and never had a chance to serve together. In 1944 he came to the Forty-first Guard Unit as its head corporal. So I was again able to come in contact with him. Therefore, I know HIRAYASHI very well.

Most of my impression of HIRAYASHI, I received ten years ago when I was a recruit. The impression of him has had a great influence upon my character. Truly he is one of my most respected persons. As a military man he is gentle, sincere, faithful, with a strong sense for responsibility and truly a man to be trusted.

His stature is small. His gentle feature expresses his kindness. When we look into his calm eyes, we are able to detect his prudence and ceaseless effort that he had made in character building. He was always trusted by his superiors. He was always kind towards his inferiors and was looked up as our example. He was more of a practical man than one who talks. He would tell us about his experiences. When a subordinate made a mistake he would not scold him on the spot, but would calmly teach him why it was the wrong thing. Such was his way of leading and guiding us.

He would never force us to do any unreasonable thing and never used brutality against his subordinates, which has been the malpractice of people in authority ignoring personal right and abusing their power. He would always take the initiative in doing the difficult things himself. This point together with his kindness is one of his greatest merits which we all praised.

As he was a man of the above character, he lived up to the spirit of the Red Cross as a member of the medical corps. Whenever he found leisure time from his work, he would go around and visit the patients. He saw it to it that the patient received recreation and care.

He would tolerate no unwelcome on the part of the patients. He would tell them that the slightest carelessness would cause serious setbacks and taught them to bear momentary pains for the sake of recovery.

The above is just a glance at his character. During his navy life he exerted every effort in character building and polishing up his strong points.

CERTIFIED TO BE A TRUE COPY

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

- 1 -

EXHIBIT 24 (a)

1422

I was most sorry to learn of his present situation. Not only myself who is so much indebted to him, but also all of his former subordinates, I believe feel the same way about him.

I do not know what crime he committed. If he has done anything in violation of the American law, I believe it was because of his loyalty to his superior and that he unavoidably obeyed superior orders because of the strict obedience taught in the service.

Under the guidance of the allied powers, Japan is now reconstructing her nation according to the ideals of democracy. The realization of this ideal means the elimination of oppression from our rights, the promotion of our personality, and the erasing of the word war crime from the pages of the future history. We must warn our successors of the past. We are under the obligation to build this ideal state. But we must not forget that before us lies many difficulties. When we think of this ordeal, I feel that men like HIRAYASHI is needed for this task in Japan now. I am convinced that he will become an exemplary citizen in this ideal state that we cherish so much to build.

Members of the commission. I beg that you consider the high qualities of HIRAYASHI and render him the opportunity to exert his effort in the construction of a New Japan.

Respectfully,

HIRASHI, Hiroshi.
Former Japanese Chief Petty Officer.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

EDWARD E. KERRICK, Jr.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

• 2 •

EXHIBIT 24 (a)

1423

CHARACTER WITNESS

FOR: USNS, Suroi, ex-naval surgeon commander.
BY: USNS, Matsushima
OF: 907 Ito-cho, Shiga-gun, Tochigi Prefecture.
TO: U. S. Military Commission HAWAIIAN ISLANDS.

Sirs:

A half-year has elapsed since my father has been apprehended and confined as a war crime suspect. I have not heard anything from him since then. I am very anxious to know. The absence of father from our peaceful home is a great blow to all of us.

It may be because it was he who was supporting the family but I think it is his ways of setting fine patterns in every day life and teaching us to be good. Now that father is gone his fine patterns come back to us with reminiscence. I can remember ever since I was five or six that I never held any feeling of dissatisfaction against father. Due to my father's profession we moved from Utsumiya, Choshi, Iwate, Saito, etc., but father always kept dogs and small birds. Sometimes we had as many as four or five. In his free hours in the morning and in the evenings he used to look after them. Once when a pet dog suffered from a fishbone stuck in the throat he gave the dog injections and inspirator treatments. He even brought the dog into the living room to sleep. Besides caring for such pet animals he also made vegetable gardens. It was another of his hobbies. I heard that in his middle-school days father was a good baseball player. After he entered the navy service he did not seem to find the opportunity to play baseball but I do recall him telling me about appearing in a newspaper with his photograph when he visited Australia as a Lieutenant, junior grade. I still have that clipping in my album.

Father disliked telling lies, so whenever we behaved wrong and unless we frankly told him we were sorry for it, he would make us sit before him and make us listen to his story of George Washington. When he finished, he only put his hands on our heads and quietly said you will never be like George Washington if you act like that again. Father was usually earnest when attending to grandmother. As we grew up and at times when we failed to do as father taught us, he would call us and talk to us about filial piety. However, not once have I ever been punished with beatings. My father's conviction was that a man's sincerity will strongly influence another. "If you speak earnestly enough you are sure to convince the other. If you are still unsuccessful it means that it would be useless to change his wrong attitude. But you are my children I know you will believe my words and advice." His creed was to talk with sincerity and not use force.

Today when I reflect upon my father's character I find no man who walked through life as nobly and with fairness as father. I respect my father with all my heart.

I do not hesitate to say that he is the finest character I know of. I do not know on what grounds my father has been apprehended for but I am confident he is innocent. I know the proverb father wrote himself, and which I posted on the wall in my room will guide us to live honestly.

CERTIFIED TO BE A TRUE COPY

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

EXHIBIT 25 (2) (a)

1424

Fulfill your duties first and then
say whatever you have in mind.
What you say you shall reap.
Effort is the soul of progress.
Do whatever you can, yourself.
Reflect upon yourself everyday and
correct yourself by watching others.

Sirs, we pray for his early release. If this petition should be of
any value in proving the noble character of my father nothing can make me
more happier.

UNSC, Matsukida

I hereby certify the above to be a true and complete translation of
the original petition in Japanese to the best of my ability.

EDWARD E. KENNEDY, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY -

James P. Kenny
JAMES P. KENNY

Lieut., USN

Judge Advocate.

FORM 25 (a) (a)

1425

CHARACTER WITNESS

FOR: USNO, Chicago.
Former Naval Medical Officer, Commander.

BY : ZEN TAKADA, Professor.
Surgery Department of Tokyo Jikeikai Medical College.

DATE: 9 September 1947

TO : MARIANAS Military Commission.

Sigs:

USNO, Chicago, graduated from the Tokyo Jikeikai Medical College in 1932. After graduation he was appointed as Assistant and for about half a year he worked at the surgery department.

He was quiet and industrious, as well as being extremely earnest in his studies. When dealing with the patients he was kind and gave them medical care with a warm heart. I considered him to be a man of high character.

ZEN TAKADA

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

EDWARD E. KERRICK, JR.
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY, JR.
Lieut., USN
Judge Advocate.

26(a)

1426

CHARACTER WITNESS

For: Chisato Ueno, former naval medical officer commander of No. 99 Yoita,
Yoita-machi, Shioya Gun Tochigi Prefecture.

3 September 1947

To: U. S. Military Commission.

Sirs:

As schoolteacher in charge of the above named Chisato Ueno when he was attending the Yoita Grammar School, I have been his teacher and for which reason I wish to state the following facts.

1. Life at home during his childhood days. He was brought up as the only boy among four sisters. One older and three younger sisters. But the home education of his parents was very good and there was no waywardness nor dissoluteness which we sometimes hear about. Therefore he was obedient, earnest and moreover grew up with a character of strong willpower.

2. Grammar School Days. He was gentle and kind to his friends and studied very earnestly. He always rated at the head or second in his class and at that time it was extremely difficult to pass the entrance examinations to the Utsunomiya Middle School but, he was admitted with high grades.

3. Middle School Days. From his first year to the third year he was in the dormitory. He was absorbed in baseball and his studies were apt to be neglected. So he moved to the home of Mr. Sakiguchi, teacher at the Utsunomiya Girls High School, and devoted himself to his studies. Therefore he entered the Jikei Medical College when he graduated.

4. As a Medical Practitioner. After the termination of the war he was demobilized and took up the work of his deceased father and engaged in the management of a hospital. Through the influence of his father and his own earnestness and kindness as well as his fine attitude, he won the confidence of the town, not to speak of his patients. Especially his visiting patients in the night hours, regardless of wind or rain, saved the lives of a considerable number of patients.

5. As the Father of His Family. He never neglected to attend to his mother with devotion. As to his wife and children he was very quiet. He was especially earnest in the education of his children. Consequently his two sons, who are in the fourth and second years at middle school are both brilliant students.

6. The voice of the people of the town. Because he is industrious and kind, his reputation was very high. He devoted heart and soul with a conviction to help his patients. Moreover, he took the leadership in promoting public hygiene.

I certify that the above statement is an impartial observation of his character.

Sakurai Gyu
of 930 Yoita, Yoita Machi, Shioya-Gun,
Tochigi Prefecture.

CERTIFIED TO BE A TRUE COPY

I certify the above to be a true and complete translation of the original petition to the best of my ability.

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

Burns E. HERRICK, Jr.
BURNS E. HERRICK, Jr.,
Lieutenant, USN,
Interpreter.

"Exhibit 27 (a)"

1427

Character Witness.

For: Chisato Ueno,

By: Eunie Kinoshita,
1479, Yaita-machi, Shiroya-gun, Tochigi-Pref.

Date: 4 September 1947.

To: Marianas Military Commission.

Sirs;

On behalf of the inmates who have received the kind care of Doctor Chisato Ueno, (who was interned at Sugamo Prison by order of the Allied General Headquarters), I wish to submit a petition. (I shall refer to him as Doctor).

Doctor Ueno is an indispensable character for the town of Yaita. I fell ill in late January this year and received the care of a couple doctors, but the condition only grew worse until my life was stricken. I heard about the high reputation of Doctor Ueno and had him visit me. It was a cold dark night but he willingly and immediately came to see me and without sleeping a wink stayed at my bedside to watch until I had pulled through the critical stage. During those hours he did rest a moment. By his strong conviction to fulfil his responsibilities as a doctor and his efforts to carry it out saved my life. Words cannot express the gratitude of my wife and children. Especially, on the day when he was to be interned he came together with the officials and gave us his last diagnosis and instructions. His deep sense of responsibility really made us respect him. I am sure that it was not only myself who felt that way. I wish to say that no other doctor besides him could sacrifice himself for the sick regardless of rich or poor, day or night. The loss of Doctor Ueno is the sadness of the entire town of Yaita. The voices asking for the early return of Doctor Ueno is heard all over the town. Judging from the character which may be conjectured from what I have already stated and from the noble character which I had the privilege of knowing by being saved by him, I am willing to swear before God that Doctor Ueno is a man of righteousness and humanity, be it in the past, present or future.

The earlier Doctor Ueno is released, it will mean that many number of lives to be saved. And how relieved we will feel. Especially in times like today when medical goods are scarce, the sublime efforts of a doctor plays a major role for the happiness of humanity.

On behalf of the sick patients in my locality I certify that the above is a true account of Doctor Ueno's noble character.

I hereby certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

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

HUGHES E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

Exhibit 28(a)

1428

CHARACTER WITNESS

For: Chisato Ueno, ex-naval surgeon commander, 59 Yoita, Yoita Machi,
Shioya-Gun, Tochigi Prefecture.

By: Kotaro Shinonaki, Principal of Tochigi Prefectural Ashikaga Girl's
High School.

Date: September 1, 1947.

To: Marianas Military Commission.

Sirs:

As a friend of the above named Chisato Ueno, ex-naval surgeon commander, who was interned as a war crime suspect, I submit to you a request for a commutation of his sentence at the trial.

For twenty-eight years we have known each other, ever since 1919 when we enrolled together at the Utsumiya Middle School. We began middle school lives together by sharing the same room in the dormitory. As we advanced in school our friendship also grew with the years, and at length we promised each other that we would be like real brothers sharing happiness and hardship alike and together.

When he was attending the Jikeikai Medical College in Tokyo, I was also studying in Tokyo. We met once or twice a week, talking about the present and future, like young college students. After leaving school we have continued our friendship. Therefore I think I am justified in stating that I understand the character, thoughts and its formation, of Senri the best. I believe I possess the qualification to state grounds for his innocence, not only for sentimental reasons but from an impartial standpoint.

As a boy he spoke little, steady and honest, and methodical. He possessed a strong sense of righteousness and also gentility. He was especially devoted to looking after his mother and younger sisters. His love was strongly and widely expressed towards such small animals as dogs and small birds. As an example of his upright character I wish to state here how he challenged a minority group of delinquent upper grade boys in middle school, by advocating the reformation of morals among students. As for filial piety, he frequently used to tell me that he wished he could finish school early so that he could help his aged father. He used to cut down school expenses to help his father's burden.

His ardent love for knowledge grew as he became older and unlike other students, he even stayed in on Sunday mornings to study. His feelings towards nature, used for experiments, was extremely complicated. One day when we went on a camping tour in summer we came across a bull-frog cornered by a snake. He was almost frantic attempting to chase away the snake. A friend in our group commented on his conduct and said, "It is a world where the stronger one wins. Even if temporarily saved today the fate of a settled destiny can never be changed." To which he answered, "Maybe you may be right, but I cannot idly watch a stronger thing preying upon a weaker thing."

His love for art was strong. He was fond of pictures and artistic dolls. When strolling down the Ginza Street he used to stand before some shop-windows fascinated by some highly skilled works on dolls. He used to

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

"Exhibit 29(a)(1)"

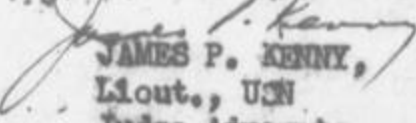
sound like somebody in Charles Lamb's "Old China" when he said, "but I can't afford to buy it." He also liked literature. In fact he had an equal number of books on novels and poetry as he did books on medicine. A certain translation from French, a compilation of poetry was just like a fond pet dog to him. He used to tell me about German literature and I, about English literature. It was natural that he became interested in Ogai Mori an army surgeon and noted writer at the same time. Such tendencies in Senri was elevated to love for humanity. He visited the graves of Senchi Matsuno and Lafcadio Hearn. When walking together he would talk about the immortality and universality of art. Like the feelings of any youth, gazing at the stars which shine in the boundless sky he realized the uselessness of mankind's conflicts and talked about a world where all mankind worked together to realize a world without wars, a world where all people awakened to brotherhood feelings through union of learnings and art. Senri who entered the navy to "prevent war" was trusted by his superiors and respected by his subordinates which was largely due to his lofty ideals and fine character. Trips to distant countries gave him an opportunity to come in contact with many people and further convinced him for the necessity of universal brotherhood. After his discharge from the naval service he gained opportunity to help the people of his native town with the skill he had acquired as a naval surgeon. At times he even gave up his breakfast saying he did not want to keep his patients waiting long. Even late in the night he visited a distant patient. By his bedside he always kept a flashlight, coat and other necessary things so that he could immediately respond to an urgent call. He was really self-sacrificing.

The reason for his recent apprehension I believe must be to take the responsibility for a crime committed by his subordinates at the front. He was a man who hesitated to experiment on animals even for the purpose of a medical practice. It is unthinkable that he could have mistreated a service-man who was of the same nationality as Abraham Lincoln, either by himself in person or ordered others to do so. I also think his men were influenced through daily training and guidance by the sublime love for humanity and high ideals cherished by their commanding officer. If there should be a crime committed, it must have been by a few exception minority who never understood the real feelings of their commanding officer.

The commanding officer cannot evade responsibility for any mistakes committed by his subordinates. I also know that a penalty must be paid for a crime regardless of the thoughts and character of a certain person in daily life.

However, I who have known Senri since the middle school days fully understand his thoughts and character and I have here stated the impartial opinions concerning the quiet doctor who followed the footsteps of Doctor Hideo Noguchi and endeavored to realize peace and happiness for all mankind.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

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

DURHAM E. KERRICK, Jr.,
 Lieutenant, USNR,
 Interpreter.

"Exhibit 29 (a)(2)"

1430

Character Witness

For: Chiato Ueno
Ex-naval surgeon-commander
No. 907 Yaite, Yaite Machi, Shoyagun, Tohigi Prefecture,
Director of Ueno Hospital.

To: Marianas Military Commission.

1. He was an honest boy.

(a) He never lied. Not even in a joke. His friends sometimes even laughed at him for being too honest.

(b) Even after he advanced to college in Tokyo he kept account of school expenses. For example how much for tuition fee, for room and board, for books, for car-fares, for pocket money, etc. He sent detailed accounts to his parents and it used to make them laugh.

2. He was a really rare character in attending to his parents.

(a) From boyhood he never disobeyed his parents. A rich man's only son it apt to be spoiled but he was different. He was obedient and his parents never punished him.

(b) He never quarreled or got involved in mischief. It seems to me that even as a boy he knew it would bring trouble to his own father.

(c) He never went out of his room without telling where he was going. He did not like to go far nor did he associate with the spoiled students.

(d) He was always ambitious and building up his body. He used to make his parents happy by telling the, "Some day he will try to be successful character."

3. He was extremely kind.

(a) When he was 12 or 13 years old, his pet dog fell through the glass covered roof of a green house and was killed by a piece of shattered glass which pierced its heart. After crying over an hour, clinging to the dead dog, he buried him in one corner of the garden. He visited the grave time and again with flowers etc.

(b) When a friend happened to get slighted injuries he brought that friend to his home, to his father and would ask him to give him the necessary treatment. So his small friends soon began to respect him. The neighborhood naturally began to call him "a really fine boy."

(c) When he was attending middle school, a friend by the name of Takasaki, a student of the Higher School in Sendai, was badly in need of schooling funds. Upon hearing about it his sympathy was expressed by giving that student 15 yen every month from his own pocket money. Takasaki was able to continue his studies and after graduation later became doctor of medicine. He went to the fronts and to this day his whereabouts is still unknown.

(d) After he advanced to the Tokyo Jikei Medical College there is another story very similar to the above. When he was in third year at college he came home on Saturday and told his father he had a classmate

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James P. Kenny
JAMES P. KENNY,
Lieut., JCN
Judge Advocate.

"Exhibit 30 1 (a)"

1431

who was in trouble. His classmate had to give up school because his father could not continue sending money. Chinato pleaded to his father to help his friend out. He said that if he had a brother his father would also send him to college. Chinato's father readily accepted his son's entreaty and told Chinato to go back and bring the classmate and his father to him. He went back to Tokyo that very night and brought the worried father and son to his home. Kanaaki, the schoolmate was able to graduate school and became a doctor. To return the gratitude he worked for about two years at the Ueno Hospital. He is now a doctor for the Japan Life Insurance Company.

Born of a father who was respected as a great man, and a mother who was a sagacious woman of high reputation, his home education was very good. I wish to state here again that Chinato was an honest, obedient and kind man.

I certify that the above statement is true and correct.

Date: 5 September 1947.

Signed:

Yasushi Takahashi
Headman of Yaita Town Shioya-Gun, Tochigi
Prefecture.

Mitsuo Matsumoto
Vice-Headman of Yaita, Shioya-Gun, Tochigi
Prefecture.

Kanujiro Kimijima
Vice-Headman of Yaita Shioya-Gun, Tochigi
Prefecture.

Sakumasa Terjima
Chairman of Yaita Committee Shioya-Gun,
Tochigi Prefecture.

I hereby certify the above, consisting of two (2) typewritten pages, to be a true and complete translation of the original petition to the best of my ability.

HUGHES H. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

30 2(a)

1432

CHARACTER WITNESS

FOR: UENO, Seizi, ex-naval surgeon commander.
BY : UENO, Yoshie
907 Tsuta-machi, Shioya-gun, Tohigi Prefecture
TO : U. S. Military Commission MARIANAS

SIRS:

I am the wife of UENO, Seizi, who was interned as a war crime suspect. We have been married for sixteen years and as his wife I know the honesty and truthfulness of his character.

When the jeep came to take him away and as soon as it went out of sight I almost fainted. I wish to state here just everything I can think of.

When my husband was attending Tokyo Jikei Medical College we were married in Tokyo. It was immediately after his graduation from the college and when he was doing post-graduate work in the surgery department we had two children but he did not have any income. Of course, my husband's father sent us some money every month but nevertheless we lived very modestly. One day we received a telegram from a friend named TAKEZAKI saying, "NICHINO died" but regretful he could not do anything a father should do for his child. At that time we were leading a very destitute life but he sold five or six books on medicine which he had brought with his small savings. He told me to send the money to TAKEZAKI. I was very happy to know how he felt. I felt that a real friend is a friend who offers help in time of need. This friend soon won his degree and became an army surgeon. His whereabouts is still unknown. He was like a brother to TAKEZAKI and when he returned to Japan he sent rice and rice-cakes to TAKEZAKI's family.

When my husband was commissioned we lived in I chosha. The grocery boy that used to deliver vegetables was depressed one day. He asked if we wanted any vegetables. My husband was washing his face but when he heard the boy he came out and asked why he looked so troubled. The boy said he had torn off a fingernail and the pain kept him awake all night but this morning his master had told him to work. When he heard as far as this, he went over to the boy and took a look at the fingernail and then said to me, "Yoshie, this is whitlow, get the instruments ready for a minor operation." I felt sorry for the boy and it was time for my husband to go to work so I said "why not do it after you return this evening?" But he said, "I can't make him suffer all day. Besides if we waited till evening he may lose the finger." When he finished he said, "I think I did a good thing. The captain may scold me for being late this morning but I wouldn't mind. Come every day and I'll fix you up."

That boy became a naval ensign later and wrote to us that the loss of one finger may have given him a different career and thanked us. He also wrote that when he had attained a position in the world to employ people he found out that he should deal with his subordinates just as my husband had treated him. He wrote he would never forget the gratitude as long as he lived.

CERTIFIED TO BE A TRUE COPY

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

EXHIBIT

31(a) (a)

1433

When he was repatriated last year on 15 July, on the very day memorial service was being held for his deceased father, the whole family rejoiced over the happy tidings. The town was eagerly waiting to see how the son of Doctor Ueno would be. The reason was because his deceased father had always considered medical practice as a humanitarian work and because he had lived up to his words. Even when he was sick himself he attended to his patients, and eventually he died as a result of hard work. Like his father, my husband cherished the same ideas. When he returned home his mother told him to rest for a while, but the very next day after he had visited relatives and friends to report his safe return, he began working. In the evenings he hardly changed clothes. In the morning while he was still eating breakfast, in the midst of a bath, he would respond to the call by a patient. It was usually after the whole family was in bed that he came home from the last patients' home.

Only after a month after his repatriation it was as if the "Great Doctor Ueno" had been revived to life again. The town people were very happy to have him. After he had ridden the bicycle through muddy roads he would clean the wheels before coming into the house.

I can not forget the evening of 20 January. The snow started to fall in the afternoon and by nightfall it was seven to eight inches deep. As usual he went out on bicycle and visited his patients. Some were three "ri" (a distance of roughly twelve kilometers) away. Of course, he had to push his bicycle in the snow and it was two o'clock in the morning when he returned. Just when he was going to rest a nearby patient wanted him to come. The weather was bad, and he had worked all day and even past midnight so I went out and asked if the patient could not wait until morning. He heard me say that and dressing up again he said he couldn't let the patient who was suffering wait and without waking up my nurse he went out again. He did not return after four, even five o'clock and I began to be worried. I woke a nurse up and told her to go to the patients home. We waited all night without sleeping a wink. He came back at seven-thirty in the morning. He said he succeeded in preventing a pneumonia case from developing cerebral trouble. That day he worked the whole day as usual. It was the case of Mr. KINOSHITA who lives in the neighborhood.

He never made profits from the poor people either in operation fees or medicines.

I could state here instances to prove how well he looks after his aged mother. I think I know what kind of a character my husband possesses. He really loves his family.

I can not believe my husband who has such good qualities can ever commit any unlawful acts.

It is not only for the sake of the family that I am waiting for his return but because he is innocent and because he could again work for the sick people of this town.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

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

EUGENE E. HERRICK, JR.
Lieutenant, USN.
Interpreter.

31 (a) (a)

1434

CHARACTER WITNESS

FOR: UNHO, Chiato
Director of UNHO Hospital.
Yaita, Yaita-machi, Shiota-gun, Tochigi Prefecture.

BY: NAKA NAKAZATO.
Member of the Tochigi Prefectural Assembly.

OF: 1227 Yaita, Yaita-machi, Shiota-gun, Tochigi Prefecture.

DATE: 4 September 1947

TO: MARIANAS Military Commission.

Sirs:

The above named UNHO, Chiato, took up the work left to him by his father Mr. Senri UNHO and became Director of the UNHO Hospital. He devoted himself to the management of the hospital. He was a quiet man and very polite to his patients. He willingly responded to calls in late hours and visited patients regardless of bad weather or distance. Because he was so earnest he gained a very high reputation for himself. As a member of the local society he was modest, refined and quiet. At home he set before his family a pattern of a beloved father. He was also devoted to the education of his children and a rarely seen man of high character.

I certify the above statement to be true.

NAKA NAKAZATO

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

EDWARD E. KENNEDY, JR.
Lieutenant, USNR.
Interpreter.

DECLARED TO BE A TRUE COPY

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

32 (a)

1435

CHARACTER WITNESS

FOR: **UNO, Chiato.**
Former Medical Officer Commander, Naval Service.

BY : **TAKESHI, Minami**
Assistant Professor of Jikeikai Medical College.

DATE: **9 September 1947**

TO : **MARIANAS Military Commission.**

Says:

The above named UNO, Chiato, is my friend and when we were in college we played sports together. We shared the same room at the lodging house and I am acquainted with his character. In maintaining teamwork and also as an individual the respect of his juniors was centered upon him with a warm feeling of brotherly love. At his lodging house he took interest in tea-cult and loved with flowers. He was a man of gentle manners.

TAKESHI, Minami

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

EDWARD E. KENNECK, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

FORM 33(a)

1436

Character Witness

For: Chiato Ueno.

**By: Kiyochi Murakami
President, Nippon Asbestos
Industry Company.**

Of: 742 Yaita Machi Shioya-Gun, Tochigi Prefecture.

Date: August 1947.

To: Marianas Military Commission.

Sirs,

Doctor Chiato Ueno won the best reputation of Yaita as a doctor, and there are many people living in the town or nearby villages who were saved by him. His capability and above all his kindness in attending to patients is well known. Regardless of weather conditions or dark nights he promptly came to see those in need of a doctor. He was a very earnest man. My wife is one of the many whom he has saved. Last year, when Doctor Ueno had returned to Japan, my wife suffered from brain-hemorrhage, he did all that was possible to nurse her. His kindness and skill as a doctor makes him an indispensable character in this locality.

The Doctor has an aged mother. To whom the Doctor attends with greatest devotion and which has won high reputations. He was a man of fine character, a father of a harmonious family who loved his wife and children.

All the people of this town and the nearby villages are praying for the Doctor's early return so that he may again look after the patients.

I hereby certify the above to be a true and complete translation of the original petition to the best of my ability.

**HUGHES E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.**

James P. Kenny
**JAMES P. KENNY,
Lieut., USN
Puerto Advocate.**

34(a)

1437

CHARACTER WITNESS

FOR: UNNO, Chiato.
Former Naval Commander Surgeon.

OF : 59 Yaite, Yaite-machi, Shiyaya-gun, Tochigi Prefecture.

DATE: 3 September 1947

BY: KIUCHIRO OSHIMA
Member of the Tochigi Prefecture Assembly.
773 Yaite, Yaite-machi, Shiyaya-gun, Tochigi Prefecture.

TO : MARIANAS Military Commission.

Sirs:

I shall make a statement on:

1. CHARACTER:

A gentleman who attended great devotion to filial piety.

2. DISPOSITION:

His father was a doctor, and his mother was chairman of the local women's organization. As he grew up amidst such home life his disposition and manners are both fine.

3. SCHOOL CAREER AND ACQUIRMENTS:

Following his graduation from the Jikeikai Medical College until he was commissioned as Naval Medical Officer he studied medicine. He served as medical officer in the navy. After termination of war he returned to his home town and took up management of the hospital left to him by his father. He was engaged in giving medical aid to the sick but during that time he seemed to believe that "medical practice was a benevolent art," and never failed to work for the love of mankind and strive for still higher standards of skill.

4. REPUTATION AND RESPECT:

He was exceedingly polite and kind to patients who were hospitalized and those who visited the hospital for medical care. Moreover, his association with the people of the town. The way he conversed with people and his refined ways and cheerfulness was fast gaining the high reputation of many people in every village and class.

I certify that the above is an impartial statement on the character of the above named.

CERTIFIED TO BE A TRUE COPY

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

James P. Kenny
JAMES P. KENNY
Lieut., USN
Judge-Advocate.

SHUNJI S. KENNER, JR.
Lieutenant, USNR,
Interpreter.

FORM 35 (a)

1438

AFFIDAVIT

22 September 1947.

For: USHO, Chicago

**Of: Tochigi-ken.
Age 42.**

The above person was a friend of mine since our school days, and for six years since we entered the Tokyo Jihai Medical College in 1926 until we graduated in March 1932 we were the best of friends. During this time he was very friendly, merciful, and loved even the animals, and I thought him as a good person who loved sincerity.

I think that we cannot help it if he was a responsible person in connection with this war crimes, but I firmly believe that he himself as a man is a man with human mercy. I hereby certify as to his character.

**SAKADA, HIROSHI
Head of the Tokai Hospital
Shimizu-ken, Ito-shi, Okazaki, 451.**

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

**EUGENE E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.**

CERTIFIED TO BE A TRUE COPY

James P. Kenny
**JAMES P. KENNY,
Lieut., USN
Judge Advocate.**

36 (a)

1439

Character Witness

For: Senri Uno, ex-naval surgeon commander.

By: Ken Uno

Of: 907 Iaita Machi Shioya-gun Tachigi Prefecture.

To: U.S. Military Commission, Marianas.

Date: 17 September 1947.

Sirs;

I am the mother of Senri Uno ex-naval surgeon commander, who was taken into custody as a war criminal suspect on 8th February. My son grew up among many sisters and therefore is very weak-hearted. We never quarreled with his friends and was very obedient to his parents. He lived with his parents until he advanced to middle school and during those years he never brought anxiety to his parents. Just when he enrolled at middle school I was seriously ill and could not attend to the preparations for entering middle school. His uncle took him to the Utsumiya Middle School. He was not told how seriously ill his mother was, but somehow he learned about it and going all the way to school from the dormitory where he stayed, he phoned us. The long distance call required 7 hours before connections was made. During those hours he stood by the phone until 11 o'clock in the night. After that he returned home every Saturday and during the weekend he spent the whole day sitting by my bedside. He visited the local shrine to pray for my fast recovery. He told me he prayed that he would give ten years of his future if his mother could be saved. He was a kind hearted boy. As the only boy in the family I did my best to raise him to be a respectable man. I taught him to work for the benefit of others and not only for himself. Therefore he has helped many of his friends who were in need of help. His father died while the boy was serving in Saigon. That year in November he was assigned to the Naval Medical School in Tokyo and was able to return to Japan. He went straight to father's burial place and filled with emotion he just stood there with tears in his eyes.

As his mother I know what his character is and I am firmly convinced that he would not have committed any wrong. After the death of my husband there is no one except Senri to look after the hospital. I am 62 years old and I have five very young grand children to look after. They are very worried about their father and the eldest boy is not very strong. For the children and the many patients he attended to I wish he could be released at an early date.

I hereby certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

JAMES F. KENNY,
Lieut., USN
Judge Advocate

ROBERT E. HERRICK, Jr.,
Lieutenant, USN.,
Interpreter.

Exhibit 37 (a)

1440

CHARACTER WITNESS

FROM: OHSUI, Setsuko
2-764, Hamamachi, Yamaoka-cho,
Shiogo-gun, Tochigi Prefecture.

TO: The President of the Military Commission, MARIANAS Area.

I am the sister of UNO, Chioto, former Surgeon Commander, Imperial Japanese Navy. I can hardly believe that my good brother is being held as a war crime suspect. My brother was rather a nervous person, but he was very honest and hated anything that was wrong.

When my brother returned after the end of the war, the people of the village rejoiced. They would say, "Indeed, he resembles his deceased father very much, and examines us just like him." Our father who was praised by the newspaper, always said, "Medicine is an art of benevolence," and cared for the poor without receiving compensation and visited the heavy patients as many times a day as they needed. Whenever he passed a grave of a patient he once cared for, he would always pay his respects. We were all greatly devoted to our father. After my brother returned and succeeded father's practice, I seem to find in him our father who we so respected and loved.

My brother offered food which the patients would like, and many times he would sleep with his clothes on when there was a serious case which needed his close attention. "Last night I slept at twelve and this morning I was awoken at four." "It is the cherished ideal of a doctor to die looking after his patients." These were my brother's words and how they resembled father's. All the patients I meet would say, "We feel lost since Doctor Uno has gone, we shall pray that he may come back soon." And my heart would be filled with tears.

Our home is on a street out of the main way, so the road in front is very poor. One day last winter when I was returning from an errand I saw my brother earnestly washing his bicycle. But was all over both wheels. Starting to help him wash the wheels, I said, "Doctors would not like to come through such a road, would they?" "Perhaps not" he replied, "but as long as I don't mind it I can keep my patients happy." I saw in my brother the very spirit of our father and I could not help but thank God.

There was another instance. One day I had a splinter on the tip of my finger and it had gone in between the nail. I became pale with the thought that an incision had to be made. Smiling, my brother slipped into my mouth a lollipop. Yes, he was a brother who would give his sister a candy to distract her from the pain.

I do not know what my brother is charged with that he is not being confined. I firmly believe my brother is not a man to do any wrong. I beg your lenient judgment so that he may be able to return again to the needy patients of our village. Disclosing my sincere feeling as a sister, I beg this of you.

CERTIFIED TO BE A TRUE COPY

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

JAMES P. KERRY,
Lieut., USN
Judge Advocate,

WILLIAM E. KERRIN, JR.
Lieutenant, USN. Interpreter.

38 (a)

1441

Sept. 3rd, 1947.

To the Chief of the War Commission in Marianas
and the War Commission in Marianas.

TESTIMONIAL FOR PERSON AND CHARACTER

Shohichi Nakase
Lt. Commander, Navy
Former Vice-Commander of
the No. 41 Garrison.

We were the neighbors of the above person and were brought up together with him from the childhood. We are quite acquainted with him and know very well about his character more than anybody else. We take a liberty of stating the following statement with an oath.

Shohichi Nakase is the second son to Kichijiro Nakase whose residence is at Sashikita, Oaza, Tanabara, Takigun, Mie Pref. The Nakase clan has been engaging in the agriculture for generations. They have been faithful Buddhist and specially Shohichi's father, Kichijiro had the good reputation as the most faithful Buddhist and his good character was much talked among the village people as an good example.

Since Shohichi was brought up in the atmosphere of such family and was affected great deal with the good influence of his father, he has such a good character as he pays much merciful attention even to insects because of his dislike of killing any lives. After his graduation of higher primary school, he had a job at the Branch of Taki Bank situated at the next village of his native country. He was expected much of his brilliant future as a model young man by his elders care and his friends' respects because of his faithfulness towards his duty in the bank. When he was about 17 years old, he entered into the Navy and by his constant efforts he gained the position as was in the wartime. He was brought up as stated above, he has always held a spirit of loving peace and stood for a cooperative spirit based on his righteousness for helping weak. He loved a fair play because he himself was a good sportsman, specially in swimming and gained the love and respects from his junior youngmen as though he is their own father.

While he was at his home, he was also a very good person and his family was always in a peaceful atmosphere. He did not care much about money so that he was not rich at all. But he spent such money as he could and tried his best to give his children the education. As the result of his care his children are bringing up in a wonderful way.

We believe firmly that he is a fine and all round person both in a social and private life as stated above.

We justify the above statement is true with our oath.

CERTIFIED TO BE A TRUE COPY

James P. KERRY
JAMES P. KERRY,
Lieut., USN
Judge Advocate.

/s/ Shinjiro Nakase
Shinjiro Nakase
93, Toraji San'yaku,
Shibuya Ku, Tokyo.

Exhibit 39 1 (a)

1442

/s/ Tetsuo Kusunoki
18 Shiba Kinsaku cho,
Minato ku, Tokyo

/s/ Mitsuo Kusunoki
737, 4-chome, Sendagaya,
Shibuya ku, Tokyo.

I certify the above, consisting of two (2) typewritten pages, to be
a true and complete translation of the original petition to the best of
my ability.

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

CERTIFIED TO BE A TRUE COPY

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

39 2(a)

1443

To the Chief of the War Commission
and the War Commission in Marianas,

Sept. 4th, 1947

TESTIMONIAL FOR PERSON AND CHARACTER

Shohichi Nakase,
Lt. Commander, Navy
Former Vice-Commander of
No. 41 Garrison.

I beg to state herewith the following statement with an oath. I, as the eldest daughter to the above person and was brought up for twenty some years at the atmosphere of his strictness as an Naval officer but deep love of my father, know his character better than anybody else.

1. My father was a good as father and as leader in our home life. He has a nature of understanding anything with good will.

I recall one little story about my father. It was a time when the fruits of persimmon has grown. The persimmon tree in our garden grew fine fruits that year and we were all longing for the sweet maturity of the fruits when we eat. But one day we found out the fruits were stolen by somebody. We were all disappointed a great deal and we felt hatred for a person who stole them. But my father told us that the man who took the persimmons was tempted to eat because the persimmon looked very sweet and delicious, so we better forget it as we ate them with him together. He always taught us that one has to introspect oneself always, and he has examined himself daily in writing his diary.

2. My father has strong faith in religion and he used to pray, to study religions and devotional books and tried to keep peaceful mind always. Every morning before breakfast, he accustomed to pray God and Buddha and start his daily life. And he used to teach us that the faith is only way of leading peoples a right way of living not only for his own sake but also for others.

3. My father was fond of sports very much and was specially training himself as sportsman for several years while he was in the Navy. He was an expert specially in swimming, he lead young people as leader. I believe that his character was effected great deal by his likeness of sports so as to be fair and right for anything he participates both in mentally and physically as most of good sportsman effected through fair sports.

4. My father was not used totalking much at home but he was respected a great deal by his friends and neighbors. He was also loved by his friends and because my father often to my house from remote places, he always helped them in what way he could because my family was not rich, but in a manner that he was glad when his men were happy and he was in sorrow when his men suffered.

He never spoke about what he has done for others, so we usually found out later by seeing letters of thanks or by hearing from some people express thanks. But he always told to people whenever his men did good things.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieut. JUN
Judge Advocate.

"Exhibit 40 1(a)"

1444

He never talked about his doings so that I was often perplexed by people who express many thanks for what my father done for them.

My father also was a strong man of will. His best favorite was smoking. He used to smoke from young age. But once he suffered with his stomach ache, and he found out smoking habit was wrong for him by Doctor's advice, he gave up smoking right away on that very day. We quite surprised because we did not know my father had such a strong will. This fact proves his strong will I think.

5. My father was fond of little animals, specially small birds and dogs. Whenever his dog became sick he cared very much in giving medicines and meals so as to cure human being.

As stated fragmentary above, I believed firmly that my father is not the man to maltreat people.

I hereby testify the above statement is true with an oath to my conscience.

/s/ Chiyoko Itagaki,
67, Sanno-cho,
Yokosuka city.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

40 2(a)

1445

To the Chairman of War Commission
and War Commission in Marianas,

Sept. 4th, 1947.

TESTIMONIAL FOR PERSON AND CHARACTER

Shokichi Nakase,
Lt. Commander, Navy,
Former Vice-Commander of
No. 41 Garrison.

I am the wife of the above person. I have been together with him for the length of 30 years. I knew quite well of his personality and character.

I appeal to you the following statement with an oath to my conscience.

He has a deep religious faith and is very gentle person. He used to associate with any people without any discrimination so that everybody liked him. He specially cared for a weak and suffering people and helped many of them so that they respected and loved him very much.

In his home life, he was a good father and especially very earnest towards an education for children. He was getting along very well with neighbors and friends.

He was very faithful for his duty and was always respected as an example.

It was said that he was a good instructor for his men.

I state herewith about his character with an oath to my conscience.

/s/ Yuku Nakase,
67, Sanno machi,
Yokosuka city.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGENE E. HERRICK, jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

Exhibit 41 (a)

1446

Sept. 3, 1947.

The President and the members of the Military Tribunal for Marianas Island.

Dear Sirs:

I am a great friend of former Lieut. Commander Shohichi Nakase, (a former Deputy Commander of the 41st Garrison Unit). We both lived in Yokosuka and have been acquainted for about 30 years, so I feel that I know him better than anyone else, and I hereby make the following statements.

1. He was very warm hearted and sympathetic. My father was a workman, and my mother managed to send the four of us boys to middle school by taking naval officers as boarders. During the course of 30 years ago, but he has never forgotten my mother's kindness, and occasionally would drop in to see us. My mother praised him often, saying that he was the only one, out of over 100 boarders, who remembered her kindness.

At the end of August this year, the wife of the former head master of the school where I teach, came to our house and told me that I was the only teacher who remembered the old days and visited them! On another occasion, the wife of a priest of a small country temple in Kanagawa prefecture, where I stayed with the school children during the war, told me that I was the only teacher, who remembered those by-gone days, and kept up the friendship. I feel that I unconsciously followed the example set by Lieut. Commander NAKASE, which prompted me not to forget the people's kindness and made me act that way.

2. He possessed the real spirit of sportsmanship; he was a very skillful sportsman, a rare case among the Naval officers. He excelled in gymnastics, high jump, (pole jumping) ironhorse, and vaulting boxes, and he was skillful at archery, and he also held the cross swimming record between Uraga and Chiba.

Ever since the end of the war, everyone is very enthusiastic about sports, and at my school too, baseball seems to be the center of attraction.

His ability for various sports is really amazing; there is no need to explain his bright and cheerful personality, which developed from his spirit of sportsmanship.

Your obedient servant,

Tsunao Mitani,
Teacher at Yamasaki Elementary School,
Yokosuka - Shi.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

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

DORRIS E. HERRICK, JR.,
Lieutenant, USN,
Interpreter.

Exhibit 42 (a)

1447

Character Evidence

3 October 1947.

To: The President and the Members of the Military Commission, Marianas.

From: Lt. Cmdr., Nakase, Shokichi
Former Executive Officer of the 41st Naval Guards.

I being a woman ask your pardon for imposing on you like this, but as I have been a good friend of Lt. Cmdr., Nakase, Shokichi for many years, I would like to state here as to his Character.

1. Situation of the long military life of Lt. Cmdr., Nakase, Shokichi.

Example.

While the above person was an instructor at the Gunnery School, he was very cheerful, active, gentle earnest, and was excellent in studies and physical education, and he had a very good knowledge of various arts and was a exemplary instructor of the whole school. He was very courteous to his superiors and also to his subordinates. He took care of his undergraduates and whenever his subordinates were in need, he would do whatever he can for him without thinking of himself. In many instances he gave part of his pay to help them and did not mention it to anyone; therefore his family did not know of it. I happened to hear about this good deeds from persons he helped.

Example.

Furthermore, when the Shanghai incident began in 1932-33, he went to the scene of the battle as an patrol leader. During this time he was ordered by his superior to move his patrol to another position in the mist of enemy fire. At this time he decided that the loss would be too great; so he waited for a change and acted with firm determination to bear the responsibility himself, and by this action he was able to obtain the motive with much less casualty. I heard of this from his subordinates of that time and also heard that he was looked up to by his subordinates as an patrol leader with humanity and was loved and praised by his superiors. Everything he did was all in this matter.

2. His character as an civilian.

He was very courteous to others and was very much liked by his neighbors, and he possessed an character of "everything for the public." Therefore, he always did things for the good of the public which we all think of as an good example. He was a person of a very true and simple heart. I have heard from him and from others that he was religious and tried to educate himself in this field by reading books which would make him reflect himself and also those that would be for the good of the public. He was well versed in doing good deeds which we every day, and therefore Nakase was a very good man as an military person and as an civilian.

IDENTIFIED TO BE A TRUE COPY

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

"Exhibit 43 1 (a)"

1448

Example.

I would like to state our intimacy with his family as my husband was his friend. When my husband died in the battle, I was worrying about what to do being left with many children. I was then ill in bed. He visited me very often looking after me and encouraging me. I was deeply thankful of it. But he never told it to anybody, so they know about that for the first time when I told that to them. He was indeed a humane person. I believe that the words, "Action before words," applifits to the character of Mr. Shichiaki Nakase.

As I mentioned, I have long been close to Nakase, so I know his character as a man. With confidence, I affirm that he is a man of peaceful character.

3 October 1947.

Respectfully,

Obata, Fuji,
33 Sakamoto-machi, Yokosukashi.

To the President and the Members of the Military Commission, Marianas.

I certify the above, consisting of two (2) typewritten pages, to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

Exhibit 43 2(a)

1449

Sept. 4, 1947.

To the President and members of
the Military Tribunal for Marianas

Dear Sirs:

I am a great friend of former Lieut. Commander Shohichi Nakase,
(former Deputy Commander of the 41st Garrison Unit), whom I have known for
28 years, we live in the neighborhood and I feel that I know his character
better than anyone else, and I can make the following statements with
utmost sincerity.

1. He was always very honest and sincere, and whatever he was doing,
he took the work seriously and did his best.
2. He always upheld the spirit of peace and humanity and loved his
neighbors, who in turn respected him.
3. He was always a sympathetic friend of the weak and was loved and
trusted by all.
4. At home, he was very gentle and loving.
5. He was a perfect gentleman.

Your obedient servant,

/s/ Sanji Kusuhara
64 Minato machi,
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

WALTER E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TRUE COPY

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

44 (a)

1450

Sept. 3, 1947.

To the President and the members of
the Military Tribunal for Warcrimes.

Dear Sirs:

I am a great friend of former Lieut. Commander Shohichi Nakase,
(former Deputy Commander of the 41st Garrison Unit). We were in the
Navy together for about 25 years, and since I feel that I know his character
better than anyone else. I am making the following statements with
utmost sincerity.

1. He was always sincere, and honest, and worked hard and seriously and
was a perfect example to others.
2. He always upheld the principles of peace and humanity and respected
and loved his friends, and treated the subordinates like his own sons,
who loved and admired him.
3. He was always a great friend of the weak, and helped those in need.
4. As a citizen, he was loved and respected by all.
5. He was a great sportsman, excelling in field sports, swimming and
gymnastics, and for over 20 years he was in a position to teach.

Your obedient servant.

/s/ Masamichi Isono
42 Shioiriguchi
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

EDWARD E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

JAMES P. KENNY
Lieut., USN
Judge Advocate

45 (a)

1451

Sept. 4, 1947.

To the President and the members of
the Military Tribunal for War Crimes,

Dear Sirs:

I am a former subordinate of former Lieut. Commander Shohichi Nakase,
(former Deputy Commander of the 41st Garrison Unit.) We have been in close
contact for 13 years, consequently I know his character well. The following
statements are made with utmost sincerity.

1. He was always very sincere and taught his subordinates with great
kindness and thoroughness.
2. He always upheld the principles of peace and humanity, and was
admired and respected by all.
3. He was a good friend of the weak, whom he protected with the spirit
of justice, consequently he was loved by many.
4. At home he was very kind and gentle, and as a citizen, he was a
perfect gentleman.

Your obedient servant,

/s/ Kinoshita Vaya.
111 Sano machi, Koinouchi,
Yokosuka - Shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGH E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

46 (a)

1452

Sept. 2, 1947.

To the President and the members of
the Military Tribunal for Marianas.

Dear Sirs:

I have known former Lieut. Commander Shohichi Nakase, (former Deputy
Commander of the 41st Garrison Unit) for over 10 years, and since I
know his character thoroughly, I would like to make the following statements.

1. He was gentle, warm hearted, reliable, and was very religious.
2. As a naval officer, he was respected and trusted by both the senior
and junior officers, and was very friendly with the subordinates, for
whom he always stood up, with the spirit of justice.
3. He always upheld the principle of peace and humanity.

your obedient servant,

/s/ Etsuo Uekawa
67, Sano-machi,
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

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

CERTIFIED TO BE A TRUE COPY COPY

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

Exhibit 47 (a)

1453

Aug. 30, 1947.

To the President and the members of
the Military Tribunal for Marianas.

Dear Sirs:

I have known former Lieut. Commander Shohichi Nakase (former Deputy
Commander of the 41st Garrison Unit) for over 20 years, and know his
personality well, and I, hereby, make the following statement.

1. He possessed a very noble personality, upholding the principle of
justice, humanity and of equality of race, and was always a sympathetic friend
of the weak; he love his neighbors, who in turn loved and respected him.

Your obedient servant,

/s/ Tomotada Ihada.
427 Shioiri-nachi.
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

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

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 48 (a)"

1454

3 Sept. 1947.

To the President and the members of
the Military Tribunal for Warcrimes.

Dear Sirs:

I am a great friend of former Lieut. Commander Shohichi Nakase,
(former Deputy Commander of the 41st Garrison Unit). We lived in the
neighborhood, and since I have known him for 27 years, I feel that I know
his character better than anyone else, and I make the following statements
with utmost sincerity.

1. He always upheld the principles of peace and humanity.
2. He was always a friend of the weak and was always most willing to
help those in need.
3. He was a keen sportsman and tried his utmost to improve the health
and the physical condition of mankind.
4. He was loved and respected by all, his friend, and as a citizen he
has got a very good reputation.

Your obedient servant,

/s/ Etsuro Ogaki
418, Shioiri-cho
Yokohama-shi,

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

EUGENE E. HERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

Exhibit 49(a)

1455

Sept. 4, 1947.

To the President and the members of the
Military Tribunal for Marianas.

Dear Sirs:

I am a great friend of former Lieut. Commander Shidechi Nakano,
(former Deputy Commander of the 41st Garrison Unit). We lived in the
neighborhood and I have known him for over 10 years, and I know his character
through and through and I can make the following statements with utmost
sincerity.

1. He is a man of upright nature, who will never do an unjust act.
2. He respected his seniors, loved his neighbors and was altogether
very warm hearted and human.
3. He was very kind and sympathetic, and always tried to help those in
distress, even at a great sacrifice to himself.

His noble personality was well known, and those who knew him, admired
and respected him.

I can not believe him to have done anything against humanity, no
matter under what circumstance he might be placed.

Your obedient servant,

/s/ Unosaku Ichino
414, Shidechi-cho
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

50 (a)

1456

To the President and the members of
the Military Tribunal for War Crimes.

Dear Sirs:

I am a great friend of former Lieut. Commander Shokichi Nakase,
(former Deputy Commander of the 41st Garrison Unit). We were at the former
Naval Gunnery School three times together, and have come in close contact
for 13 years, so I know his character well, and would like to make the
following statements.

1. He was gentle, sincere, and friendly, and had a rare personality,
which was admired by all.
2. He always upheld the principles of peace, and humanity, and taught
his subordinates with this spirit.
3. He was always a good friend of the weak and helped them with the
great spirit of sacrifice.
4. He adhered to the spirit of justice.
5. He was all for equality of race.
6. His home life was very peaceful and he was always a good husband.
7. As a citizen, he was a perfect gentleman, and was loved and
respected by all.

Your obedient servant,

/s/ Seihai Ichida
230, Nakasato-machi,
Yokosuka-shi

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGHES E. HERRICK, Jr.,
Lieutenant, USN.,
Interpreter.

DECLINED TO BE A TRUE COPY

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

Exhibit 51 (a)

To the President and the members of
the Military Tribunal for Marianas.

Sept. 2, 1947.

Dear Sirs:

Since I lived next door to the former Lieut Commander Shokichi Nakase
(former Deputy Commander of the 41st Garrison Unit), and have known him
for over 20 years, I feel I know his character and personality better than
anyone else, and I would like to make the following statements.

1. He was loving and sympathetic, and was very religious, so those who
came in contact with him, loved and respected him.
2. He was a great sportsman and upheld the spirit of sportsmanship.
3. He was always a sympathetic friend of the of the weak, and upheld
the principles of justice, humanity and equality of race.

Your obedient servant,

/s/ Torao Ogawa
67 Sano-machi
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGHES E. HERRICK, Jr.,
Lieutenant, USN.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

52 (a)

1458

To the President and the members of
the Military Tribunal for Warcrimes.

Sept 4, 1947.

Dear Sirs:

I am a great friend of former Lieut Commander Shohichi Nakase,
(former Deputy Commander of the 41st Garrison Unit). We were together at
the former Naval Gunnery School, and have come in close contact for over
10 years, so I feel I know his character better than anyone else. I am
making the following statements with utmost sincerity.

1. He has always been very friendly and kind and was loved and respected
by all.
2. He always upheld the spirit of peace, and humanity, and the principle
of democracy and respected the individual rights and freedom.
3. He was always abided by the principle of justice and humanity, and
acted accordingly.
4. He was always a friend of the weak.
5. As a citizen, he always worked for the sake of the universe, disre-
garding the self-interest.
6. He contributed a great deal to the improvement of the physical
condition of mankind, as an instructor of physical culture.

Your obedient servant,

/s/ Soji Miyasaki (former Lt. Commander.)
2797 Kaga-machi
Yokosuka-shi.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

53 (a)

1459

To the Chairman of War Commission
and War Commission in Marianna,

Sept. 4th, 1947.

TESTIMONIAL FOR PERSON AND CHARACTER

Shakichi Nakase,
Lt. Commander,
Former Vice-Commander of
the No. 41 Garrison.

I am a friend of the above person, I am acquainted with him at the temple of Yokosuka and associated with him for twenty years. Therefore I know his personality and character perfectly well.

I hereby appeal to you the following statement with my heart and soul.

1. He has a deep religious faith and has an idea to help people.
2. He lived through with a spirit of peaceful mind, humanity and philanthropy.
3. He was respected by peoples because he always stood for a weak.
4. He tried his best to lead people to the righteousness, holding a spirit of loving righteousness.
5. He was a gentle person while he was at home.
6. He was always kind and modest to others as in his public life and was respected by others.

I testify the above statement is true within oath.

/s/ Kakumai Oyama,
67, Sanno cho,
Yokosuka city.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KENNEDY, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

Form 54 (a)

1460

To the Chief of War Commission
and War Commission in Marianas.

Sept. 4, 1947.

TESTIMONIAL FOR PERSON AND CHARACTER

**Shobichi Nakano,
Lt. Commander, Navy,
Former Vice-Commander of
No. 41 Garrison.**

I am a friend of the above person and am acquainted with him for more than twenty years during the tenure of Naval Officer. Therefore, I know quite well about his personality and character more than anybody else.

I appeal to you the following statement with an oath.

1. He was deep in religious faith and he used to train his men with a spirit of humanity.

When he was an instructor of the Naval Gunnery Academy in 1927, one of his cadets stole some money on the spur of the moment from his mate. When this case was found out he asked to the higher officer to forgive his sin and he guided him gently to the right way. After he graduated he became very happy and got a good position.

2. He had a strong spirit of loving peace and humanity. When he was in the position of Chief in charge of sports at Ichikawa Marine Corps, he set a good example to open the naval athletic meet and let civilians to participate in it which consisted of the peaceful sports as tennis, basketball, and other exercises, in spite of the tendency of sports at that time were some tactics of war trained games. He gained public favor and was known as Nakano of the Navy by people.

3. He loves righteousness and he was philanthropist. He campaigned to Shanghai Incident as a head of a section of the First Marine Corps in January, 1932. When the order was given to him to attack Wusun area, the battle was severe and shells poured like rains. If he marched on with his men as order was given, most of men should be killed right at once and if not, he had to disobey order. But he could not let his men killed, so he picked the latter plan, and once he was nearly Court Martialed but he succeeded the attack in his way without killing any men at all. This was one of the display of his love towards people.

4. He did not talk much at home but he was always cheerful, good husband and also good father. He often went to see movies or sports meet accompanying with his wife and children whenever he had the leisure time. After his hard work, I often saw him bathing at sea beach with his family in summer time. He always paid much attention for his family.

5. He was very kind and gentle towards people. Whenever they had any trouble in neighborhood, he always helped and cooperated with them so that neighbors admired his fine personalities always.

I testify herewith the above statement is true with an oath to my conscience.

/s/ Shobichi Nakano

CERTIFIED TO BE A TRUE COPY

James P. Keary
JAMES P. KEARY

Verify the above to be a true and complete translation of the
Lieut. U.S.N.
Judge Advocate.

WILLIAM E. HARRIS, Jr., "William" (a)
Lieutenant, U.S.N. 55

Sept. 4, 1947.

To the President and the Members of the Military Tribunal for Marianas.

Dear Sirs:

I am a junior of former Lieut Commander Shokichi Nakase, (a former Deputy Commander of the 41st Garrison Unit). For 3 years he has taught me at the Naval Gunnery School, so I feel I know his character and ability well, and I make the following statements with utmost sincerity.

1. He was a great sportsman, and his ability for sports was famous throughout the Navy, and he had the reputation of being number one sportsman in the Navy, the fact everyone believed and acknowledged.

He had a wonderful talent for all sports, which no one could compete, and he also had an ability for teaching, and he taught the inexperienced young people with great kindness.

Altogether, he was a very brilliant man, and a skilled sportsman, and taught the junior officers and subordinates with great love and enthusiasm. Those of us, who were taught by him, regard him with love and respect, just as he were one our father.

Your obedient servant,

Eishi Nakase.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. HERRICK, Jr.,
Lieutenant, USN,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 56 (a)"

1462

Sept. 3, 1947.

To the President and the members of the Military Tribunal for Warcrimes.

Dear Sirs;

I am a former subordinate of former Lieut. Commander Shokichi Nakase, (former Deputy Commander of the 41st garrison unit) and since we were in the Navy together for over 10 years, I feel I know his character better than anyone else, and I am making the following statements with utmost sincerity.

1. He was always very religious.
2. He always upheld the principles of peace and humanity.
3. He was a friend of the weak.
4. He upheld the spirit of justice.
5. He upheld the principle of the equality of race.
6. At home, he was a very good husband.
7. As a citizen, he was a very reliable man, having a good reputation.

Your obedient servant.

Yoshiro Takahashi
55, Fukuda - machi,
Yokosuka - shi.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USN.,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

57 (a)

1463

MEMORANDUM

15 September 1947

To the Chief Judge,
U. S. Military Tribunal,
Marianne Island Base.

Sirs:

We, the undersigned, being personal friends of former Rear Admiral, of the now defunct Japanese navy, Shinsai Asano, who is at present being held in detention in Guam Island as a war criminal suspect on the charge, we are informed, of being responsible for the alleged manslaughter in violation of the International War Law and Regulations and of the War Customary Law, alleged to have been committed in Truk Island in June, 1944, beg most respectfully to set forth our testimonials to the suspect's personality and humbly to petition for fair and lenient judgment being passed on his case.

The suspect was born in Ibaragi Prefecture, Japan; in September 1914, he was selected as a naval cadet and since then served the Japanese Navy on end, coming upon the last Pacific War at last, as ill luck had it. Now allow us to describe our personal observations of his personalities. The suspect is modest and honest by nature, a man of few words, self-controlled, with a strong sense of obedience, true to his friends, cheerful in his associations with others, always thoughtful of his subordinates, thus making himself an object of reverence and respect in the eyes of all the people with whom he has associated.

That the suspect was clear-headed can be proved by the fact he was one of the one hundred successful students out of two thousand odd applicants who had undergone the entrance examination for the Naval College and that on that occasion he was the only student hailing from his native prefecture who succeeded in passing the said entrance examination.

That he is a man of noble character can be testified to by the fact that during his tenure of office he was picked out of a great number of promising naval officers as naval attaché to His Imperial Highness Prince Kuni, remaining in this service for two years.

It is with deepest regret that we have to note, however, such a fine man of exceptionally noble character and excellent personality is still being held in detention in Guam Island as a war criminal suspect.

Judging by his character and personality as described above, we cannot but consider it most likely that for all the conduct of his subordinates, he as their commanding officer has shouldered the full responsibility.

As a matter of course, we are not aware in the least of the nature of crimes alleged to have been committed in Truk Island and yet we cannot help believing that such a man of ability and noble character as the suspect is indispensable, especially after the defeat, to a new Japan which is at present laboring under the necessity to stand up on its own feet, aiming at its reconstruction, both economically and spiritually, along the line of democracy.

CERTIFIED TO BE A TRUE COPY

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

"Harris 58 (a)(1)"

1464

The home of the suspect is located at Kinyama in the suburbs of Yokosuka City with four members of his family consisting of his wife, Sumiko; eldest son, Isamu, 23; only daughter, Akiho, 20; and second son, Hiroshi, 16; who needless to say are on tip-toe, anxiously waiting for the early repatriation of their beloved. They are sustaining their living with a meager salary of the eldest son who is engaged in teaching at a primary school in Yokosuka City.

We shall, therefore, esteem it a great favor if you would kindly take the above-mentioned circumstances into consideration and pass fair and lenient judgment on his case, in our fervent desire that he would be liberated and permitted to be repatriated to rejoin his family at the earliest possible date.

Hoping this petition will be favored with your generous consideration and thanking you in anticipation,

We have the honor to be,

Sir,

Your obedient servants,

The suspect's personal friends, 34
in number, under joint names
duly signed with seal impressions
affixed thereto on the separate sheets.

I certify the above, consisting of two typewritten pages, to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. MURKIN, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

58 (a)(2)

1465

**CHARACTER CERTIFICATION OF SHIMPEI ASANO BY TORAI NAKANURA, No. 4008
KINOKUNI-cho, YOKOSUKA CITY.**

1 September 1947

To: U. S. Military Commission, Marianas Area.

Sirs:

I shall certify the character of Shimpei Asano, former rear admiral, who was charged for violation of laws and customs of warfare on Truk Island in June 1944.

Mr. Shimpei Asano is a graduate of the Naval Academy, class of the 49th graduating group. The same class as Prince Hirohito. Cadets who shared the same class with a prince are traditionally modest and generally dignified. Mr. Shimpei Asano was especially dignified in his ways and a quiet and sincere gentleman. I can assure you that he was outstanding in these respects.

After serving two years as Chief of Section One, Personnel Office, Yokosuka Naval Base he was assigned to captaincy of the warship Tenryu in June 1942 and in January 1943 he became Chief of the Recruiting Office and later, in January 1944, I remember he was appointed commander of the garrison troops on that island. As his service record proves, the fact that for two years he held the office of Chief of Section One, Personnel Office, which calls for an impartial and most honest as well as a noble character and high intelligence shows Mr. Asano's personality.

Moreover, during the time he was a lieutenant commander and commander, for two years he served as aide-de-camp to Prince Asaka Kuni. Normally, aide-de-camps to Princes of the Imperial family are selected from naval officers of high academic merits and especially an officer with distinguished noble character, because he must be worthy of setting a fine pattern for the Prince by assisting and guiding him.

By the fact that he served two years each, as Chief of Section One of the Personnel Office and again as aide-de-camp to an Imperial prince, proves what a perfect and outstanding gentleman he was. It proves his noble character and quiet and sincerity as well.

In May 1942 the Asano family moved to the same community where I live and since then we have been intimately associated. In private life Mr. Shimpei was a sociable person and his family too were really sincere people. They were respected by the people of the neighborhood. The people of our neighborhood are all worried and grieved over the recent incident.

We do not have the faintest idea of the recent incident but it is very surprising to hear that Mr. Shimpei is held as a war crime suspect. It is also very regrettable.

As a high ranking commanding officer on Truk Island, his responsibilities must have been great. I cannot but think that he does not know what he was apprehended for, that he is volunteering to take the responsibility for

COPIES TO BE A TRUE COPY

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

"Serial 59 (a)(1)"

1466

offenses committed during the war due to unavoidable circumstances by his subordinates. Taking the blame for offenses he does not even know of, for being chivalrous. It is my conviction that this feeling is an old custom of Japan, for the leader to take all the responsibility. I sincerely hope a thorough investigation into the case in a democratic way be conducted.

It is customary for Japanese naval officers to desire that their boy children grow up to follow the footsteps of their father in the naval service, but Mr. Asano is different. Both his eldest and second sons had not taken up the navy career. The eldest son grew up to be an educationalist, and the second son seems to be taking the same road.

Japan is witnessing democratic changes and already the demilitarization of the country has been completed. Everything is making a strenuous effort to reach the goal of democratic ideals. A man of Mr. Asano's high intelligence and experience I am confident in saying that he will contribute to the democratization of Japan.

I sincerely hope for the most lenient yet impartial trial, taking into full consideration, the character of Mr. Shimpei, the actual facts and the circumstances prevalent at that stage of war.

I certify the above, consisting of two typewritten pages, to be a true and complete translation of the original petition to the best of my ability.

EDWARD E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieut. JG
Judge Advocate.

"NAVAL 59 (a)(2)"

1467

PETITION

To: The President of the Military Commission, Marianas Area.

As ASANO, Shinsai is still overseas after two years have elapsed since the end of the war, we the people of the community are deeply worried over him and are waiting for his return.

Asano is an amiable person. He is gentle, impartial and always has the good of the public in mind. When we asked his advice regarding matters of the community, he would always gladly help us.

The manner in which he devoted himself to military affairs together with his honesty and sincerity, has always been highly respected by the people of the community as an example for military men. Many times his subordinates visited his home on Sundays and they would chat all day. After the end of the war, many subordinates of Asano visited his home and spoke of his high character and counseled his family.

When Asano was at home, he was always thoughtful towards his wife and daughters. When he was away he always wrote home but never mentioned a word of the hardship which he was having.

His wife and three daughters are waiting for his return. His son is a teacher in a grade school who is now devoting himself to the education of the younger generation in the ideals of democracy. We have the deepest pity that such an exemplary family should have to undergo such great anxiety. We have been living in the same community with the Asano family, and we have always respected his fine character and have been impressed by his integrity and kindness.

We who have known his gentleness cannot believe that he is now standing in the court of justice as a suspect.

We beg your kind consideration of his fine character and deal leniently with him. We the undersigned beg to petition you.

Respectfully,

KURAHASHI, Kazuko
4109 Ikegami-cho, Yokosuka-shi.
and 106 others.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

BURRIS E. HERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

60 (a)

1468

CHARACTER OF MR. SHIMPEI ASANO.

The family of Mr. Shimpei Asano lives at Ikegami-machi, Yokosuka-shi, now. They are his wife, his two sons and his daughter. Isamu, his eldest son, graduated from normal school with good records in 1945, and became a teacher. He is faithful and mild, trusted by his comrades and exerting himself day and night for the education of children. Therefore, he has an infinite confidence among guardians of his pupils, and his pupils love his character. He made a really democratic class, and he is famous as a model young teacher. Eldest daughter of Asano is cultivating her woman's virtue under her mother. His second son is a middle school student and is a promising young man. His wife is a good wife and earnest in the education of her sons and daughter. His neighbors often talk about his peaceful family. There is a saying, "If you see children, you will find what kind of parents they have." From the character of his wife, sons and daughter, we know that their father, Shimpei is of admirable, respectable character. We are a proud friend of Isamu. We heard from him about his father, and we wrote this letter. It is our greatest delight if this letter will serve as your reference.

4 September 1947

/s/ Ando, Yosaku,
1,398 Taura, Yokosuka-shi.
and twenty others.

To Your Honor, the President of the Military Commission, Marianas Area.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"61 (a)"

1469

CHARACTER EVIDENCE

1 September 1947

To: The President and the Members of the Military Commission, Marianas.
From: Rear Admiral Asano, Shinsai, former commandant of the 41st Naval
Guards.

I am a person who mingled very friendly with the above person for about
one year. Therefore, I will state as follows:

1. The above person is a man of gentleness, mercifulness, and of great
love.
2. The above person is a man who loved honesty, a man with principles,
and a man who would not do anything that is inhuman.

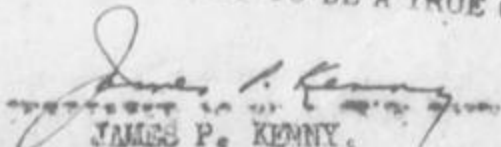
I swear this to my conscience and certify the above.

Iwada, Tomotaka
Yokosuka-shi, Shiori-cho, 27

I certify the above to be a true and complete translation of the
original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USN,
Interpreter.

CERTIFIED TO BE A TRUE COPY


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

FORM 62 (a)

1470

CHARACTER CERTIFICATION OF SHIMPEI ASANO.

By Tameo Ito, Dean of Kanakura Women's College, No. 195 Konachi, Kanakura City, Kanagawa Prefecture.

Date: 6 September 1947.

To: U.S. Military Commission, Marianas Area.

Sirs:

I have been intimate with Mr. Shimpei Asano since 1932. He was very friendly to all and esteemed righteousness. While strictly observing military rules, he was rather sympathetic and tended to be cooperative. His love for humanity was very deep and he was a great praiser of peace. He may have been compelled to fight in times of war but as a man he could talk open-heartedly with anyone. He may have gone to the war but in the front lines he hated war itself and understood the contradiction of why people had to wage wars. I know he must have been waiting for peace.

Shimpei is that kind of a man. Any man will pity dumb animals and insects, and as a man no one can, as an individual, challenge him to quarrel. I think he has the personality which cannot stop people from liking him.

I am sure this is the way anyone who knows Mr. Asano feels.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY,
Lieut., JGN
Judge Advocate.

"Exhibit 63 (a)"

1471

P E T I T I O N

FOR: ASANO, Shunpei, Rear Admiral, I.J.N.

Admiral ASANO could be declared a noble-minded man, as well as a capable leader of social men, because he not only was bent on improving himself and bettering his character, but also sought knowledge over a wide scope, and never hesitated to advise us, who were under him as a military man, to see to it that there shall never be contradiction in our way of self-preservation as an individual and our lives as members of a community.

Here he mingled with militarism, his social points of view and his method of training would not be a step out of the scope of feudalism. However, he was a man with an altogether different conviction, and had early discarded his old ideas and advocated the development of Democratic Japan. Come to think of it, his advocacy may have been innate. For this reason, how many are looking forward with great expectancy to this present age?

As I sit here in solitude and quiet reminiscence of the days in Truk, I recall the critical situation resulting from a food shortage. With all communication routes cut off from us, we had to cultivate our own fields. There seemed to be no end to the critical food shortage and there we were at the brink of death, and those that died were not few.

However, his leadership and creation have helped minimize the casualties, and have helped many to return home safe and sound. He is brave and sagacious and is prompt in decision. He is sharp in meeting all occasions, and to his men he was filled with paternal sentiments. Should there have been anything against him, it must most certainly have been an inevitable act, something beyond his power.

"Save that man, ASANO" surely must be the pass word of everybody who knows him.

It is my solemn wish that due consideration is given his present condition and his past accomplishments and that he be given a lenient trial.

December 1944.

HITOSHI MIYAGAWA

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

WALTER E. KERRICK, JR.
Lieutenant, USN.
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

FORM 64 (a)

1472

CERTIFICATE OF PERSONALITY

Rear Admiral ASANO, Shingo.

The above mentioned person specialized in Gunnery, and after the outbreak of the Great East Asia War was commissioned skipper of a cruiser, Head of Replacement Department at Truk, and later Commanding Officer of the Forty-first Guard Unit.

He is a man of quiet disposition, honest and frank, and loves his men. His associations with his friends are intimate and affectionate and he is trustworthy.

At Truk.

20 December 1946

SAISHI KAJIMA
Rear Admiral, I.J.N.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

HUGHES E. HERRICK, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

FORM 65 (a)

1473

PETITION FOR COMUTATION OF SENTENCE FOR:

REAR ADMIRAL ASANO, Shipod.

By Captain KENSHIRO HARADA, IJN

When Rear Admiral ASANO was with the Personnel Department of the KURE and the YOKOSUKA Naval Bases, I was also a member of the Personnel Department, YOKOSUKA Naval Base, and for this reason I was in constant touch with the admiral. While at Truk, as heads of our respective departments, we were very close terms and so I am in a position to fully comprehend his personality.

Rear Admiral ASANO has been connected with the Personnel Department ever since he was a captain. Without doubt, this fact places him in a position fully to understand the inner workings of human nature. He is a man of high moral standing, fair and impartial, with harmonious character, humane, and a possessor of a precise judgment, and a model and typical naval officer.

That he was looked upon as a father by the younger officers, and that he was regarded as a trustworthy man by our colleagues, the heads of the different departments, are manifestations of this fact.

When we had learned that he had been taken into custody as a war criminal suspect, we could hardly believe our ears.

Giving due consideration to his human character I profoundly appeal for clemency in your dealings with him.

**KENSHIRO HARADA
Captain, I.J.N.
Commanding Officer 4th
Construction Corps.**

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

**HUGHES E. HENRIK, JR.
Lieutenant, USNR.
Interpreter.**

CERTIFIED TO BE A TRUE COPY
James P. Kenny
**JAMES P. KENNY,
Lieut., USN.
Judge Advocate.**

SECRET 66 (a)

1474

P E T I T I O N

FOR:

Navy Captain ASANO, Shimpai

During my service in the Navy I had the privilege of having his close friendship for about thirty years. He is very gentle, sincere and kind. I have never seen him show anger. As we Japanese say his character could be said to be that of a man who will not kill even a worm. I can hardly believe that he is under suspicion in the present case. I pray that he will be freed of all suspicion very quickly.

ANIME, Taji
c/o FUKUDA, 12 NITA, MIYONO, Ward, Tokyo.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

ROBERT E. KENNEDY, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Kenney
JAMES P. KENNY,
Lieut., USN
Judge Advocate.

"EXHIBIT 67 (c)"

1475

CERTIFICATE OF ASANO, Shinsuke's CHARACTER.

Admiral ASANO as a typical Japanese naval officer:

In a single word Admiral ASANO is a model of the Japanese Naval Officer. Outwardly a very strict disciplinarian, he is very warm at heart. Thus, when talking to his men, he did not lose his dignity and always had his men looking up to him even at the most horrifying scene. He also persistently instructed us officers to be on the lookout for our errors and faults in handling our men.

The Commanding Officer (the Admiral) always had deep insight into the enlisted men's living and psychological conditions. During a burial ceremony of one of the men who died in action, he remembered that this man had once hurt himself climbing a coconut tree and so had a coconut placed before the altar, which is a manifestation of the fact mentioned above. In spite of his possessing this tenderness, he did not like to be in the limelight and concentrated on training us who had direct access to our men.

For instance, he would hold discussions in response to the turn of the tide of the battle, or changes in circumstances surrounding Truk, and would appreciate most the heated arguments concerning the duties of the corps. Then following our debate, the Admiral with his vast knowledge of the overall situation would designate our course with his precise judgment.

Thus, if it could be said that we had carried our combat missions and business without much mishaps of concluding the war it would not be an over-statement to say that this was all made possible by the superb leadership of the Admiral.

Admiral ASANO as a man with knowledge:

Admiral ASANO, as a naval officer, was a man with wide knowledge. As one who has intimately talked with him, it has always been a pleasure to listen to his significant talks as one of the well educated "man about town" and a Pacifist, as well as to look up to him as our Commander.

Many were the times that we had assembled around the Commander discussing the "True Way of Japan" and "Democracy." The Commander always pointed out the facts that we should never have resorted to armed force as a means of developing Japan, and it wasn't a matter of once or twice that he had expressed deep regrets against the leaders who had led us into war.

The Admiral, at heart, is a Pacifist. He was a diplomat and a business man in a military uniform, and who had profound knowledge of the true aspect of the world and the course Japan should take.

By virtue of his significant talks - originating from his own special experience as a naval man - which I had heard, I have gained a light to guide me in my existence as a "man about town" who must cooperate in the rehabilitation of New Japan.

SHINSUKE ASANO

I hereby certify the above to be a true and complete translation of the original written in Japanese to the best of my ability.

JAMES P. KERRY,
Lieut., JAG
Judge Advocate

WALTER E. KENNEDY, JR.
Lieutenant, USN
Interpreter.

68 (a)

1476

P E T I T I O N

Rear Admiral ASANO is not narrow-minded nor prejudiced, as is customary of Japanese officers with long military service. He has a wide view of everything and is understanding.

He is a man of stern integrity with pure heart, as is common of all true "knights" of the past or the present, and of the East or West. He also has the distinct characteristic of observing his word of honor.

His modernistic touch and his distinctive character of ancient knight-hood were inspiration without bounds to us.

I believe that in discussing him we could only touch his true self by focusing our attention especially on his character previously mentioned. For these reasons, I have written this appeal, that they may be given due consideration.

SUGIMORI OHO

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

EDWARD E. KERRICK, JR.
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Kenny
JAMES P. KENNY
Lieut., USN
Judge Advocate

FORM 9 (a)

1477

P E T I T I O N

FOR: Rear Admiral ASANO, Shimpai.

That Admiral ASANO is a man of gentle and sincere nature with high moral standings and a strong sense of righteousness is evidenced by the fact that he has been the Military Attache to the Crown Prince.

He loved his men as father would his son, and during the days of our critical food shortage he personally advised all non-commissioned officers individually. There was the time when he reminded me that there was a man lying down in the left corner of the barracks who seemed to be losing weight each day and added that there must be many others like him and that I should pay strict attention. I am convinced that he is a grand old man with profound thoughts for his men over to the least of the enlisted men.

The Admiral was thoroughly acquainted with America and the Americans and was a pro-American advocate to the extent of telling us that although there are many who say things against the Americans because of the difference in our national traits, the Americans are essentially good hearted and make very good friends once you get to know them.

I have known him for two and one-half years and I have come to respect the man, ASANO. And for this reason, I have taken this means to ask for leniency for the man, ASANO, who is to be tried as a war criminal suspect.

SEIICHI HIRATA
LC(jg), USN.

I hereby certify the above to be a true and complete translation of the original petition in Japanese to the best of my ability.

HUGH E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

CERTIFIED TO BE A TRUE COPY

James P. Perry
JAMES P. PERRY
Lieut., USN
Judge Advocate
JAMES P. PERRY
Lieut., USN
Staff Judge Advocate

70(a)

1478

CHARACTER REFERENCE

For: Shimpai Asano, former rear admiral, Commander of the 41st Naval Defense Corps.

By: Sumi Asano (Mrs. Shimpai Asano)

Date: 1 September 1947.

To: Marianas U. S. Military Commission.

Sirs:

I am the wife of Shimpai Asano. We were married in April 1924 and for over twenty years we have lived together. I am justified I hope in stating that I know the character of my husband more than anyone else. For which reason I hereby swear and certify that the following is true and correct.

In society and at home my husband was always cheerful. He cherished a strong feeling for world peace and love for humanity. He was respected by many people and I cannot remember anyone who disliked him. On account of his profession as a naval officer he has handled many men as his subordinates. But he took sides with the weak and useful guidance to them, many of those who were demobilized will have called upon us to pay their respects to my husband. At home, our eldest son after graduating from the Kanakura Normal School is teaching at school. The eldest girl Akiko is helping me at home after finishing high school. And the second boy is still a fifty year student in middle school.

Due to the profession he chose, he was away from home time and again, but to myself and the children he was always kind and our family never experienced any loneliness nor sadness.

He has many hobbies. When he was young he was interested in Western as well as Japanese music. In spare moments we went picnicking or to movie theaters. As he grew older his greatest hobby seemed to be reading books. When he was at home he never spoke a word about his official duties. He was of the type who spoke little, always alert to not make slips in speech. He was sociable and democratic ideas seemed to be his aim.

I do not know on what charges my husband was interned but I earnestly plead to you for a kind consideration and a fair trial.

Signed: Sumi Asano.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KENNEDY, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 71 (a)"

1479

**CHARACTER CERTIFICATION OF FORMER COMMANDER OF 41ST GARRISON CORPS, REAR
ADMIRAL SHINPEI ASANO.**

By: Kojiro, Gunki, No. 418 Shiori Machi, Yokosuka City, Kanagawa Prefecture.

3 September 1947.

To : U. S. Military Commission, Marianas Area.

Sirs:

I am an intimate friend of the above named man. For 25 years I have been an intimate neighbor and therefore I think I am more familiar with his character than anyone else. Therefore, after giving oath I shall make the following statement:

1. He is a most virtuous character with the spirit of loving peace, humanity and charity.
2. He was a man of justice and righteousness and there is absolutely nothing which demerits him.
3. His character was very noble, always sympathizing with the weaker side. Affectionate to those under him he was deeply sympathetic.
4. In private life, he was sociable with his friends and neighbors and was respected by all.

Guided by my conscience I swear that the above statement is true.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

**HUGH E. KENRICK, Jr.,
Lieutenant, USNR,
Interpreter.**

"Exhibit 72 (a)"

CERTIFIED TO BE A TRUE COPY

James P. Kenney
**JAMES P. KENNY
Lieut. USN
Judge Advocate**

1480

To the Chairman of War Commission in Marianas.

5 September 1947

TESTIMONIAL FOR PERSON AND CHARACTER OF SHIMPEI ASANO.

1. During my tenure of the office as Paymaster on Warship "Hosho," Shimpei Asano was the head of the gunnery on the same boat. As there were more than fifteen officers including 2nd chief and some pilot officers in the officers' mess room at that time, a good example of his character being not only peaceful and clear but harmonious with other people and at the same time respected by others, was the fact that Shimpei Asano was a man who was always the center of the gatherings of officers in the mess room which was most cheerful and harmonious, and brought us the most impressive life I have ever had in my navy life on this warship "Hosho" for a year.

2. After that Shimpei Asano was transferred to the Naval Paymaster School as an instructor of war tactics. He who came from the field of the War Tactics was well associated with the other instructors and pupils who belonged mostly to the field of accountant, and different type of people with those who came out from a field of war tactics, was respected by all the instructors and pupils. I have heard often that there was no one like him who had such a fine character and was respected by others in this school.

3. Moreover after he left the school, he became the attaché officer to Prince Kuni. Only by this fact, we can say he was a fine officer.

4. He and I were coincidentally under the same family name, but we have no relation at all, beside we came from the same prefecture of Ibaragi.

signed: Takayuki Asano
Former Navy Captain, Paymaster.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

HUGHES E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY

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

"Exhibit 73 (a)"

Yaita-Machi, Shiogo-gun,
Tochigi Prefecture

July 24, 1947.

His Excellency,
Commander-in-chief.

Dear Sir:

Please allow me to send you a copy of a petition for Ex-Surgeon
Commander Senri Ueno, who has been detained in the Sugamo Prison last
February.

A PETITION

For generous consideration of Ex-Surgeon Commander Senri Ueno.

1. Summary.

The undersigned earnestly beg His Excellency General Douglas Mac
Arthur that he would kindly consider the case of Ex-Surgeon Commander Senri
Ueno, who has been detained in the Sugamo Prison since last February,
and that His Excellency would generously take such steps as to commute his
punishment, if he were found guilty.

2. Reason.

(a) The growth and the character of Senri.

Senri was born as the eldest son of late Mr. Masui Ueno, a physician
in the town of Yaita, Tochigi Prefecture, in 1907. From his boyhood he
had a deep faith in God and very faithful to his parents. He behaved well
and was never scolded by them. There are many anecdotes which prove his
kindness. When he was 12 or 13 years old, his house dog fell through the
glass roof of a hot-house and died by having been thrust through his
heart with a piece of the broken glass. After having wept about one hour
embracing the corpse, he buried the dog at the corner of the garden. He
would often times lay flowers and a cup of water on the grave. Whenever
he found some of his friends sick, he would bring him to his house and ask
his father to take care of the sick gratuitously.

Naturally he was not only respected by his friends, but his neighbors
also would admire him saying, "Truly Senri is a wonderful boy!" He pro-
ceeded to a high school. There, as before, he would never quarrel with his
classmates, nor maltreat his juniors. At that time, one of the townsmen
told me, "The eldest son of Mr. Ueno is very kind. He is giving Mr.
Takesaki (who is a student of the Dai Ni Koto Akko), 25 yen a month from
his own pocket money without informing it to his parents. Isn't he really
a wonderful boy?" It was a real story. Mr. Takesaki could graduate from
the college, thanks to his help, and afterwards he was given the degree of
Doctor. He went to the war front, and his fate has not been heard until now.

RECEIVED TO THE COPY

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

Exhibit 74 (a)

1482

Senri proceeded to the Tokyo Jikei Medical College. When he was in the third year grade, he suddenly returned home one Saturday afternoon, and told his father, "I have something to ask for your help, daddy. The day before yesterday, I found one of my friends named KAMIZAKI was weeping. I asked him, 'What is the matter?' He replied, 'My father came from the native country and notified me that he could not send money from now on, owing to misfortune. So, I have to give up my study, it's a great pity, but I can't help it. I asked him whether his father had returned or not. He replied that his father has still been staying at his lodging house. 'That's very good,' I said to him, 'I have some idea. Tell your father to stay and wait until next Monday. I will return home on next Saturday and consult with my father.' Now, father, I beg you would help Mr. KAMIZAKI so that he can continue his work for one and a half year more, and graduate from the college." After listening silently to his son's story, the father said, "All right, son, return to Tokyo tomorrow, and bring Mr. KAMIZAKI and his father here. I will meet them and make them easy." He returned the next morning and brought them to his house. Senri's father sent eighty yen per month to Mr. KAMIZAKI. It is needless to say how grateful they were! Mr. KAMIZAKI could graduate from the college by his help. Later he came to Senri's father's hospital and helped him for about two years to express his gratitude. Mr. KAMIZAKI is now working in the Nippon Life Insurance Co., as an insurance physician. These are some incidents which show Senri's kindness and sympathy. After he became a surgeon, he also behaved modestly, and always treated kindly the sick or wounded sailors.

(b) The miserable condition of Senri's family.

Senri's father having been a physician, served on the sanitary affairs of his town for thirty years. He was also known as a sincere and kind doctor, who treated the poor people for nothing. When he was dead, one thousand odd people attended the funeral, including all chiefs of public offices and prominent men of all the town.

Senri's mother was also a wise woman. As a president of women's society of the town, she worked hard for the welfare of the townfolk. At present she is an adviser of the society. But after her only son was imprisoned, she has become totally devastated, always weeping about her loved one's fate. At present, Senri's family members are the following: Mother (age 69), wife (36), eldest son (16), 2nd son (15), eldest daughter (13), 2nd son (11), 4th son (9), sister (39). All children are attending school. His sister is jobless.

To sustain this eight member family requires at least several thousand yen, no with standing all efforts of curtailment. Unhappily, as Senri's father had been in bed and no income for four years, the family exhaust all their savings. Senri returned home last July. He borrowed about forty thousand yen, brought some medicine, succeeded his father's job. "The young doctor has returned," rejoiced the people. He prepared and could pay his debts considerably. But the happy time was short. After only six months peaceful life, he suddenly was brought away to the Sugamo Prison on the 6th of last February. Now surprised and broken hearted the whole family were! They only were weeping, not knowing what to do. When the townfolk knew this incident, they all deeply sympathized and resolved to petition the pardon of Senri. In last February several thousand people jointly appealed to the authority.

CERTIFIED TO BE A TRUE COPY

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

EXHIBIT 74 (2) (a)

1483

Four months has elapsed since then, the poor old mother has always been praying that her son would return safely. There are considerable number of people who owe to Samri's father's kind treatment, but they can not help the family economically, because they are living from hand to mouth. I visited the family recently, and I was struck by seeing the miserable condition of them. Which was beyond my anticipation. I felt my eyes were wet, and resolved to save this poor family. So hereby I dare to write to His Excellency the behind the scene story and beg your generous and human consideration.

/s/ Yasuhai Takahashi

Town headman of Yaita
Shioya-gun Tochigi Prefecture.

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY
Lieut., JCN
Judge Advocate.

74-1111

1484

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

FF12/A17-10
02-JDM-90

17 Feb 1948

Serial: 1906

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

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

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

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

17 Feb 1948

FF12/A17-10
02-JDM-ro

Serial: 1906

In view of paragraphs three and four above and because the Convening Authority believes that the punishment for similar war crimes should, insofar as practicable, be uniform, it is recommended that the Secretary of the Navy commute the death sentences of HIRIGUCHI, Takeshi and TANAKA, Susa to that of life imprisonment. (See. 461 U.C. & D. refers).

Subject to the above the proceedings, findings of guilty, and the sentences in the foregoing case of ASANO, Shinsai, UENO, Chioto, HAYASHI, Shohichi, HIRIGUCHI, Takeshi, HIRAYASHI, Masumi and TANAKA, Susa are approved.

ASANO, Shinsai, UENO, Chioto, HIRIGUCHI, Takeshi and TANAKA, Susa will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

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

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

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