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U. S. War Department

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WAR CRIMES OFFICE

**Judge Advocate General's
Office**

File No. 48-33-1 NAVY CASE
Sub. HIDEYAKU FURUKI
PART 1

See also Nos.

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U. S. GOVERNMENT PRINTING OFFICE 16-42070-1

0024

no 3

RECEIVED
11 AUG 1947
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

CASE OF
MAJOR FURUKI, HIDEAKU, IMPERIAL JAPANESE ARMY

VOLUME I + II
PREFIXED DOCUMENTS
RECORD OF PROCEEDINGS

CERTIFIED TO BE A TRUE COPY
James P. Kenny, Lieut. USN
Judge Advocate

0025

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

Cinepacflit File
A17-25

c/o Fleet Post Office,
San Francisco, California.

Serial 4816

7 AUG 1947

Numerous clerical errors and errors in punctuation which have not been corrected, or which have been corrected but not initialed by the Judge Advocate, as required by section 511, Naval Courts and Boards, are noted throughout the record. The record will not, however, be returned for correction as it is not considered the rights of the accused have been prejudiced.

Subject to the foregoing, the proceedings, findings on Charge I and the specifications thereunder and on Charge II and specification 5 thereunder and the sentence in the foregoing case of FURUKI, Hidesaku, formerly a Major, I.J.A., and the action of the Convening Authority thereon are approved. The findings on specifications 1, 2, 3 and 4 under Charge II are disapproved for the reason set forth by the Convening Authority in his action on the record.

LOUIS DENFELD
Admiral, U. S. Navy,
Commander in Chief Pacific
And United States Pacific Fleet.

To: Judge Advocate General.
Re: Record of proceedings of Military Commission - case of FURUKI, Hidesaku,
former Major, I.J.A.

Copies to:
ComMarinas
IsComGuan
President Military Commission, Guam,
CO, MarBksGuan.

#37
0026

PF12/AL7-10/
13-JDM-en

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

1 AUG 1947

Serial: 16183

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, was convened 21 February 1947 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 Area; and the Judge Advocate General of the Navy (JAG despatch 311730 July 1946). The commission was authorized and specifically directed to take up this case. The order for trial (charges and specifications) was issued 24 February 1947, and served on the accused on 24 February 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 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, dated 5 December 1945, as necessary to obtain justice.

Referring to Charge I and the specifications thereunder the facts are simple. In 1945, on dates set out in the specifications, prior to the surrender of Japan, thirteen natives of the Marshall Islands were killed on Jaluit Atoll by the accused FUKUKI, Hideoaka, formerly a major, IJA, and the highest ranking army officer on Jaluit at the time. The accused contended that the killings of the natives were justified and legal because the natives were persons subject to jurisdiction of the Japanese military authorities on Jaluit, and that their executions had been ordered by the Military Commander of Jaluit after due investigations of charges preferred against them. The evidence shows that the so called investigations of the natives which formed the basis for the order of their executions did not comply with the requirements for a trial as universally recognized by civilized states.

In the above circumstances it is considered that the main question presented is, does a United States military commission have jurisdiction to try the accused, a Japanese national, for an offense (murder) committed in the Marshall Islands, then under Japanese mandate and prior to occupation by United States Forces? It is believed that this question was answered in the affirmative in the despatch of the Judge Advocate General of the Navy (311730 July 1946), received prior to the date the Commander Marianas was directed to bring the accused to trial (301300 Aug. 1946) and cited in the precept. Because it is believed this case may establish a precedent the attention of the Navy Department is invited to the above question for such further consideration as may be deemed appropriate relative to legal or policy features.

Referring to Charge II and the specifications thereunder a review of the record fails to disclose affirmative positive evidence that the natives named in specifications 1, 2, 3 and 4 were punished as spies. The specifications respectively alleged violations of Article 30, Annex to the Convention, Laws and Customs of War on Land, Hague Convention No. IV of 18 October 1907. The allegations that the natives named were punished as spies are material allegations alleging the gravamen of the offense. The gravamen of an offense must be proved to sustain a conviction. (C.M.S. 6, 1933, 6, 7; 2, 1925, 11). The accused's guilt must be established by substantive proof. (Sec. 154, R. C. & E. 1937). There is nothing but circumstantial evidence in this case to show that the natives named in specifications 1, 2, 3 and 4 were punished as spies. Circumstantial evidence is frequently better than direct evidence, but when it alone is relied upon the circumstances must be

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13-JUN-68

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

satisfactorily proved as facts and these facts must clearly and unequivocally imply the guilt of the accused to the extent that it can not reasonably be reconciled with any hypotheses of his innocence. (Sec. 144, M. C. & S. 1937; Sec. 865 and Sec. 922 et seq. Wharton's Criminal Evidence, 11th Ed.). In this case the positive evidence bearing on the nature of the offenses for which the natives referred to were punished indicates that they committed offenses other than spying, namely, attempted murder, desertion from Jaluit, disobedience of orders, assault of military guards and destruction of military property. Accordingly it is the opinion of the Convening Authority that there is an insufficiency of evidence to support the conviction of the accused on specifications 1, 2, 3 and 4 under Charge II.

Subject to the above remarks the proceedings, findings on Charge I and the specifications thereunder, and on Charge II and specification 5 thereunder and the sentence in the foregoing case of FURUKI, Hidesaka, formerly major, IJA are approved. The findings on specifications 1, 2, 3 and 4 under Charge II are disapproved for the reason that the Convening Authority considers there is insufficient evidence to establish the fact that the natives of the Marshall Islands named in these specifications were punished as spies.

FURUKI, Hidesaka, formerly major, IJA will be transferred to the custody of the Commanding General of the 6th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

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

To: Commander in Chief, Pacific and United States Pacific Fleet.
Re: Record of Proceedings of Military Commission - case of
FURUKI, Hidesaka, formerly Major, IJA.

Copy to:
Island Commander, Guam.
President Military Commission, Guam.
Commanding Officer, U. S. Marine Barracks, Guam.

0028

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0029

Case of
Furuki, Hidesaku,
major,
Imperial Japanese Army.
March 1, 1947.

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

437
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James P. Henry, # 182

48-33

0030

Major Furuki, Hidesaku, Imperial Japanese Army,

Trial by Military Commission

at Guam

Marianas Islands.

March 1, 1947.

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James P. Kenny Lt. JAG

0031

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James P. Kanny #154

0032

Al6-2/FF12/
13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3785

21 February 1947

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.
Subject: Precept for a Military Commission.

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

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

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

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

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

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James P. Kenny *for* *W. H. K.*

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0033

A16-2/FF12/
13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3785

21 February 1947

Subject: Precept for a Military Commission.

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

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

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

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

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

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

Copies to:

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

Certified to be a true copy:

David BOLTON,
Lieutenant, U. S. Navy,
Judge Advocate.

"A" -2-

0034

ARGUMENT IN OBJECTION TO THE APPLICATION OF THE LAW ENFORCED BY MR. [REDACTED]
AMINO

Original argument in Japanese prefixed to the original record.
Certified translation prefixed herewith marked "C."

0035

ARGUMENT IN OBJECTION

TO THE

APPLICATION OF LAW

Delivered by

Mr. Yuichiro AKIMOTO.

The accused objects to the application of the law as is introduced in specifications 1, 2, 3, 4, and 5 of Charge I in which the defendant is alleged to have violated Article 199 of the Criminal Code of Japan.

Such application seems to be based upon the fact that the act of the accused had taken place in Jaluit Atoll, Marshall Islands which was then a Japanese mandated territory and that the Criminal Code of Japan was enforced there according to the provision of the Imperial Ordinance No. 26 promulgated in 1923,

I think that the prosecution has applied the Criminal Code of Japan, because it followed the principle of applying the law of the territory in which the action had taken place.

Such application is legal only when this case is tried in a Japanese court. But as this court is an American court ruled by American laws, Japanese laws are foreign laws.

It is the general principle in criminal procedure that foreign laws can never be applied in the trial. ("Theory of the Criminal Code of Japan" by E. MAKINO, Doctor of laws, Professor of the Imperial University). Of course, there may be instances in civil cases when foreign laws are applicable. From the stand point of the theory of legislation, it is still a topic of argument among the scholars of criminal laws in various countries as to whether or not foreign laws are applicable in criminal courts. But thus far, in no country or state can I find a written regulation which permits the application.

I believe that there is no such provision in American laws which permits application of foreign laws in criminal courts.

Therefore, the accused believes that application of the Criminal Code of Japan in the Charge of this case is illegal, and thereby objects to the first charge.

AKIMOTO YUICHIRO

I certify the above to be a true and complete translation of the original argument in Japanese to the best of my ability.

EUGENE E. KERRICK, Jr.
Lieutenant, U.S.N.R.
Interpreter.

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James P. Kerry

"C"

0036

ARGUMENT IN OBJECTION TO THE CHARGES AND SPECIFICATIONS DELIVERED BY MR. SUZUKI.
SAYED

Original objection in Japanese prefixed to the original record.
Certified translation prefixed herewith marked "E."

0037

.....ARGUMENT IN OBJECTION TO THE CHARGES AND SPECIFICATIONS.....

The accused objects to the charges and specifications. First, the accused is charged in each specification of Charge I, with violating Article 199 of the Japanese Criminal Code, the text of which has been translated and cited as follows:

"Every person who has killed another person shall be condemned etc". But observing the Japanese Criminal Code as a whole, this translation "every person" is inappropriate and easily misunderstood. We believe it would be more appropriate if it were translated as follows:

"A person who has killed ...etc.."

We request that this correction be made.

Secondly, in each of the specifications of Charge I, only Article 199 of the Japanese Criminal Code is applied to the offense of the accused. I believe, if the accused should be charged by applying the Japanese Criminal Code, then the charge and specifications also should be written in accordance with the Japanese Criminal Code and Japanese Criminal Procedure Law. However, Charge I and each of its specifications is written in complete harmony with "murder" in the American Criminal Law. We must not allow ourselves to forget the following point. That is, in America homicide is divided into "murder" and "manslaughter". Their elements are different and the way of writing the charges and specifications varies accordingly. But in the present Japanese Criminal Code homicide is not divided into these two classes and as a name of a crime, there is only one called "homicide". There does not exist a name of a crime nor type of crime which corresponds with that of "murder" in the Criminal Law of U.S.A. Therefore, while in the charge and specifications it is alleged "in violation of Article 199 of Japanese Criminal Code", it is contradictory to write charges and specifications under the name of a crime "murder" as no such stipulation exists in the Japanese Criminal Code and which in American Law conveys a specific meaning and element. From this point of view, the charges and specifications in this case hold no significance and should be rejected.

SAIZO SUZUKI

I certify the above to be a true and complete translation of the original argument in Japanese to the best of my ability.

EUGENE E. KERRICK, Jr.
Lieutenant, U.S.N.R.
Interpreter.

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James P. Kenny #VPA

"E"

0038

Objection to the charges and specifications in the case of Major FURUKI, Hidesaku, Imperial Japanese Army, delivered by Commander Martin E. Carlson, U.S.N.R. Defense Counsel on March 1, 1947, before the Military Commission convened by the Commander Marianas Area at Guam, Marianas Islands.

The accused, Major FURUKI, Hidesaku, Imperial Japanese Army objects to the charges and specifications on the following grounds:

All the specifications allege "FURUKI, Hidesaku, then a major, Imperial Japanese Army," . Under the first charge there are five specifications. All five specifications allege the offense charged is "in violation of effective law especially Article 199 of the Criminal Code of Japan." Major FURUKI, Hidesaku, Imperial Japanese Army is still an officer of the Army because he has been kept a prisoner by American authorities since the termination of hostilities - August 1945, accused as a war criminal. Article D-13, page 490, Naval Courts and Boards, 1945 states "in the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court martial practice, and such specification should show on its face the circumstances conferring jurisdiction, as for example, that the offender was an inhabitant of a district under military government". Quite to the contrary all specifications show on the face a clear lack of jurisdiction. Especially is this true of the five specifications under Charge I because these specifications allege the offense as "in violation of effective law especially Article 199 of the Criminal Code of Japan".

We will enter a plea to the jurisdiction of this commission to try the accused, Major FURUKI at the proper time. But since Naval Courts and Boards, Section D-13 requires that all specifications show on the face "the circumstances conferring jurisdiction the accused objects to them all and especially to the five specifications under Charge I.

Section D-14 Appendix D, Naval Courts and Boards requires that the record of this court be "transmitted to the Judge Advocate General of the Navy to be revised and recorded". It is therefore necessary that the requirements of Section D13 of Naval Courts and Boards be complied with in this present case and the specifications be amended to show jurisdiction.

The accused further objects to specification one of Charge I because four separate offenses are charged in one specification. We ask that this specification therefore be amended and four specifications be drawn up one for each offense. Under Section 199 Criminal Code of Japan translated by William J. Sebald this ruling is set forth: "Even when murder is committed as a result of one single resolution, as many cases of murder are formed as there are victims " 35 S.C. 3587.

So in specification two of Charge I there are three separate offenses charged in the one specification.

In specification three of Charge I there is alleged two separate offenses.

Two separate offenses are alleged in specification four of Charge I.

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James P. Kavanagh U.S.N.

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And specification five of Charge I also alleges two separate offenses.

We hold that there should be thirteen specifications inasmuch as thirteen offenses are alleged.

The accused object on the same grounds to specifications one, two, three, four and five, of Charge II. We hold that there should be thirteen specifications under Charge II.

The accused further object to all the specifications of Charge II on the ground that the offenses alleged are said to be that the accused Major FURUKI did, punish as spies,..... killingnative inhabitants of the Marshall Islands....., this in violation of the laws and customs of war. We hold that these specifications are not in good form in that the specific laws and customs of war are not set forth verbatim. Under the first charge the section of the Criminal Code was set forth verbatim, but now in this second charge no such law or custom is set forth. It is not enough to simply allege that the offense is a violation of the laws and customs of war. This is too vague and uncertain to fully acquaint the accused with the offense with which he is charged. Section 17, Naval Courts and Boards requires: "whenever the offense comes directly under any other enactment (foreign laws, municipal ordinance, or local ship or station order) the same shall be set forth verbatim in the specification and proved like any other fact."

Since the record of this commission must be transmitted to the Judge Advocate General of the Navy to be revised it is necessary that it be correct in all detail. Section D-14, Appendix D - Naval Courts and Boards, and we ask that all specifications of Charge II be amended and the specific laws and customs of war be set out verbatim.

MARTIN E. CARLSON,
Commander, U.S.N.R.
Defense Counsel.

up - 2 -

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James P. Kenny et USN

0040

REPLY TO THE OBJECTIONS MADE TO THE CHARGES AND SPECIFICATIONS BY THE ACCUSE

DELIVERED BY

DAVID BOLTON,
Lieutenant, USN.

Able counsel for the defendant have offered certain objections to the charges and specifications. I will seek to answer the objections in the order that they have been made to the commission.

Able counsel Mr. Akimoto has objected to Charge I and the specifications thereunder on the theory that the charge seeks to apply foreign laws to an offense charged before the commission and that in general, foreign laws can not be applied in criminal trials. Counsel for defense himself stated that there is still an argument in various countries as to whether or not foreign laws are applicable in criminal courts but he states that in no country or state and I quote "can I find a written regulation which permits the application." For the information of the defense counsel I would like to refer him to the basic charter of the International Military Tribunal which sat in the Nuremberg trials. Under Article 6(c) the tribunal established by agreement for the trial and punishment of national war crimes of European Axis countries certain crimes were considered as coming within the jurisdiction of the tribunal and Section 6 refers to crimes against humanity and reads as follows:

"Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war or persecutions on political, racial, or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

This provision goes beyond the scope of the defendants arguments in that it not only permits trials of crimes against the local law of the foreign place but in fact permits trials of crimes regardless of the existence of any such local law. Further, I would like to refer counsel for the defendant to the common practice in naval courts to apply in criminal trials not only naval criminal laws but also applicable civil criminal laws of the jurisdiction within which the court is sitting and also criminal laws of foreign jurisdiction which refer to the specific offenses charged.

However, Charge I, is rested by the judge advocate squarely upon the issue that in the application of this law we are sitting not as a foreign military commission but rather in the position of an exceptional superior local court. That concept is a basic one which is reflected throughout the application of military governments, and the historical background of military commissions sitting in occupied territory. They are empowered to sit in the place and in the position of a local court.

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James P. Kenny Lt USN

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With reference to the argument by able counsel for the defendant, Mr. Suzuki, who objected to the phrase "every person" as used in specifications under Charge I and requests that the words "a person" be substituted for the words "every person", the judge advocate believes that in its substantive use in this specification the differentiation between "a person who has killed another" and "every person who has killed another" is immaterial if not completely indistinguishable and we believe no correction is warranted. At best such a correction would be clerical and highly technical as there is no conceivable prejudice to the defendant in this difference in interpretation.

In addition, Mr. Suzuki objected that the specifications in applying Japanese law are framed largely in terms of the background of the common law rather than the background of Japanese pleading. It should first be noted by the commission that we are not bound by Japanese laws of pleading and procedure and that the function of pleading is to assure a fair and just prosecution of the case against the accused and a fair opportunity for his defense. Actually it should be noted that in the application of common law phraseology to the specifications we have gone further in that we added safeguards of the common law concepts of the crime of murder. We have not in any way prejudiced the defendant. On the contrary in pleading we have applied safeguards which are implicitly applied by the Japanese courts themselves in the interpretation of such broad and vague terminology as that in which the instant crime is written. Japanese counsel will certainly agree that their own courts have sought to apply additional concepts and safeguards to delimit and restrict the broad application of the language of this provision which reads "every person who has killed another....."

In providing such safeguards we have gone much beyond the Japanese safeguards by specifically requiring proof that the acts were done wilfully, feloniously, with premeditation and malice aforethought, etc, in order to establish the crime as charged. This perhaps more than anything else that we could say at this point, establishes our inherent desire to assure justice to the accused. For this purpose and in accordance with this desire we have established these additional safeguards requiring specific elements in addition to the basic formal pronuncio of the Japanese law which per se merely requires that "every person who has killed another person shall be condemned to death or punished etc". The fact that we have not alleged the gradations of offenses beneath that of murder as applied in the common law and in various statutes running the gamut, in certain jurisdictions, from murder in the first degree to the lowest crime of manslaughter in the second degree does not in any way prejudice the defendant because we have, in fact, already assured him of safeguards beyond that to which he is under his own law entitled.

Mr. Carlson in his able objections to the charges and specifications has stated that he objects to the specifications on the ground that they do not show jurisdiction. As the argument on jurisdiction is one which defense counsel have stated they would defer until a later time, it is merely necessary at this point to answer that objection in line with the jurisdiction of the commission as set forth in the precept which creates and establishes its jurisdiction over certain crimes and persons. We anticipate further argument by the defense counsel as to jurisdiction and are limiting ourselves in this point to such argument as is essential to show the specifications technically correct. The precept in establishing the juris-

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James P. Kenney *LVH*

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diction of the commission, as set forth in part in paragraph 3, provides that "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over offenses and Japanese military personnel now in the custody of Commander Marianas, referred to in" . . . the referenced despatch. There is no basis on which the defense can contend that in accordance with the precept the specifications have not adequately established specific jurisdiction. The requirement of jurisdiction over the person is satisfied in the specification by the allegations that FURUKI, Hidesaku, a major, Imperial Japanese Army, is being tried before this commission. The fact that he is in the custody of Commander Marianas is self evident. That he is one of the Japanese referred to in the referenced despatch will be established in the argument as to basic jurisdiction.

With regard to jurisdiction over the offense the specification alleges offenses committed against certain Marshallese. The specifications in Charge I allege the crime of murder against Marshallese and the specifications under Charge II allege other crimes under the laws and customs of war committed against the Marshallese. Thus, the specifications do allege that the offenses were committed against Marshallese. They conform with the basic jurisdiction of the commission as set forth in the precept which specifically provides jurisdiction over offenses referred to in the despatch of the Judge Advocate General of the Navy. This despatch, which is not before the commission at this point and which will be discussed further in connection with jurisdiction, specifically refers to offenses against Marshallese natives. It is, therefore, apparent that we have established by the specifications both jurisdiction over the person of a member of the Japanese military, Major FURUKI, and jurisdiction of the offense, the offense of killing Marshallese.

Mr. Carlson in his able argument has contended that in lieu of the five specifications of each charge there should have been thirteen and that for each person killed there should have been a separate specification. It is apparent that in accordance with the broad latitude of the SCAP rules which can be applied by the commission no warranted objection can be made to the inclusion in one specification of the deaths or murders that were committed at one time and at one place by the accused.

However, it is unnecessary to rely upon the SCAP rules in this connection since all formal and substantive essentials required of a proper specification have been complied with. To cite, Naval Courts and Boards, Section 12, "a specification sets forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended".

Naval Courts and Boards, Section 27, with regard to specification states, "a specification should contain allegations of all the essential elements of the offense in simple, accurate, and concise language." That in substance is the essential requirement of proper pleading. This requirement has not been violated in the specifications and the charges against the accused. Clearly

"G" -3-

CERTIFIED TO BE A TRUE COPY

James P. Kenny for USA

0043

each of the specifications are written in simple and concise language setting forth in each specification, with regard to each incident, the facts sufficient to constitute the offense in sufficient manner as to enable a person of common understanding to know what is intended. Particularity as to time, as to place, as to person, and as to offense, is set forth properly and no prejudicial matter can be derived from the wording and content of the specifications. The defendant has not been prejudiced on these specifications. On the contrary by their clarity and simplicity, the just deliberations of this commission will be enhanced by the fact that the commission is faced with five specifications under each charge instead of thirteen. Similarly the defendant for his defense is accorded the same advantages of simple and direct pleading.

DAVID BOLTON,
Lieutenant, USN.
Judge Advocate.

"G" -4-

CERTIFIED TO BE A TRUE COPY

James A. Harvey *USN*

0044

THE ACCUSED MADE THE FOLLOWING REPLY

What the judge advocate said is not applicable since this is not an International Tribunal but a Military Commission. It is prejudicial to the rights of the accused if any member assumes he is sitting as a member of an International Tribunal.

If there are any cases in point showing that the charge as drawn under Charge I is customary in Japanese courts then the judge advocate should cite them and not just state that it is the prosecutions desire to safeguard the accused by trial under a navy convened Military Commission.

Since the prosecution did not answer our objection regarding the necessity of the specification to show jurisdiction we believe that the commission should recommend to the convening authority that the specifications be amended in accordance with requirements of Section D-13, Appendix D, Naval Courts and Boards, 1945.

MARTIN E. CARLSON,
Commander, U.S.N.R.
Defense Counsel.

"H" -1-

CERTIFIED TO BE A TRUE COPY

James P. Kenny Lt USN

0045

THE JUDGE ADVOCATE MADE THE FOLLOWING REPLY.

With regard to the statement by defense counsel that this Tribunal is not sitting as an International Military Tribunal, that particular question and particular problem is one which will perhaps more suitably be argued and determined at the time when argument as to jurisdiction is made.

I do not believe that any statement by the judge advocate has prejudiced the defendant in this regard because we merely cited sections from the Charter Of The International Military Tribunal for the Nuremberg Tribunal in answer to the statement by defense counsel that they had never seen any law or regulations which would permit trial under foreign laws for a crime charged before a Tribunal, Commission, or Court.

Counsel for the defendant objected that under Charge II the laws and custom of war violated should be specifically set forth verbatim. Section 27, Naval Courts and Boards, states it is not essential to state in a specification that an offense was committed in breach of any Federal Statute, article of the articles for the government of the Navy, law of the State in which the court is sitting, or general regulations, as the court takes judicial notice of such statute, article, State law, or regulation under which the charge is laid. As this court is competent to take judicial notice of international law and specifically the laws and customs of war, it is therefore, unnecessary that Charge II should set forth the laws and customs of war verbatim.

DAVID BOLTON,
Lieutenant, USN.
Judge Advocate.

"I" -1-

CERTIFIED TO BE A TRUE COPY

James P. Kenney *JSK*

0046

REQUEST OF THE ACCUSED FOR POSTPONEMENT IN TRIAL DELIVERED BY MR. AKIMOTO

Original request in Japanese prefixed to the original record.
Certified translation prefixed herewith marked "K."

0047

If it please the commission:

The defense is not yet ready for trial and requests an adjournment. We have no inclination or desire to delay the proceedings, but because of the following reasons we request that the trial be put off until Wednesday, March 5th at 9:00 a.m.

It was in the afternoon of 24 February, 1947, that the charges and specifications of this case were served to the accused FURUKI. The first opportunity we had to meet him was on the next day, Tuesday, February 25, 1947. Since then we have been absorbed everyday in preparing the case, but inspite of this, we have been unable to hear from the accused, the general outline of the facts. Moreover, those witnesses now in Guam who know the case well and who can testify in behalf of the accused have all been designated as witnesses for the prosecution. So the defense cannot use them at this time, but we learn there in Japan an important witness for the accused in this case. We are going to take steps to summon this witness and we shall need considerable time in this investigation.

Another fact to which we would like to draw your attention is, that we, Japanese lawyers in submitting a document or statement to the Commission, must have them both in English and Japanese. The other day, I wrote this request for delay in Japanese, then had to have it translated into English and to submit it I had to rewrite it into a clean copy. Therefore, we have to spend three times as long than the American lawyers. We request your special attention as regards this point.

Since the proceeding TOMITA case came to a close on the 14th of December of last year, and until the charges and specifications for the present case were served on 24 February, seventy days have elapsed. During this period, the Japanese lawyers, returned to Japan on 25 December and came back to Guam on 18 January.

If the charges and specifications of the present case, had been served immediately after the proceeding case or we had been allowed to even talk to the accused we could have had sufficient time in preparing and we would have made thorough investigations of witnesses and other matters. Hence, we believe we would not be requesting this adjournment.

As the situation stands, there are many matters, both in the facts of the case and legal issues, which are still left to be investigated. We cannot possibly finish our preparations in a short time.

This case, the accused being charged with murder is too important a case for the defense to go to trial and be properly prepared in only four days. Remember the prosecution had since August 1945 to prepare this case!

We shall at this time only ask a delay until Wednesday morning at 9:00 a.m.

We hope, that the Commission will give special consideration to these circumstances, and grant our request.

YUICHIRO AKIMOTO

I certify the above to be a true and complete translation of the original request in Japanese to the best of my ability.

CERTIFIED TO BE A TRUE COPY
James P. Kearney

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

0048

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

A16-2/FF12/
13-JDM-ro

24 Feb 1947

Serial: 3786

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

Subject: Charges and Specifications - in the case of:
Major FURUKI, Hidesaku, Imperial Japanese Army.

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

CHARGE I

MURDER

SPECIFICATION 1

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 23 May 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, four unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Losohr, Kohri, Kozina, and one whose name is unknown, and did therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Losohr, Kohri, Kozina, and one whose name is unknown, died on or about 23 May 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

CERTIFIED TO BE A TRUE COPY

James P. Kenny

"T(1)"

0049

CHARGE I (continued)

SPECIFICATION 2

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 28 May 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, three unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Arden, Makui, and Tiagrik, and did therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Arden, Makui, and Tiagrik, died on or about 28 May 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

CERTIFIED TO BE A TRUE COPY

James P. Kearney to USN

"T(2)"

0050

CHARGE I (continued)

SPECIFICATION 3

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 15 June 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed; with an instrument, a deadly weapon, exact description to the relator unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Chuta and Chomohlo, and did therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Chuta and Chomohlo, died on or about 15 June 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

CERTIFIED TO BE A TRUE COPY
James P. Kearney Jr USN

"7(3)"

0051

CHARGE I (continued)

SPECIFICATION 4

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 20 July 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the victim unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the victim unknown, but believed to be Mandala and Laperia, and did therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Mandala and Laperia, died on or about 20 July 1945, on the said Jaluit Atoll, thus in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

CERTIFIED TO BE A TRUE COPY

James P. Kennedy Lt JG

"4(4)"

0052

CHARGE I (continued)

SPECIFICATION 5

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 10 August 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Mojkané and Moloin, and did therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Mojkané and Moloin, died on or about 10 August 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

CERTIFIED TO BE A TRUE COPY

James P. Keany *JSK*

"7(5)"

0053

CHARGE II

VIOLATION OF THE LAWS AND CUSTOMS OF WAR

SPECIFICATION 1

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 23 May 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, four unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Losohr, Kohri, Kozina, and one whose name is unknown, this in violation of the laws and customs of war.

CERTIFIED TO BE A TRUE COPY

James P. Henry # USN

"7(6)"

0054

CHARGE II (continued).

SPECIFICATION 2

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 28 May 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, three unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Ardon, Makui, and Tiagrik, this in violation of the laws and customs of war.

CERTIFIED TO BE A TRUE COPY

James P. Henry #158

"7(7)"

0055

CHARGE II (continued)

SPECIFICATION 3

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 15 June 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Chuta and Chonmohle, this in violation of the laws and customs of war.

CERTIFIED TO BE A TRUE COPY

James P. Keary Lt USN

"7(8)"

0056

CHARGE II (continued)

SPECIFICATION 4

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 20 July 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Mandala and Laporia, this in violation of the laws and customs of war.

CERTIFIED TO BE A TRUE COPY

James P. Kerry Lt USK

"T(9)"

0057

CHARGE II (continued)

SPECIFICATION 5

In that FURUKI, Hidesaku, then a major, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving as the commanding officer of the said Second Battalion, at Jaluit Atoll, Marshall Islands, did, on or about 10 August 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, two unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Nejkan and Molein, this in violation of the laws and customs of war.

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

CERTIFIED TO BE A TRUE COPY

Lt. James P. Kenny USN

"T(10)"

0058

CERTIFIED TO BE A TRUE COPY

James P. Kenney L.P.M.

0059

米國太平洋艦隊
マニラ方面司令部

昭和二十二年二月十四日

發 マニラ方面司令部

宛 マニラ方面司令部軍法委員附法務官

米國海軍大尉「タイム・ボルト」

米國海軍大尉「エム・エー・ケリー」

或ハ法務官トシテ、貴官等、後任者

託

大日本帝國陸軍少佐 古本秀策

前託、者ハ貴官が法務官名義軍法委員ニ

於テ後託ノ起訴並ニ罪狀項目ニ付テ裁判

セラルベシ 貴官、裁判長ニ之ヲ通告シ、被告

ニ裁判ノ日時ヲ通告シ原告並ニ被告兩側ノ

全證人ヲ集合セラルベシ

CERTIFIED TO BE A TRUE COPY

James V. Kenney to VSM

"0060"

0060

第一回 人役水車

CERTIFIED TO BE A TRUE COPY
James P. Kenney & Wm. H. Kenney
"U(2)"

第二花部 罪狀項目(一) (續)
相合、實証中、主令特ニ日本則法第二、
條ニ照應、タモ、ナリ 本誌、悔本左記、如、
「人ヲ殺シ、シテ者、死刑又ハ無期又ハ三年以上
ノ懲役ニ處ス」

CERTIFIED TO BE A TRUE COPY

James P. Kenney to USK

"U(3)"

0062

第二起訴(續)

罪狀項目 頁、三

又、マニラ諸島に於て環状捕縛網、大日本
帝國軍隊南洋第二支隊第二大隊付ニシテ、
同第二大隊、大隊長トシテ勤務シ、大日本
帝國陸軍少佐(當時)古木秀策ハ「マニラ」
合衆國トシテ獨領及び其同盟諸國カ大日
本帝國ニ戦争状態ニシテ、此ニシテ、
項「マニラ」諸島「マニラ」環状捕縛網、
責任的ニ違法的ニ企圖ト更責ラセテ正
當ナ理由モナク武力セサル「マニラ」諸島、
島民三名「アルテ」・「アグ」・「ヤグ」を殺害
シ、確實ニ姓名不明ナルモ前記、者ト思ハル
ヲ春日即チ危險ニ武力ニ計画不明ニシテ、
襲ヒ殺害又ハ殺害セシメ同時同所ニテ止
「マニラ」諸島、佐氏アルテ・「アグ」・「ヤグ」
ノ身体及頭部ニ致命傷ヲ負ハセ、
前記、致命傷ニヨリ前記「マニラ」
「ヤグ」・「マニラ」諸島、佐氏ト思ハル者、
昭和三年五月二十六日頃死亡セリ、右行爲ハ實
施シ、法令特ニ日本刑法第一九七條ニ違背
シテモナリ、本条、於本左記、
者、死刑又ハ無期若クハ三年以上、
懲役ニ處ス

James
McHenry
J. J. Goff
CERTIFIED TO BE A TRUE COPY

第二起訴(續)

罪狀項目 其、三

マリアナ諸島マール環狀珊瑚島、大日本
帝國軍南洋第二支隊第二大隊付ニシテ、
同第二大隊、大隊長トシテ勤務中、大日本
帝國陸軍少佐(當時)古木宗八、マール合
衆國トシテ屬領及ニ其同盟諸國カ大日本帝國
ト戦争状態ニマリシ昭和三年六月十五日、マ
ール諸島マール環狀珊瑚島ニテ、莫見前ニ
違法的ニ企圖ト更ニ其マール正當ナ理由モナ
ク、武裝セサルマリアナ諸島、島民ニ殺シテ、
モリ、在發者ニハ確證ナ姓名不明ナルモ前
記、者ト以ハルヲ器具即チ危險ナ武器(前
細不用)ヲ以テ殺シ、又ハ殺シセシメ同時
同所ニテ上記マリアナ諸島、佐氏等、
モリ、身体及ニ頸部ニ致命傷ヲ受ヘセ
シテ、モリ、前記、致命傷ニヨリ前記マ
ール諸島、佐氏等、マールモリ、以ハル
ハ昭和三年六月十五日死セリ、右行為ハ
實施中、法令行ニ日本刑法第九七條ニ違
シタモリ、本条、應本左記、如シ、
者、死刑又ハ無期若クハ三年以上、懲役ニ處

CERTIFIED TO BE A TRUE COPY
James Henry

"(5)"

0064

定 額 項 目 表, 已

「マニラの諸島」は「環水冊」の、大日本帝國
軍隊、自第一及第二大陣中、同軍、
大隊、大隊二つ、都参り、大日本帝國を
更に佐(當時)古本各采へより、合衆國
と、廣領なる其同盟諸國が大日本帝國に
戦ふ事案ニリ。昭和二年七月二十日頃、
アル・嘉島にて「環水冊」の「責問」
を法廷に全圖に更考し、以て正當な理由を
ク武裝せしめ、アル・嘉島、第氏三名ヲシ
テ「アキヤ」若姦名ニ、確實ナ姓名不詳ナ
ル元前記ノ者ト更ハルカ必見即チ危殆ナ
武器(詳細不明)アリ、襲ヒ殺害ス、殺害
セシメ同時同所ニ上死「アル・嘉島」、
佐氏「アキヤ」「ラギヤ」、身体及び頸部ニ
致命傷ヲ受ケリ。前記「アル・嘉島」
島、佐氏「アキヤ」「ラギヤ」と更ハル者、
昭和二年七月二十日頃死セリ。右行營ハ安
秘中、法令特ニ日本刑法第九條ニ違反
シタルモノナリ、本法、應本左記、如シ人ノ殺
シタル者、死刑又ハ無期ナリハ三年以上ノ懲
役ニ處ス

(6)

CERTIFIED TO BE A TRUE COPY
James P. Keary Jr. USN

0065

罪狀項目 其 一 五

「マニラ」諸島「マニラ」環狀珊瑚島、大日本帝國
國庫東南洋第一支隊 第二大隊付「マニラ」同
第二大隊、大隊長トシキ部務、大日本帝國
國庫東南洋(南洋)吉本秀策「マニラ」合
衆國トノ廣領、其同盟諸國「大日本帝國」
國「戦争」状態「マニラ」昭和二年八月十日由
「マニラ」諸島「マニラ」環狀珊瑚島「マニラ」支隊
付「マニラ」法隊「マニラ」企圖「マニラ」要受「マニラ」正「マニラ」
「マニラ」武裝「マニラ」マニラ諸島、島民「マニラ」
「マニラ」前記「マニラ」者「マニラ」大「マニラ」即「マニラ」
「マニラ」(詳細不明)「マニラ」襲「マニラ」殺害「マニラ」
「マニラ」同「マニラ」門「マニラ」上「マニラ」諸島、在「マニラ」
「マニラ」マニラ、身体「マニラ」頭部「マニラ」致命傷「マニラ」
「マニラ」前記「マニラ」致命傷「マニラ」前記「マニラ」
「マニラ」在「マニラ」マニラ「マニラ」大「マニラ」
「マニラ」マニラ「マニラ」有「マニラ」
「マニラ」日本「マニラ」マニラ「マニラ」
「マニラ」本「マニラ」本「マニラ」如「マニラ」今「マニラ」
「マニラ」又「マニラ」無「マニラ」三「マニラ」上「マニラ」

"U (7)"

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 James A. King *St. Louis*

0066

第二三 許
戰爭大綱 五 懲罰 二 對 外 之 懲 罰

罪狀項目 其 一

「一、諸島」云々、環狀珊瑚島、大日本帝國軍隊南洋第二支隊第三大隊第三中隊隊長「三」初務中、大日本帝國陸軍少佐當時吉本秀策「マサキ」合衆國「」之屬領同盟諸國方大日本帝國「戰爭狀態ニアリ」昭和二年三月十三日「マサキ」諸島「」環狀珊瑚島「」之「違法刑ニ裁キ」武裝「」之「諸島」島民「」名「」殺害者「」死「」者「」不明ナル「」者「」一「」人「」及「」不「」算「」者「」一「」名「」思「」ハ「」ル「」者「」又「」ハ「」ト「」ナ「」リ谷貝印「」危險ナル武裝「」詳細不明「」ヨリ殺「」死「」セ「」タ「」ル「」者「」一「」名「」有「」セ「」タ「」ル「」事「」に戰爭大綱並ニ「」懲罰ニ「」及「」ビ「」タル「」事「」

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"U(8)"

0067

無名氏集 - 11

フーエル諸島アル・環礁群、大日本帝國
 軍艦、南洋第一支隊、第二大隊付ニシテ、同年ニ大
 隊長トシテ任務中、大日本帝國海軍の佐官
 時、也木爲末ハ、アル・環礁群トシテ、屬領同
 盟諸國カ大日本帝國ニ戦争状態ニ入リ、昭和
 二年三月ニ日頃アル・環礁群アル・環礁^{SEK}
 群、珊瑚島ニ于テ、是レ別ニ遠方別ニ裁判^ノ武
 装セラル^ルアル・環礁群、島氏三名アル・環礁群
 「分」アル・環礁群、老幼者ニ、確、實、タ、姓名不明ナル
 別、者、ト、因、ハ、ル、ラ、ス、バ、イ、ト、テ、害、即、チ、危、險
 ニ、武、器、(詳細不明)ニ、テ、襲、ヒ、負、傷、死、セ、シ、タ
 此、レ、別、ノ、別、セ、シ、タル、平、凡、戦、争、決、然、並、ニ、慣、習
 ニ、違、ハ、ル、モ、ナ、リ、

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"Uf92"

0068

第二章(續)

罪狀項目 其、三

「マーシャル諸島」「ヤル」環狀珊瑚島、大日本
帝國軍海軍第二支隊第三大隊付ニシテ
同第三大隊長トシテ勤務中、大日本帝國陸
軍少佐(當時)古本秀策ハ「アメリカ合衆國」
トシノ屬領同盟諸國ガ大日本帝國ト戦争
状態ニアリシ昭和二年六月十五日頃「マーシャル
諸島」「ヤル」環狀珊瑚島ニテ責處的ニ意
法的ニ裁判ナク武装セラル「マーシャル諸島」島
民ニ名告發者ニ確實ナ姓名不明ナルモノナリ
「クワンモ」ト云ハル者「スベ」トシテ器具即チ
危險ナル武器(計測不明)ニヨリ莫ニ負傷死
シタル事同シ同セシタル年、戦争法規並ニ
慣習ニ違反シタルモノナリ

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James P. Kanyo WSK

10402

0069

第三近衛(終)

現状項目 其、四

「マーシャル諸島」ヤル「環状珊瑚島」大日本帝國軍隊南洋第一支隊第二大隊付ニシテ同隊ニ大隊長トシテ和務中、大日本帝國陸軍中佐(當時)古本秀策(アメリカ合衆國「ソノ」属領同盟諸國)大日本帝國ト戦争中能ニリシ形存ニシテリ「マーシャル諸島」ヤル「環状珊瑚島」ニ其奥の「連法」ニ裁判ナリ武世セリ「マーシャル諸島」島氏ニ名告殺者ニハ薩摩ノ姓ノ不明ナルモ「マーシャル諸島」ト要ハル者「ス」トシテ番員即チ危険ナル武官(詳細不明)ニシテ襲ヒ「死」セシメ「ク」同ノ「死」セシメ平ニ戦争ノ頃其ニ「死」ニ「シ」タ「シ」テ「リ」

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0070

第三起訴(續)

罪狀項目 其、五

「マニラの諸島」に於て環状珊瑚島、大日本帝國軍商南洋第一支隊第三大隊什二二二同隊二大隊長トシテ勤務中、大日本帝國陸軍少佐當時(吉)木秀策ハアメリカ合衆國トシテ創制同盟諸國カ大日本帝國ト戦争状態ニアリシ能和ら年八月十日頃「マニラ諸島」に於て環状珊瑚島ニテ是具的ニ違法的ニ裁判ナク武装セラル「マニラ諸島」島人ニ名告殺者ニハ確實ニ姓名不明ナル「マニラ」ト云ハル者ヲ「ス」トシテ是即々危險ナル武器(詳細不明)ニテ殺シ更傷死セシメテ之ヲ殺セシムル事、戦争法規ニ背悞スル事ニ成ルモノナリ。

マニラ地方司令部
米國海軍少將「ミ」ヘ「バ」ナシ

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James P. Kany 12-18-42

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0071

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, March 1, 1947.

The commission met at 10:00 a.m.

Presents

Rear Admiral Arthur C. Robinson, U. S. Navy,
Colonel Vernon E. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry E. Reese, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Carstensen, Coast Artillery Corps, United
States Army,
Commander James J. Vollenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Brodner W. Lee, junior, U. S. Naval Reserve, reserve,
and
Lieutenant David Dalton, U. S. Navy, and
Lieutenant James P. Hany, U. S. Navy, judge advocates.

Alcide S. Teolin, sergeant, U. S. Marine Corps, and Brian S. Moore,
sergeant, U. S. Marine Corps, entered with the accused and reported as
protest marshals.

The judge advocates introduced Robert R. Miller, yeoman first class, U. S.
Navy, and Robert Clifton, yeoman third class, U. S. Navy, as reporters and
they were duly sworn.

The judge advocates introduced Lieutenant Eugene E. Harvick, junior, U. S.
Naval Reserve, Mr. Frederick A. Savary, Mr. James Ueda, and Mr. Shigeo
Yamamoto as interpreters and they were duly sworn.

The accused, Major Hidemitsu Furuki, Imperial Japanese Army, requested
that Commander Martin E. Carlson, U. S. Naval Reserve, Mr. Yoshitake Akimoto
and Mr. Seizo Suzuki act as his counsel. Commander Carlson, Mr. Akimoto
and Mr. Suzuki took oaths as counsel for the accused.

The judge advocates read the precept, original hereto prefixed marked "A".

An interpreter read the precept in Japanese.

The judge advocates did not object to any matter.

The accused did not object to any matter.

The judge advocates and each member were duly sworn.

The accused stated that he had received a copy of the charges and
specifications preferred against him, both in English and Japanese, on
February 24, 1947.

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James P. Hany Lt USN

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

The accused replied in the affirmative and read a written statement in Japanese prefined marked "B".

An interpreter read the English translation copy prefined marked "C".

The accused further objected and read a written statement in Japanese prefined marked "D".

An interpreter read the English translation copy prefined marked "E".

The accused further objected and read a written statement in English prefined marked "F".

The accused waived the right to have this objection read in Japanese at this time.

The judge advocate requested a short recess to prepare a reply to the objections of the accused.

The request was granted and the commission then at 10:45 a.m. took a recess until 11:15 a.m. at which time it reconvened.

Present:

All the members, the judge advocate, the interpreters, the accused and his counsel.

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

The judge advocate made a reply to the objections of the accused prefined marked "G".

The accused made a reply prefined marked "H".

The judge advocate made a reply prefined marked "I".

The accused waived the right of having these objections and replies read in Japanese at this time provided they will be furnished a copy at a later time.

The commission was closed.

The commission was opened. All parties to the trial entered.

The commission announced that the objections of the accused to the charges and specifications were not sustained and that the commission found the charges and specifications in due form and technically correct.

The accused stated that he was not ready for trial, requested a postponement of the trial and read a written statement in Japanese prefined marked "J".

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James A. Henry & U.S.N.

An interpreter read the English translation profined marked "P".

The request of the accused was granted.

The commission then, at 12:30 p.m., adjourned until 9:00 a.m., Wednesday, March 2, 1947. JK

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James A. Kenny & VSK

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0074

SECRET

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Wednesday, March 5, 1947.

The commission met at 9:00 a. m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Vernon M. Gynon, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, Tsuchiro, counsel for the accused, read a written objection
in Japanese to the jurisdiction of the commission over the accused, original
appended marked "L".

An interpreter then read an English translation of the objection of Mr.
Akinoto, appended marked "U".

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at
which time it reconvened. 8K

Presents:

All the members, the judge advocates, the reporter, the interpreters, the
accused and his counsel.

No witnesses not otherwise connected with the trial were present.

Mr. Sumiki, Seizo, counsel for the accused, read a written objection in
Japanese to the jurisdiction of the commission over the accused, original
appended marked "U".

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James P. Kenny 20452

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An interpreter then read an English translation of the objection of Mr. Suzuki, appended marked "A".

Commander Martin E. Carlson, counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, original appended marked "B".

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

The judge advocate requested a recess until 3:00 p.m. to prepare his reply to the objections of the accused.

The commission then, at 11:20 a.m., took a recess until 3:10 p.m., at which time it reconvened.

Present:

All the members, the judge advocate, the accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate informed the commission that three natives of the Marshall Islands were now present as official observers at this trial. They had come on the invitation of the Judge Advocate General of the United States Navy and Commander Harrison. These natives were introduced as follows:

Iajiro, age forty-nine, was born on Ailinglaplap, Marshall Islands, and attended Catholic Mission School on Jaluit. He was a magistrate for the Japanese on Ailinglaplap. He is one of the five paramount chiefs in the Western Chain and at the present time he is a Chief and Magistrate on Ailinglaplap and also a Chief on various islands of Jaluit Atoll, including Bikini Island, the site of the crimes alleged in the Charges and Specifications.

Burns Hime, age thirty-seven, son of an Australian Missionary, was born on Rongerik Island, but moved to Jaluit about 1913. He studied at a missionary school in Hawaii from 1918 to 1920. He taught in the Mission School on Jaluit until 1941 and was a resident of Rongerik Island, Jaluit Atoll, during the war. At present he is the treasurer of Marshall Islands Church, and a school teacher on Jaluit. He speaks and understands the English language.

Isak Jaka, age forty-three, was educated by Protestant native missionaries and at the Japanese government school on Jaluit. He has worked as an interpreter for the Japanese.

The judge advocate announced the following stipulation between counsel:

An oral stipulation has been entered into by the defense counsel and the judge advocate under the terms of which, when classified documents are referred to during the course of the proceedings of this commission, reference only to the content and substance of these documents will be made in open court before this commission. No reference to the date time group, or other means of identification of classified matter will be made, but defense counsel represented by Commander Carlson, U.S.N.R., will

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James P. Kenney Lt. JG

be given full opportunity to verify the accuracy and the authenticity of any statement regarding the content of such despatches. The reason for this stipulation is primarily one of cryptographic and communication security. Counsel for the defense have all, individually and jointly, agreed to this method of procedure.

The judge advocate read a written statement in answer to the objections made by the accused, appended marked "Q".

The commission then, at 4:00 p.m., took a recess until 4:15 p.m., at which time it reconvened.

Present:

All the members, the judge advocate, the reporter, the three official native observers from the Marshall Islands, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

The judge advocate continued with his reply.

The accused waived the right to have this reply read in Japanese at this time provided they will be furnished a copy.

The commission then, at 4:50 p.m., adjourned until 9 a.m., Thursday, March 6, 1947.

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James P. Kennedy *USN*

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0077

EXHIBIT

United States Pacific Fleet,
Commander Harlan,
Camp, Marianne Islands.
Thursday, March 6, 1947.

The commission met at 9:12 a.m.

Presents

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon H. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry E. Hanson, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Carstensen, Coast Artillery Corps, United States Army,
Commander Hiram J. Wallach, Dental Corps, U. S. Navy, JK
Commander Charles E. Ingalls, Junior, U. S. Navy,
Lieutenant Commander Frederick W. Lee, Junior, U. S. Navy-1 Reserve, members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert E. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, counsel for the accused, read a written reply in rebuttal to the jurisdiction of the commission over the accused, copy appended marked "B".

Counsel for the accused waived the right to have the argument of Commander Carlson read in Japanese at this time.

The judge advocate made an oral statement in rebuttal to the jurisdiction of the commission over the accused, copy appended marked "B".

Counsel for the accused waived the right to have the statement of the judge advocate in rebuttal read in Japanese at this time.

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that the plea to the jurisdiction by the accused was not sustained.

The judge advocate read the letter containing the charges and specifications, original prefined marked "A", in English; then an interpreter read a copy in Japanese, prefined marked "A".

The accused was arraigned by the judge advocate as follows:

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James P. Kenny *JP*

0078

Q. Furuki, Hidemasa, major, Imperial Japanese Army, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty? 82

A. Not guilty.

Q. How say you to the second specification of the first charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the third specification of the first charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the fourth specification of the first charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the fifth specification of the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

Q. How say you to the first specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the second specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the third specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. How say you to the fourth specification of the second charge, guilty or not guilty? 82

A. Not guilty.

Q. How say you to the fifth specification of the second charge, guilty or not guilty? 82

A. Not guilty.

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

A. Not guilty.

The prosecution begins.

The judge advocate made an opening statement, copy appended marked "V".

An interpreter read the judge advocate's statement in Japanese.

The commission then, at 11:25 a.m., took a recess until 2:05 p.m., at which time it reconvened.

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Presents

All the members, the judge advocates, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

That from December 8, 1941 to August 14, 1945, a state of war existed between the Imperial Government of Japan and the Government of the United States of America.

That on or about August 14, 1945, the Marshall Islands were occupied by the armed forces of the United States of America, and that said Marshall Islands have continued under the government and jurisdiction of the United States since that date.

That Jaluit Atoll is part of the Marshall Islands and is part of the territory under the command of Commander Harrison.

That the Imperial Government of Japan surrendered to the Government of the United States of America on September 2, 1945, and that no peace treaty has been consummated between the Imperial Government of Japan and the Government of the United States of America. JPK

The Cairo Conference of December 1, 1943, particularly that portion which reads: "Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914."

The Potsdam Declaration of July 26, 1945, particularly paragraph 6, which reads: "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."

The instrument of Japanese Surrender, dated September 2, 1945, signed at Tokyo Bay, Japan, particularly that portion which reads: "We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government, and the Japanese Imperial General Headquarters, hereby accept the provisions set forth in the declaration issued by the heads of the governments of the United States, China, and Great Britain, on July 26, 1945, at Potsdam." JPK

The Imperial Ordinance No. 26 for the Treatment of Judicial Affairs in the South Sea Islands, enacted in 1923, and revised in 1933, and that under the provisions of this ordinance the local criminal law effective in the Marshall Islands in the period of the commission of the alleged crimes, was the Criminal Code of Japan, authenticated excerpts of this ordinance will be attached to the record. (Copy appended marked "B".)

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James P. Kearney & USK

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The Criminal Code of Japan, as applicable in the Marshall Islands, particularly Section 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years." Authenticated copy of this section will be attached to the record. (Copy appended marked "X".)

The Fourth Hague Convention of October 18, 1907, and the Annex thereto, particularly Articles 29 and 30 of the Annex, which reads:

"Article 29. A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party....."

"Article 30. A spy taken in the act shall not be punished without previous trial."

and that Japan ratified and signed this convention.

The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, so far as practicable, to interned civilians.

The Treaty of Versailles, particularly article 119 thereof in which Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions; and Article 22 of the Covenant of the League of Nations; Part I of the Treaty of Versailles, which established the mandatory system, and set forth the Class "C" mandate,

The Charter established by the League of Nations, with respect to the manner in which the islands mandated to Japan should be governed.

Proclamations Numbers One through Seven, to the People of the Marshall Islands issued by and under the authority of Chester W. Nimitz, Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Area, Commanding the United States Forces of Occupation in the Marshall Islands, and Military Governor of the areas occupied by such forces.

Ordinances One through Five, issued under the authority of the Military Governor of the Marshall Islands.

An interpreter read the request of the judge advocate in Japanese.

The accused objected to the commission taking judicial notice of the Cairo Conference, December 1, 1943; Potsdam Conference, July 26, 1945; Ordinance Number 26 on the treatment of judicial affairs in the south seas islands; the Japanese Criminal Code, particularly article 199; the Fourth Hague Convention of October 18, 1907, particularly articles 29 and 30; the Geneva Prisoner of War Convention of July 27, 1929; the Treaty of Versailles, particularly Article 119; Charter established by the League of Nations for

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administration of the islands mandated to Japan; Proclamations One through Seven for the Marshalls issued by Admiral Hodge, Ordinances One through Five issued under the authority of the Military Governments of the Marianas Area. JK

In support of this objection the accused cited section 27 and section 309 of Naval Courts and Boards, particularly section 309 which reads as follows:

"Matters of which courts may take judicial notice need neither be charged nor proved. Where the court entertains any doubt as to the propriety of taking judicial notice of a fact, it should require it to be proved like any other fact."

"A court may not take judicial notice of a foreign law, or of a law of another State, etc., than that within which the court is sitting, the existence of such law being a question of fact which must be proved by competent evidence the same as any other fact--i.e., the purport or the actual wording of the law must be introduced into the evidence--and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place."

The judge advocate replied.

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

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.
A. Clarence L. Winceff, Captain, United States Navy, Deputy Chief of Staff, Military Government, Commander Marianas.

2. Q. What is your official title and your duties in connection with Military Government?
A. I am the Deputy Chief of Staff for Military Government on the staff of Admiral Fennell. JK

3. Q. As Deputy Chief of Staff for Military Government are you familiar with the existing laws in the Marshall Islands?
A. Yes, I am.

4. Q. Were any proclamations, ordinances, or directives issued by Military Government for the administration of the Marshall Islands?
A. Yes, there were seven proclamations issued by Admiral Chester W. Nimitz as the Military Governor of the Marshall Islands and the Commander of the occupational forces. There were additionally five ordinances issued by the Deputy Military Governor of the Marshall Islands, Rear Admiral H. H. Ballou.

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5. Q. Were any additional directives issued with regard to administration of Military Government in the Marshall Islands?

A. Many administrative directives have been issued by the authority of the Military Governor since the occupation of the Marshalls. Most of these are for ordinary routine of administration. A recent directive, the last directive which I remember issued by Commander Marianne in line with carrying out the policy of the proclamations, directed certain things on Military Government of the Marshalls as such.

6. Q. Is the existing administration of justice in the Marshall Islands based upon these proclamations, ordinances, and directives?

A. It is.

7. Q. Do you have copies of these proclamations with you?

A. Yes, I do have copies of the proclamations and ordinances with me.

8. Q. Would you read from proclamation number one those provisions relating to military occupancy and the powers thereof?

A. I will read from Proclamation Number One, Articles 1 and 2. Article 1: "All powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me as Admiral, United States Navy, Commanding the United States Forces of Occupation, and Military Governor, and will be exercised through subordinate commanders by my direction." Article 2 is as follows: "The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation." The remainder of this proclamation refers to other matters. OK

9. Q. Would you read the introductory portion on Proclamation Number Two?

A. "By Proclamation Number One, I have assumed all powers of government of the areas of the Marshall Islands, occupied by the United States Forces under my command. In order to make provisions for the safety of the United States Forces under my command and for the maintenance of public order and safety in the area occupied by such forces, I, C. W. Nimitz, Admiral, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas and Military Governor of the occupied territory, hereby proclaim as follows."

10. Q. Will you read Article 4, which relates to violation of the Japanese law?

A. "Any person who commits an act which violates any provision of Japanese penal law in effect in these islands prior to occupation by the Forces under my command or the provisions of native law customary in the islands, may, at the discretion of the Military Governor or under his authority, be brought to trial before Military Court and on conviction, shall suffer such punishment as the Court may direct. The Court shall be guided by punishments customarily imposed for such offenses in these islands and may, in the case of offenses against native customary law, call upon village headmen or chiefs to sit with the Court."

11. Q. To what subject does Proclamation Number Four relate?

A. It relates to military courts.

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James P. Kenny *JP*

12. Q. Would you read that article which relates to the jurisdiction of such courts?

A. "Article II. Jurisdiction.

"1. Over Territory. Jurisdiction of every Military Court shall extend to the whole of the occupied territory, and, as regards each part of the territory, from the time at which that part was first occupied.

"2. Over Persons. Jurisdiction of every Military Court shall extend to all persons in the territory except:

- a. Members of the Forces of occupation; and
- b. Persons who are treated as prisoners of war under the Geneva Convention of July 27, 1929, ~~provided~~ that the Military Governor may order the trial before a Military Court of such persons when accused of war crimes.

"3. Over offenses. Military Courts shall have jurisdiction over:

- a. All offenses against the laws and usages of war.
- b. All offenses under any proclamation, order or regulation issued under the authority of the Military Government.
- c. Offenses against provisions of Japanese penal law in effect at the time of occupation, or the provisions of native law customary in the occupied territory, provided the trial of such offenses or class of offense by a Military Court has been ordered by the Military Government."

13. Q. To what does ordinance number 1 relate?

A. Ordinance Number One relates to the establishing of certain Marshallese administrative offices.

14. Q. What does sub-section 4 provide thereunder?

A. "Sit as a court with jurisdiction over offenses and disputes not reserved for trial by military courts; note out and carry into effect punishments appropriate to the crime, not to exceed thirty (30) days of labor."

15. Q. To what does ordinance number 2 relate?

A. Ordinance number 2 is an ordinance to provide regulations for Marshallese affairs and the administration thereof.

16. Q. Would you read section 11 therein?

A. "Part III - Courts - Section 11 - There is hereby established in each atoll a Marshallese Court. The Marshallese Court shall be composed of not less than three (3) or more than five (5) members. The Magistrate shall be the presiding officer of the court and shall choose the remaining members from among the District Headman and Elders. In an atoll which does not have a Magistrate the District Headman shall be the presiding officer of the court."

17. Q. What does section 12 thereunder provide?

A. Section 12 provides that "The Marshallese court shall have jurisdiction over: (a) All offenses punishable under the provisions of this ordinance, except those offenses for which the penalty is death or imprisonment; (b) All violations of local atoll regulations enacted by the Atoll Council pursuant to section 8 hereof."

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Jane P. Kenny *VPK*

18. Q. What does section 32 provide with regard to the crimes of murder and manslaughter?

A. Section 32, "The following acts are criminal offenses which shall be punished as herein prescribed: (a) Murder - the wilful or intentional taking of the life of a human being without lawful justification or excuse. (This offense is tried by a military court.) Punishment: Death, or imprisonment for a period which shall not be less than ten (10) years, including imprisonment for life."

19. Q. What does it provide with regard to the crime of manslaughter?

A. "Manslaughter - the unlawful taking of the life of a human being without wilful intent. (This offense is tried by a military court.) Punishment: Imprisonment at hard labor for a period of not less than one (1) or more than three (3) years."

20. Q. You referred in your testimony to a recent directive of 10 January 1947 with regard to general administration. Are there any sections therein which deal with jurisdiction of native courts?

A. Yes, Paragraph 10 of the letter, which is serial number 362, issued by Commander Marianas Area referring to native courts - paragraph 10(d) and paragraph 11(a). "10(d) To suits and torts, both at law and in equity, arising under local customs and involving amounts of one hundred dollars (\$100.00) or less." "11(a) All other judicial matters are reserved to military courts, although the local native court may serve as court of first instance in any criminal case, and order the defendant held in confinement while awaiting a military court to take jurisdiction. Similarly, no native court shall be competent to impose imprisonment exceeding six (6) months or a fine to exceed one hundred dollars (\$100.00), or both such imprisonment and fine." JK

21. Q. Do these provisions which you have read to this commission, except as limited by each other, constitute part of the effective law of the Marshall Islands?

A. They do.

22. Q. Under the existing law do military courts retain exclusive jurisdiction over the crime of murder in the Marshall Islands?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. A military court duly constituted has sole jurisdiction over murder committed in the Marshall Islands, except in the case of murder committed by members of the armed forces of the United States, where for administrative purposes it would very probably be tried by a general court martial. JK

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James P. Karry for USMC

Cross-examined by the accused:

23. Q. When there is a violation of the Japanese Criminal Code in the Marshall Islands, the witness testified that the Japanese Criminal Code would be applied. Do you mean that the Japanese Criminal Code as a whole is applicable?

A. In my understanding I know of no other interpretation. The entire Japanese Criminal Code is in effect, except the modifications by proclamations or ordinances promulgated by the Military Governor of the Marshall Islands. OK

24. Q. Does the witness know that in the Japanese Criminal Code there is a stipulation concerning the non-existence of crime and a stipulation providing for the rejection of illegality? For instance on the surface in form it may constitute a crime, but under some circumstances it does not constitute a crime. There is a ruling just as I have just said.

The commission announced it would take a short recess while the judge advocates and the accused discussed the proper framing of this question.

The commission then, at 3:15 p.m. took a recess until 3:30 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Clarence L. Winscott, captain, United States Navy, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

25. Q. The question that I just asked the witness is set forth in Book I, Chapter 7 of the Japanese Criminal Code. The content of which is that under the Japanese Criminal Code, crimes are set forth in Book II of the code, by that there are general provisions relating to those crimes set forth in Book I, Chapter 7 of Book I, which states further provisions which relate to the non-constitution of crimes or mitigation or remittance of punishment. These provisions establish that acts that otherwise constitute crimes under Book II are under certain circumstances not crimes or not punishable, or punishable merely in a mitigated degree. Did you know of this rule?

A. No, I do not know of that. I do not know the answer. I am not familiar with the matter which the defense counsel asks about. I have made a cursory examination of the Japanese Civil and Penal Codes. However, I am an administrative officer in Military Government and while it is required that I know all the laws which are in effect and the administrative procedure of the law, it is not part of my duties to be familiar with the details of Japanese law, nor, with its interpretation. In the performance of my duty

It is not required that I be familiar with them. As a lawyer therefore, I can not answer that question.

26. Q. Then can you say that what is set forth in Chapter 7 of the Japanese Criminal Code is effective?

A. I have testified before that the penal code then was in effect, with the exception of such changes or deletions that might be made under the proclamations and ordinances. I have no knowledge of any proclamation or other form of law promulgated by the Military Government which changes those sections or makes ineffective those sections of the Japanese Penal Code which are referred to. However, I consider this a matter of law and I do not feel qualified to answer it as a question of law. JK

27. Q. When did you assume your present duty as Deputy Chief of Staff for Military Government for Admiral Fennell?

A. I assumed my present duties on 23 February 1946. I have forgotten the exact date which the title was changed to the duties assigned. JK

28. Q. How did Admiral Nimitz acquire authority over the Marshall Islands?

A. As Commander of the American forces which occupied the island by force, took them away from the Japanese.

29. Q. Did this authority extend to the judicial powers over the Marshall Islands?

A. It did.

30. Q. Were there any proclamations published by which he made known his authority over the Marshall Islands?

A. Yes, there were.

31. Q. Does he still have authority over the Marshall Islands?

A. Admiral Nimitz as a person and in his present position has administrative control over the Marshall Islands through Commander in Chief of the U. S. Pacific Fleet. The actual judicial authority passed from Admiral Nimitz to Admiral Tamm and now to Admiral Benford concurrent with their position. It goes with them under international law.

32. Q. How did Commander Harrison acquire authority over the Marshall Islands?

A. Commander Harrison acquired authority over the Marshall Islands at the time of the consolidation of the Marshalls and Gilberts Area with the Marianas Area.

33. Q. Has Commander Harrison authority over the Marshall Islands been changed since that date?

A. No, the Commander of the Marianas Area has been delegated full power over all people, natives, in the Marianas Area as Deputy Marianas Governor under Commander in Chief. That has been done and confirmed. There has been no actual change in either since the time of consolidation.

34. Q. Is Commander Harrison authority in the Marshall Islands pursuant to that of General MacArthur? JK

A. Yes.

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James P. Kearney *JSN*

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35. Q. These proclamations number one through seven, how were they published?
A. I can not state with certainty how that was done on each island, but the common practice was to take the proclamation and nail it inside the council room, village council or the outside of the head master's house and on the bulletin board in the men's club house. Various practices through the islands. If there was a Military Government established there, even if there was only one officer, the proclamations were also published at that center. I have knowledge that it was done through the Ryukyu Islands and the other islands through that area.

36. Q. On what date were these proclamations published on Jaluit Atoll?
A. I do not know.

37. Q. When did these proclamations take effect on Jaluit Atoll?
A. Proclamations took effect the day when American forces occupied the island.

38. Q. They were not effective prior to that date?
A. That is a question in the interpretation of law which I can not answer. I would be glad to give my opinion if it is asked.

39. Q. Are these proclamations as "ex nunc facto law?"

The judge advocate objected to this question on the ground that the witness specifically stated that he had testified as an administrative expert on Military Government in the Marshalls and has stated that he is not qualified to give legal opinions on the effective law.

The accused replied.

The commission announced that the objection of the judge advocate was sustained.

40. Q. These documents from which you testified on direct examination, are they the original documents?
A. They are not original in the sense that Admiral Hinita signed them. They are original in the sense that they are a part of the same printing of proclamations which were nailed up in prominent places in the Marshall Islands, so far as I have knowledge. They came from files which were current from about February 1944 to sometime in early summer of 1944. It is my belief and I have no reason to think otherwise that they are copies from the same printing.

41. Q. Are these documents signed?

This line of questioning was objected to by the judge advocate on the ground that these documents were not introduced in evidence and it is completely irrelevant whether the copies or documents read by the witness were signed or not signed. The copies are merely official copies of the proclamations and it has been testified that these proclamations and provisions are in effect. JK

The accused replied.

The commission announced that the objection of the judge advocate was not sustained.

A. No.

42. Q. Are they authenticated?

A. No.

43. Q. Are they dated?

A. No.

44. Q. These natives of the Marshall Islands. Are they citizens or subjects of the United States?

This question was objected to by the judge advocate on the ground that it called for an opinion and conclusion of law on the part of the witness as to which he has not been qualified to testify.

The accused replied.

The commission announced that the objection of the judge advocate was sustained.

45. Q. When did Section 32 which you testified to, become effective?
A. May I refer to the memorandum?

The accused objected to the witness referring to the memorandum and called the commission's attention to Section 261 of Naval Courts and Boards. The accused moved that all previous testimony of the witness based on such memorandum be stricken from the record.

The judge advocate replied.

The commission announced that the objection and motion were not sustained.

Reexamined by the judge advocate:

46. Q. During the course of your testimony before this commission, you testified with regard to the fact that certain provisions, proclamations, ordinances and directives were in effect. In the course of your testimony with regard to these provisions you consulted certain documents. Are these documents official copies of the proclamations, ordinances and directives which are used in the course of the administration of Military Government in the Marshall Islands?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

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James P. Kenney #152

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A. Yes.

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

The commission did not desire to examine this witness.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

The commission then, at 4:30 p.m., adjourned until 9 a.m., Friday, March 7, 1947.

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James P. Keady 19

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EXHIBIT

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Friday, March 7, 1947.

The commission met at 9:05 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon R. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Catherine, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, OK
Commander Charles E. Ingalls, Junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, Junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Henry, U. S. Navy, judge advocates.
Dawn Haine, official native observer from the Marshall Islands,
Mark Jahn, official native observer from the Marshall Islands,
Injere, official native observer from the Marshall Islands.
Robert E. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name and rank.
A. Sugihara, Toshio, warrant officer, Imperial Japanese Navy.
2. Q. Are you presently confined on Guam?
A. Yes.
3. Q. If you recognize the accused state as when.
A. Fureki, Hidenaka. OK
4. Q. Were you ever stationed with the Japanese forces on Jaluit Atoll?
A. I was.
5. Q. Between what dates were you stationed on Jaluit with the Japanese
forces?
A. From 31 December 1941 to 20 October 1945.
6. Q. Do you know to what organization the accused, Major Fureki, was
attached?
A. I do.
7. Q. What was the organization?
A. The First South Seas Detachment.

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John P. Kenny *JP*

8. Q. What was his position with that organization?
A. He was a Battalion Commander.

9. Q. Do you know the number of the battalion he commanded?
A. I do not know.

10. Q. During the year 1945 and before the occupation of Jaluit by the United States forces did you take part in anything unusual having to do with native prisoners?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I have.

11. Q. Do you recall the date when this took place?

A. I do not remember the exact date, but I think it was around the end of May 1945.

12. Q. Will you tell the commission just what took place with reference to these native prisoners?

A. At that time I was a member of the anti-aircraft battalion on Jaluit. At that time by orders of the platoon leader, Lieutenant Iwenski, I went as a member of a working detail to Major Furuki and by the orders of Major Furuki I got on a truck and together with Major Furuki I went to a place called the Second Ammunition Dump. At the ammunition dump I waited by the truck and Major Furuki brought three natives out from the ammunition dump to the truck. He ordered the three natives placed on the truck so we placed them there. We were ordered to watch that the natives did not escape and the truck moved out toward Ainsman. The truck stopped about three or four thousand meters away from the headquarters. There he ordered us to get the natives out of the truck. We did so. He ordered us to stop all traffic. He took the three natives into a coconut grove about one hundred meters further on. I do not remember the time, but I believe it was about twenty to thirty minutes later that I heard several shots. A short time later Major Furuki came out of the coconut grove from a distance of about fifty to sixty meters. He called to us to come to him. When we went with Major Furuki into the coconut grove we found the natives that were dead and at that time I found out for the first time that the natives had been executed. Then we were ordered by Major Furuki to bury the natives respectfully and I buried them. At the head of the grave we placed a stone and placed flowers that were gathered from the vicinity. The three of us, including Major Furuki, bowed and left. And when I returned to my unit I reported to Lieutenant Iwenski that the working detail had been completed and I returned to my quarters and that is all that I know.

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James A. Karry *USA*

13. Q. Who ordered you to report to Major Furuki?
A. Lieutenant (junior grade) Tsumaki.

14. Q. Were you told at that time how you should dress?
A. I was told to take a rifle.

15. Q. When you explained what happened you used the word Ainan, is Ainan one of the islands of Jaluit Atoll?
A. The place we were located on was Baidj and Ainan was also connected with this island but the part opposite to Baidj was called Ainan.

16. Q. Was Ainan the spot where the truck containing you, Major Furuki, and the natives stopped and where Major Furuki took the natives into the coconut grove?
A. Yes.

17. Q. In your testimony you stated that "Furuki called to us," was there someone else along with you?
A. There was myself and Miyuki.

18. Q. How much time elapsed between your hearing the shots and when Furuki called to you to come with him?
A. It has been some time back and I do not remember exactly, but I think it was about thirty to forty minutes.

19. Q. You testified that it was between thirty and forty minutes that elapsed from the time you all arrived until you heard the shots, is that the same time interval you are referring to now?
A. Since I testified before I said it was about twenty to thirty minutes until I heard the shots and I do not remember exactly, but I am saying now that it was about thirty to forty minutes until I was called.

20. Q. After being called by Major Furuki and arriving in the coconut grove, tell us what you observed about the bodies of the natives.
A. As I remember it the natives were laid out on the ground and there was blood flowing from their heads.

21. Q. Did you observe any wounds on the heads of these natives?

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

The judge advocate withdrew the question.

22. Q. Was there blood on the heads of all the natives?
A. I do not remember exactly, but I think all three of them had blood on their heads.

23. Q. Were these the same natives who had accompanied you on the truck to Ainan Island?
A. Yes.

24. Q. Did these natives carry any armament on the trip to Ainan Island?
A. No.

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James P. Kanning *for USX*

25. Q. After reaching the coconut grove, where you observed the bodies of the natives, did Furuki say anything to you or anything to Miyazaki that you heard?

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

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

The question was repeated.

A. At that time Major Furuki was very quiet and he said to bury the natives with respect and other than that I do not remember him saying anything else.

26. Q. When Furuki left you at the truck and entered the coconut grove did he have an armament?

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

The judge advocate withdrew this question.

27. Q. Will you describe how Furuki was dressed at the time when he entered the coconut grove with the three natives?

A. I do not remember distinctly, but I believe he was armed with a pistol.

28. Q. After Furuki called to you and you and Miyazaki accompanied him to the grove did you observe anyone present other than the bodies of these three natives?

A. I do not think there was anybody in the vicinity.

Cross-examined by the accused:

29. Q. Why were you ordered to watch that the three natives did not escape?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The objection of the judge advocate was sustained.

30. Q. You testified that you were ordered to watch that the three natives were not allowed to escape, just what were those orders to you regarding the escape of the natives?

A. We were told that after they were placed on the truck, told not to let them escape.

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James P. Kenny to USN

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0094

31. Q. To whom was this order given?
A. Myself and Miyasaki were told this.

32. Q. Were you armed?
A. Yes.

33. Q. With what?
A. A rifle.

34. Q. Was Miyasaki armed with a rifle?
A. Yes.

35. Q. Then you were detailed as guards for these natives?
A. By the orders of Lieutenant Iwanami we were told to go as workers and we only were ordered by Major Furuki to act as guards.

36. Q. Did Major Furuki provide you with the rifles?
A. No.

37. Q. Where did you get the rifles?
A. They were our rifles which were at the platoon.

38. Q. Who ordered you to take the rifles with you on the working party?
A. Lieutenant Iwanami.

39. Q. Why did he order you to take the rifles with you?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused withdrew this question.

40. Q. Did Lieutenant Iwanami give any reason as to why you should take a rifle with you?
A. He did not say anything.

41. Q. Do you know why you were ordered to take a rifle with you?
A. I did not know.

42. Q. You did not know at that time, did you know it at a later time during the day?

This question was objected to by the judge advocate on the ground that it was outside the scope of direct examination.

The accused withdrew the question.

43. Q. You have testified to certain events that took place. At any time during the period of time did you know why you were ordered to take a rifle with you?

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

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James P. Kewey 20152

The accused replied.

The commission announced that the objection of the judge advocate was not sustained.

A. I found out.

44. Q. How did you find out?

A. Because in case the natives tried to escape they would become necessary.

45. Q. What would become necessary?

A. In case they tried to escape and they could not be captured they would be necessary.

46. Q. Were you given orders by anyone regarding the possibility of the escape of these prisoners?

A. I did not hear anything of this kind.

47. Q. Why did you testify just previously that these rifles would be necessary in case the prisoners escaped?

A. Because I had been ordered as a guard and because I thought it would be necessary if they tried to escape.

48. Q. Were these natives bound in any way to prevent their escape.

A. They were tied.

49. Q. Did you know why they were tied?

A. I do not know the reason.

50. Q. Do you know why they were prisoners?

This question was objected to by the judge advocate on the ground that it was beyond the scope of direct examination and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. I do not know the exact reason, but I think they were prisoners because they had done a great wrong against the Japanese military service.

The judge advocate moved that the question and answer be stricken from the record on the ground that the question called for the opinion of the witness, and the answer was hearsay on the part of the witness.

The accused made no reply.

The commission announced that the motion to strike out was not sustained and that the commission would give the proper weight to the answer.

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James I. Kenney #452

51. Q. You testified that this was in the later part of May. Can you fix the date more definitely than just the later part of May?

A. At that time we at Jaluit did not have hardly anything to eat and we were in very great despair and at that time I did not even have the energy to think about tomorrow and even now no matter how much I think I can not remember. JK

The judge advocate moved to strike out this answer on the ground that it was not responsive to the question.

The accused replied.

The commission directed that the answer be stricken, that the question be repeated, and instructed the witness to make a direct reply to the question.

The question was repeated.

A. I have no distinct memory. I do not remember the exact date.

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

The commission did not desire to examine this witness.

The witness made the following statement: JK

I have been asked many questions by the prosecution and defense counsel and I have answered them and to the answers to their questions there are some points in which my memory is very weak and as we are asked the reason why, it was because at that time we were in such deep despair that I can not recall distinctly about that time. And at that time as we were on the verge of starvation we did not have the energy with which to think about tomorrow.

The witness was duly warned and withdrew.

The commission then, at 10:15 a. m. took a recess until 10:32 a. m., at which time it reconvened. JK

Presents:

All the members, the judge advocate, the three official native observers from the Marshall Islands, the reporter, the accused and his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Miyasaki, Tataka, first class petty officer, Imperial Japanese Navy.

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James P. Keamy L.B.K.26

0097

2. Q. Are you presently confined on Guam?

A. Yes.

3. Q. If you recognize the accused state as whom,

A. Furuki, Hidesaku.

4. Q. Were you ever stationed with the Japanese forces on Jaluit Atoll?

A. I was.

5. Q. With what branch of the Japanese forces were you stationed?

A. Navy.

6. Q. Between what dates were you stationed on Jaluit Atoll?

A. From 30 July 1943 to 11 October 1943.

7. Q. Do you know to what organization on Jaluit Atoll, the accused, Furuki, was attached?

A. The First South Seas Detachment.

8. Q. Do you know with what branch he was connected?

A. I do not know the name of the organization.

9. Q. What was his position in the First South Seas Detachment on Jaluit Atoll?

A. He was a Battalion Commander.

10. Q. Do you know the number of the battalion?

A. I do not know.

11. Q. During the year 1943 and before the occupation of Jaluit by the American forces did you take part in anything unusual having to do with native prisoners?

A. No.

12. Q. At any time during 1943 and before the occupation by American forces were you given any duties in connection with native prisoners?

A. I was.

13. Q. When were you given these duties?

A. I do not remember the exact date, but I believe it was the last ten days of May.

14. Q. In what year?

A. In 1943.

15. Q. Will you tell the commission just what you were detailed to do and what you did?

A. In the last ten days of May 1943, I do not remember the exact date, I was a member of an anti-aircraft platoon and at that time Lieutenant Iwamoto who was the head of this anti-aircraft platoon ordered me to go to the defense section to Major Furuki, of the defense section. From the front of the defense section, myself, Warrant Officer Sugahara and Major Furuki went on a truck to the Second Ammunition Dump, while two of us waited at the truck Major Furuki brought three natives. After they were placed on the truck the truck went to Ainsman about three to four thousand meters

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James P. Kenny Lt. J.S. X

and stopped. The three natives were taken down from the truck. Major Furuki took the three natives to a coconut grove about one hundred meters on. After a period of about twenty to thirty minutes, I heard several shots. A short time later Major Furuki came out and at a distance of about fifty to sixty meters he called to us to come to him and we went with Major Furuki into the coconut grove and when we went in we found three natives had been executed, we buried these three natives and returned to the headquarters, and I forgot to say this, but when they were buried pretty stones were placed on their grave, a prayer was given that their souls rest in peace. After we returned to headquarters Sugahara went to report to Lieutenant Iwanami and I went back to my quarters.

16. Q. On this date, when you received the order to report to Major Furuki, did you receive instructions on how you should dress?
A. We were told to go armed with rifles. JK

17. Q. Will you describe to us how Major Furuki was dressed?
A. I would like to have this question placed more simply when I am told to tell the commission.

18. Q. I am asking you the same question as to Major Furuki as I asked you in regard to your dress. Now, I want you to tell how Major Furuki was dressed when you reported to him.
A. Do you ~~recall~~ what he looked like from the time I met Major Furuki until the time I returned? JK

19. Q. I want you to describe what was worn by Major Furuki?
A. I think he was armed with a revolver.

20. Q. Did the natives whom you transported to Ainsman have any armament?
A. No.

21. Q. Do you know the ^{names} of any of these natives?
A. I do not know. JK

22. Q. You stated that a short time after you heard the shots, Furuki came out of the coconut grove. Can you estimate that time interval for us?
A. At that time at Jaluit the food was very short and it was like a living hell and I can not remember the exact dates, but I believe the time was thirty to forty minutes.

23. Q. When Furuki called to you and Sugahara and took you into the coconut grove did he say anything?
A. Major Furuki said to bury these natives respectfully.

24. Q. Were these natives whose bodies you saw on entering the coconut grove the same persons you had transported on the truck to Ainsman Island?
A. They were the same.

25. Q. Was Furuki wearing his armament when he called to you and Sugahara to come into the coconut grove with him?
A. Yes.

26. Q. On entering the coconut grove will you tell us what you observed about the bodies of the natives.
A. The natives were dead.

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James P. Kenney, Jr. VSM

27. Q. Did you observe any marks on the bodies of the natives?

A. I think they had been shot in the head and there was blood flowing from it.

The accused objected to that part of the answer wherein it was stated, "I think they had been shot in the head," on the grounds it called for the conclusion of the witness, and moved that that portion of the answer be stricken from the record.

The judge advocate replied.

The commission announced that the objection of the accused was sustained and directed that the words "I think they had been shot in the head" be stricken from the record.

The commission stated that the Japanese word "omou" used and interpreted as "I think" should be explained to all parties to the trial.

The interpreter stated that when the words "I think" are used in the interpretation of a Japanese word, it is usually the word "omou." That word is subject to many varied definitions but mainly under that of "to recall to the best of one's own knowledge" or that of "to have the opinion that." The word has different meanings for different people according to the circumstances in which it is used and the translation must depend upon the context in which it is used and the meaning of the witness. "Shinsuru" or "I believe" is usually to be interpreted as "I am sure" or "I am convinced of the fact that." "To recall or recollect" is usually a direct translation from similar words in Japanese. JK

28. Q. Do you recall on what particular part of the heads of these natives you saw the blood.

A. I do not remember.

29. Q. Did you notice any marks on the heads of the natives in the vicinity where you saw the blood?

A. No.

30. Q. Was the blood flowing from the heads?

A. Yes.

31. Q. After Furuki called to you and Sugahara and you went with him to the coconut grove; did you see anyone present other than the bodies of the three natives?

A. There was no one there.

Cross-examined by the accused:

32. Q. You testified before that you stopped in front of the Second Ammunition Dump and placed the three natives on the truck. Was the Second Ammunition Dump the living quarters of these natives?

A. No, it was a place to store ammunition.

33. Q. Why were the natives placed there?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused withdrew the question.

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34. Q. Do you know the reason why the natives were there?
A. I do not know.

35. Q. You testified that by the orders of Major Furuki you guarded the natives with a rifle. At that time what sort of persons did you think the natives were?

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

The accused withdrew the question.

36. Q. You were ordered to guard the natives with rifles, why were you ordered to do so?

A. I think it was because they had revolted against the Jaluit garrison.

The question and answer were objected to by the judge advocate on the ground that it was hearsay and requested that the question and answer be stricken from the record.

The accused made no reply.

The commission announced that the objection of the judge advocate was not sustained and that the commission would give the proper weight to the answer of the witness.

37. Q. You testified that you were called by Major Furuki and went with him and saw the dead bodies. At that time what was the attitude of Major Furuki?

A. He seemed to be very pale and was always looking toward the natives.

38. Q. After this did Major Furuki say anything to you or Sugahara?

A. He said to bury these natives respectfully.

39. Q. You stated that after the burial pretty stones had been placed on his grave as his tombstone and also flowers and a prayer had been given that his soul should rest in peace. Who was the originator of this idea?

A. I think it was Major Furuki.

40. Q. You said "I think," just now, but can you say exactly who said to do these things?

A. Major Furuki.

The witness was duly warned.

The commission then, at 11:22 a. m., took a recess until 2:05 p. m., at which time it reconvened.

Presents:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the interpreters, the accused and his counsel.

Robert Oldham, yeoman third class, United States Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Miyasaki, Tataka, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

41. Q. What were your duties at Jaluit?

A. I was a member of an anti-aircraft platoon.

42. Q. Was this a navy organization?

A. Yes.

43. Q. What was your rating?

A. What was it at that time?

44. Q. Yes.

A. I was a leading seaman in the navy.

45. Q. This organization that you belonged to--an anti-aircraft battery--how was this organization connected with Major Furuki?

A. Jaluit was an island that was isolated from the end of December 1943. Because of this Masuda, Hsuke, became commanding officer of all the Army, Navy, civilian natives, Gunsemas, without discrimination, on the island, and under him Major Furuki acted as the right hand man to Masuda.

46. Q. Was this the only time that you were ever ordered to report for a working detail for Major Furuki?

A. It was the one and only time.

47. Q. On your way to reporting for this work detail you went with a warrant officer?

A. Yes.

48. Q. Did you and the warrant officer talk about the work detail on your way to Major Furuki's headquarters?

A. No.

49. Q. Did you at any time from the time you left Major Furuki's headquarters until the time you arrived at the coconut grove discuss the reason why you were ordered on the work detail with the warrant officer?

A. No.

50. Q. When you arrived at the dump--the ammunition dump--you testified that the prisoners were there. Was it customary to keep prisoners at the ammunition dump?

A. I think it was not usual.

51. Q. Do you know why these three prisoners were kept there?

A. Probably it was because Jaluit did not have any strong air-raid shelters and as the ammunition dump was the strongest protected, the prisoners were kept there.

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Jane P. Henry *USN*

52. Q. Now, you have testified that it was thirty to forty minutes after you heard the shots that Major Furuki came out and beckoned to you. What did he say to you at that time?

A. With it when he came out and called us? JK

53. Q. Yes.

A. He said, "Both of you--come here."

54. Q. Then when you went into the coconut grove with him what did you see?

A. When we went in with Major Furuki we saw the dead natives.

55. Q. They were dead when you saw them.

A. Yes.

56. Q. How long would you say they had been dead?

A. Is it the time?

57. Q. Yes.

A. It was between thirty to forty minutes after we heard the shots and we were called by Major Furuki and went.

58. Q. Now, when a person is dead, does the blood stop flowing out of the ~~the~~ any wounds he might have? JK

This question was objected to by the judge advocate on the ground that it called for a technical opinion and the witness was not qualified to answer it.

The accused replied.

The commission announced that the objection was sustained.

59. Q. Now, when you testified this morning, you testified that when you saw the bodies the blood was continuing to flow from them. Is that the way you remember it now?

A. This morning when I testified I said I saw blood trickling from his wounds.

Reexamined by the judge advocate:

60. Q. You didn't make any personal investigation into any charges that might have been made against these natives, did you?

This question was objected to by the accused on the ground that it goes beyond the scope of the cross-examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. No.

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James P. Kenny Lt USN

61. Q. Then, speaking about the group over which Masuda had command, you mentioned the term "Gunsoku." Will you describe to the commission what that means?

A. Is the answer of what is a Gunsoku required?

62. Q. Yes.

A. The architecture and civilian engineering department were in the construction corps. There was also a construction battalion. A Gunsoku is a Japanese person other than military. JH

63. Q. After arriving on Ainemau Island and getting off the truck, did the natives walk under their own power into the coconut grove with Furuki?

A. Is it the natives or the guards?

64. Q. The natives.

A. The natives were tied in a row and Major Furuki led them in.

65. Q. And after hearing the shots and being called into the coconut grove you saw the natives lying dead on the ground. Is that correct?

A. Yes.

Recross-examined by the accused:

66. Q. You just testified that you did not make a personal investigation as to why these natives were executed, but you do know why they were executed, do you not?

This question was objected to by the judge advocate on the ground that it called for a hearsay answer on the part of the witness.

The accused replied,

The commission announced that the objection was not sustained.

A. I would like to have that repeated again.

The question was reframed by the accused.

67. Q. Do you know of your own knowledge why these natives were executed?

A. I would like to have the question repeated.

The question was repeated.

A. (continued) Major Furuki is not a person who would do wrong deeds. Major Furuki looked very well after his subordinates.

The question was again repeated.

A. (continued) No.

68. Q. Did Major Furuki tell you why the prisoners were executed?

This question was objected to by the judge advocate on the ground that it called for a hearsay answer.

The accused replied,

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The commission announced that the objection was not sustained.

The question was repeated.

A. No.

69. Q. Did anyone ever tell you why they were executed that day?

This question was objected to by the judge advocate on the ground that it called for a hearsay answer.

The accused replied.

The commission announced that the objection was sustained.

70. Q. It is not clear to me from your testimony just what happened there. Did the guards go into the grove with the natives and Major Furuki?

A. I would like to have the question repeated.

The question was repeated.

A. No, the two guards, we waited by the truck.

71. Q. What did you do for those thirty to forty minutes while you were waiting?

A. We were by the truck.

72. Q. Did you discuss the prisoners during this period of time?

A. No.

Examined by the commission:

73. Q. Do you know the rank of Masuda, Nisuke?

A. He was a Rear Admiral in the Japanese Navy.

74. Q. From your position by the truck, where you testified you waited, could you see the scene, the location within the coconut grove, where you subsequently saw the bodies?

A. No.

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

The witness made the following statements:

In my testimony I can not help but use "I think" or "as I recall" because I can not remember because of the conditions which prevailed at Jaluit. For food we only had one copra and some coconut toddy. We lost weight. Persons who normally had weighed sixty kilos went down to forty. We could barely walk one hundred meters. We were in deep despair. We had no clothes to wear but the ones we had on. We went many weeks without changes. One of my friends was in the hospital and he said that he would like to eat something to fill his stomach before he died. Twenty minutes later he was dead. I could do nothing. I had nothing to give him to eat. All I could do was to sigh. Because of these conditions, I am not able to remember distinctly events.

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James P. Kennedy to USN

The accused stated as follows:

We request of the Commission, with the permission of the judge advocate, that we be allowed to recall this witness, or have the privilege to recall this witness, as a character witness for Major Furuki.

The judge advocate stated that he had no objection to this.

The Commission announced that the accused was at liberty to call any character witnesses he wished. *JK*

The witness was duly warned and withdrew.

The Commission then, at 3:10 p. m. took a recess until 3:25 p. m., at which time it reconvened.

Present:

All the members, the judge advocates, the reporter, the three official native observers from the Marshall Islands, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Akisuki, Marumi, leading private, Imperial Japanese Army. *JK*
2. Q. Are you presently confined on Guam.
A. Yes.
3. Q. If you recognize the accused state as whom.
A. Furuki, Hidesaku.
4. Q. Were you ever stationed with the Japanese forces on Jaluit Atoll?
A. I was.
5. Q. Between what dates were you stationed with the Japanese forces on Jaluit Atoll?
A. From 30 November 1943 to 10 October 1945.
6. Q. During that period was the accused, Furuki, also stationed on Jaluit Atoll?
A. Yes.
7. Q. To what organization was Furuki attached?
A. He was a Battalion Commander of the Second Battalion, First South Seas Detachment.
8. Q. During the year of 1945 and prior to the occupation of Jaluit by the American forces were you assigned any duties in connection with native prisoners?
A. I was.

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James P. Kealey & USN

9. Q. Will you tell us what that assignment was and what you did as a result of the assignment?

A. I would like to have the question repeated.

The question was repeated.

A. I do not understand. I would like to have it repeated once more.

The judge advocate withdrew the question. J.K.

10. Q. You have testified that you were assigned certain duties in connection with native prisoners on Jaluit. Will you tell us what the nature of that assignment was?

A. I was ordered by the company commander to go to battalion headquarters armed and take instructions from the battalion commander.

11. Q. At what time in the year did you receive this order?

A. It was in the middle of June 1945.

12. Q. Who was the company commander who gave you this order? J.K.

A. He was Captain Sakara.

13. Q. Who was the officer to whom he ordered you to report.

A. I do not understand the question.

The question was withdrawn by the judge advocate.

14. Q. What was the name of the officer to whom you were told to report?

A. The battalion commander, Major Furuki.

15. Q. At the time you received this order from your company commander, did you receive any instructions on what your dress or attire should be on reporting to Major Furuki?

A. As I said before, I was told to go armed.

16. Q. Will you tell the commission just what you did as a result of this order and what you saw.

A. When I went to the battalion commander's room he said to wait awhile. So I waited. Then a truck came. I was ordered to get on the truck. So I got on it. The truck stopped at the Second Ammunition Dump and then the battalion commander brought two natives to the truck. The battalion commander brought the two natives to the truck and said "that that these two natives do not escape." He asked, "Is your gun loaded?", so I loaded the gun. I was handed the rope and the truck moved off toward Ainan. It went for a considerable distance and the truck stopped and the battalion commander ordered the natives taken off the truck and then I received an order from the battalion commander to watch this road and to stop all traffic. Then the battalion commander taking the two natives went toward the lagoon. A short time later, from about ten to thirty minutes, I heard shots which sounded like pistol shots. And about ten to twenty minutes later the battalion commander called to me from a coconut grove. As I was called I went toward where the voice came from. When I went there I found the dead natives. And then the battalion commander said, "There are two shovels on the truck." So I went to get them. When I brought them the J.K.

battalion commander said, "Dig a hole here." At this time the battalion commander was also digging a hole along side. He took off the blindfolds and the ropes with which they were tied and both of us buried them. And we buried them and piled up the sand high so they would not be walked upon. And around the graves were placed stones. The battalion commander at that time went to gather some branches and placed them on the grave. Both of us bowed our heads and prayed that they may rest in peace, and returned. I came back to the company and reported to the company commanding officer that I had finished my work detail and I had returned. That is all.

17. Q. You stated that the truck in which you and Furuki and the natives were riding drove toward Ainemam Island. Did it stop on Ainemam Island?
A. Yes, it stopped on Ainemam. OK

18. Q. And that is the spot at which Furuki, along with the natives, went into the lagoon?
A. After they had stopped, they went about ten meters further on and then went toward the lagoon.

19. Q. The lagoon was on Ainemam Island, is that correct?
A. Yes.

20. Q. Was Furuki wearing armament when he entered the lagoon with the natives?
A. I think he had a steel helmet, but I do not remember about the armament.

21. Q. Did you, while you were riding with him and the natives on the truck, observe him wearing any armament?
A. I did not notice.

22. Q. Before burying the natives you stated that Furuki told you that there were some shovels on the truck and directed you to get them. Did he tell you anything else?
A. When I was called and went to him he said that he had executed the natives.

23. Q. Were the natives wearing any armament when they entered the lagoon with Furuki?
A. He had a steel helmet slung over his shoulder but I did not notice any armament.

24. Q. In your answer you said, "He had a steel helmet slung over his shoulder." When do you mean by "he"?
A. The battalion commander, Major Furuki.

25. Q. I ask you now whether the natives when they entered the lagoon were carrying any armament?
A. I remember that the natives did not have any armament.

26. Q. After being called by Furuki and entering the lagoon in what position did you find the natives?
A. Is it when the battalion commander and the natives were going toward the lagoon? OK

The question was reframed by the judge advocate.

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27. Q. After hearing the shots and entering the lagoon where did you see the bodies of the natives?

A. That is a little difficult and I cannot understand it.

28. Q. Tell us what you observed about the bodies of the natives?

A. I noticed that they were lying on the ground and there was blood coming from their heads.

29. Q. Do you recall from what particular part of the head blood was flowing?

A. I think, as I remember, it was on the forehead.

30. Q. While burying the natives did you notice the wounds from which the blood had been flowing?

A. The hair was fallen over his forehead and I did not notice the wound.

31. Q. Do you know the names of either or both of these natives that you buried on this occasion?

A. I do not know the names of the natives.

Cross-examined by the accused:

32. Q. When you were called by the battalion commander and went with him what was the battalion commander's attitude toward the dead natives?

A. His head was bowed and there was tears in his eyes.

33. Q. When they were to be buried did he say anything to you?

A. He said nothing in particular at that time.

34. Q. After they were buried, what did Major Furuki say when he bowed and said that their souls may rest in peace?

A. Major Furuki was a very religious person and at such a time he was saying something in his mouth, but I did not know what at that time. JK

35. Q. When the bodies were buried, the sand was piled upon the bodies and stones were placed around them. Did Major Furuki also participate in this?

A. Yes, Major Furuki also did so.

36. Q. And in the placing of flowers, was it also Major Furuki who placed branches on the graves instead of flowers?

A. Major Furuki had gone to get the branches.

37. Q. And you say that a prayer had been given for them. What sort of prayer was it?

A. It was the same posture and attitude as when they would pray to Buddha. The posture was one of hands clasped in front of him and his head bowed. (The witness indicating with clasped hands.)

38. Q. Was it an attitude of respect and solemnity which you did take in prayer?

A. Yes.

39. Q. When did Major Furuki leave Jaluit?

A. I do not understand when you say "leave."

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James P. Kealey to B2

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40. Q. Was Major Furuki on Jaluit at the time when you left the island?
A. After the end of the war I went together with Major Furuki and was taken off the island by the Americans.

41. Q. These natives that you talk about, who were these natives?
A. I would like to have the question repeated.

The question was reframed.

42. Q. You testified regarding two natives. Who were these two natives?
A. I do not know their names.

43. Q. Do you know anything about them?
A. No.

44. Q. The shots that you heard. How far away did these shots come from?
A. I do not know the distance. I went there and I found out but I could not tell the distance by the sound.

45. Q. How far from Major Furuki's headquarters did this execution take place?
A. About four to five thousand.

46. Q. About four to five thousand what?
A. About four to five thousand meters.

47. Q. What time of the day was it that this execution took place?
A. As I did not have any watch, I did not know exactly but I left the company headquarters at three o'clock. It was around four to four thirty in the afternoon.

48. Q. Could you locate this place of execution again?
A. If it was exactly as it was before, I think I can.

49. Q. Do you know if the bodies are still there?
A. That I do not know.

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

The commission did not desire to examine this witness.

The witness made the following statement:

When I testified about the time just before, I can not say exactly about it because the only thing we could tell time was by when the sun went down and we did not notice the time.

The witness was duly warned and withdrew.

The commission then, at 4:10 p.m., adjourned until 9 a.m., Saturday, March 8, 1947.

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James P. Kenny Jr USN

EXHIBIT

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, March 8, 1947.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Vernon M. Guyton, U. S. Marine Corps,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Fredner W. Lee, junior, U. S. Naval Reserve, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buena Heine, official native observer from the Marshall Islands,
Mark Jude, official native observer from the Marshall Islands,
Lajoro, official native observer from the Marshall Islands.
Robert E. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name and rank.
A. Tanaka, Mitsuru, leading private, Imperial Japanese Army.
2. Q. Are you presently confined on Guam?
A. Yes.
3. Q. If you recognize the accused state as when.
A. Fureki, Hideoaki.
4. Q. Were you ever stationed with the Japanese forces on Jaluit Atoll?
A. Yes.
5. Q. Between what dates were you stationed with the Japanese forces on Jaluit Atoll?
A. From 30 November 1943 to 11 October 1945.
6. Q. Was the accused, Fureki, stationed on Jaluit Atoll?
A. Yes.

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7. Q. To what organization was he attached?

A. First South Seas Detachment.

8. Q. What was his position with the First South Seas Detachment?

A. He was a Battalion Commander.

9. Q. Do you know the number of the battalion he commanded?

A. It was the second battalion.

10. Q. During 1945 and prior to the occupation of Jaluit by the American forces were you given an assignment in connection with some native prisoners?

A. Yes.

11. Q. Will you tell the commission what that assignment was and what you did as a result of that assignment?

A. In the last ten days of July 1945, I do not remember the exact date, but around 9:30 p.m. I was filing some papers in the office of the defense section when an orderly of Major Furuki came to call me. He said to me that the battalion commander was calling and to come to his room. I left what I was doing and went to the battalion commander's room. When I went there he ordered me to arm myself with a rifle and bayonet. Arming myself with a rifle and bayonet I returned to the battalion commander's room and then Major Furuki said, "Wait here awhile". In the meantime a truck had stopped on the road and Major Furuki told me to get on the truck. Major Furuki also got on the truck and the truck stopped in front of the Second Ammunition Dump. Major Furuki got off of the truck, entering the ammunition dump. A short while later brought out two natives with him, he placed the natives on the truck and then the truck started out toward Ainsman. The truck stopped at a point about the middle of Ainsman. Myself, Major Furuki and the two natives got off of the truck, then they started to go back. Then Major Furuki said to me, "You shall stop all traffic on this road and to be on the watch and to watch this vicinity", then Major Furuki taking the two natives with him entered the jungle. About ten or fifteen minutes later I heard something that sounded like two or three shots. Two or three minutes after I had heard the shots it sounded as if someone was calling, as I looked around, I saw it was Major Furuki calling and he said to come with him and when I went there I saw the two bloody natives and then Major Furuki said "As we are going to bury these natives dig a hole, the implements to dig are on the truck, go back for the implements". I brought them back and dug a hole. After I had been digging for a considerable time I noticed that Major Furuki was gathering wild flowers of the vicinity, then I told Major Furuki that I had finished digging the hole and then he said, "Lend me a hand to bury these natives." Then myself and Major Furuki untied the ropes, with which the natives were bound, and buried them. Dirt was placed on the grave, the flowers that Major Furuki had picked were placed on there and we went back to headquarters. When I was going back to the main island I felt very sorry and sympathetic with the natives, not only myself, but I think that Major Furuki was the same, that is all.

12. Q. Were these natives when you and Furuki buried on Ainsman Island the same natives that had been taken from the Second Ammunition Dump by Furuki?

A. Yes.

13. Q. What were the names of these natives?

A. At that time I did not know, but I only remember one that I heard of after the war.

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James P. Kenny #USK

14. Q. What one was that?

A. The native's name was Mandala.

15. Q. On the trip to Ainanen did these natives carry any arms?

A. No.

16. Q. Did Furuki carry arms?

A. As I remember it Major Furuki was wearing a pair of officers' trousers and a shirt like I am wearing now and he also carried a steel helmet. JK

17. Q. Did he carry a gun?

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

The judge advocate withdrew this question.

18. Q. Other than what you have just described was Furuki wearing anything else?

A. Other to that, I did not notice anything else.

19. Q. After you and Furuki had buried these natives, did Furuki then say anything to you?

A. He did.

20. Q. Tell us what he said.

A. He said, "I cautioned these natives, do not talk about this incident."

21. Q. Are you certain he used the word "cautioned"?

A. Yes.

22. Q. After hearing the shots and going to Furuki to where the bodies of the natives were lying, did you observe anyone else in the vicinity other than Furuki, yourself and the bodies of the two natives?

A. There was no one else.

23. Q. During the period from the time you arrived on Ainanen Island and up until the time you heard the shots did you see anybody?

A. I did not see anybody. JK

Cross-examined by the accused:

24. Q. You testified that Major Furuki brought out some natives from the Second Ammunition Depot. Was there any special reason for keeping these natives there?

A. Jaluit was being bombed fiercely every day by the American forces and even we had no place except our positions. The positions were but revetments covered with coconut trunks, dirt and rocks, and I am sure that the natives were placed in this ammunition dump, which is made of reinforced concrete, because that was the safest place.

25. Q. Then the Second Ammunition Dump was the safest place from air raids on Jaluit?

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

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John P. Kearney *JP*

The accused, with the permission of the commission, withdrew this question.

26. Q. You testified that when you buried the two natives and you were going back, you felt very sorry for them and you were very sad, you said that you think Major Furuki had the same feeling. What was the attitude of Major Furuki toward the natives from the time you saw the dead bodies until the time you returned? Please tell us about this.

A. To the defense garrison of Jaluit, the natives were a very valuable asset. I have never made any exact estimate, but I have heard that the natives can get five shos of coconut toddy.....

The commission stated that the answer was not responsive to the question.

The witness was directed to answer the question.

The question was repeated.

A. The attitude of Major Furuki was very sad.

27. Q. What was Major Furuki's attitude toward the dead bodies?

A. The attitude of Major Furuki through the burial was one which was very sad.

28. Q. Did he say anything to you?

A. And to me he said, "Bury them respectfully."

29. Q. How was he going about gathering flowers and preparing for the burial?

A. After Major Furuki and myself had buried them we gave a prayer and returned to the main island.

30. Q. You stated that you were confined on Guam, how long have you been confined on Guam?

A. I arrived on Guam on the 24th of March of last year, I was confined in the stockade until November of last year, from November the second of last year I was let out from the stockade and went to the witness camp.

31. Q. How do you know the date of the incident you have testified to?

A. I had been trying to recall the events of that time and eventually did so.

32. Q. While you were confined in the stockade did you sign any statement concerning this incident?

A. No.

33. Q. Who was the driver of this truck you talked about?

A. I do not remember the driver.

34. Q. Was he an army man?

A. I do not remember whether he was from the Navy, the Army or the Construction Corps.

35. Q. What kind of a truck was he driving?

A. It was the usual kind of truck.

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James P. Henry Lt USN

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36. Q. What kind is the usual kind of a truck?

A. I do not remember.

37. Q. Where did the truck go when you got out, at the time Major Furuki told you to stop traffic?

A. There is very little traffic going across Ainsman and if there was traffic it would be coming from the main island and I believe the truck was stopped in the jungle facing to the main island. OK

38. Q. When you testified on direct examination you said, the truck went away. Is that correct?

A. What I meant is that he started off and stopped on the way back.

39. Q. Did you stay in the truck?

A. I did not stay in the truck.

40. Q. Did you talk to the truck driver while Major Furuki was in the grove?

A. I did not talk to him. OK

41. Q. Did you go into the grove with Major Furuki and the two natives?

A. As I testified before Major Furuki said, "You stay here", so I stayed there.

42. Q. When he called you and you went into the grove, how long after Major Furuki went into the grove did he call you?

A. As I remember it I think it was about two or three minutes.

43. Q. Major Furuki went into the grove, in two or three minutes he called you to come in, is that right?

A. Was it after he entered the grove?

44. Q. Yes. How long was Major Furuki in the grove?

A. I misunderstood the previous question and answer, but he was in about ten to twenty minutes.

45. Q. How do you know he was in ten to twenty minutes?

A. I was asked about the time and I had just guessed at it.

46. Q. Who asked you about the time?

A. I just answered the question I was asked, what was the time that elapsed when he entered the jungle and I was called.

47. Q. Did someone tell you to answer ten to twenty minutes?

A. No.

48. Q. Did you have a watch with which you could tell how long Major Furuki was in the grove?

This question was objected to by the judge advocate on the ground that the witness has already testified that he made an approximation of the time.

The accused made no reply.

The commission announced that the objection was sustained.

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James A. Kenny *USN*

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49. Q. How deep was this hole that you dug?

A. I think it was about three feet.

50. Q. What kind of soil did you dig into?

A. Just about every place on Jaluit is sand and the place I dug was sand.

51. Q. What did you dig with?

A. It was a shovel.

52. Q. How long did it take to dig this hole?

A. I can not estimate exactly, but I think it took about twenty to thirty minutes.

53. Q. What time of the day was it when you finished burying the natives?

A. As I did not have a watch, estimating by the sun it was about 4:40 or 4:50 in the afternoon.

54. Q. Can you find this place again where you buried these natives?

A. I can not relocate the exact spot, but I can relocate the general vicinity. OK

55. Q. Are the bodies still there?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused, with the permission of the commission, withdrew this question.

56. Q. Do you know whether the bodies are still there?

A. I do not know.

57. Q. Now, you testified as to the name of one of the natives. Who told you the name of this native?

A. I heard this from an officer named Kadota who was formerly attached to the defense section.

58. Q. Was he an officer of the Japanese Navy?

A. He was an Army officer.

59. Q. Japanese Army?

A. Yes.

60. Q. When did he tell you the name of the native?

A. While I was in the stockade I had heard this.

61. Q. What did he say to you?

A. Knowing that there would be a trial I asked Lieutenant Kadota, "I may be asked the name in the trial so will you tell it to me?".

62. Q. What else did he tell you?

A. He just told me the name and nothing else.

63. Q. You testified that Major Furuki told you not to talk about this incident and in talking about this incident in the stockade you disobeyed the orders of Major Furuki, did you not? OK

A. I did not say anything concerning the incident.

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James P. Kenny *JP* USN

64. Q. You did not remember the name of the native until this army officer told you his name, is that correct?
A. I did not know his name until then.

65. Q. Did Major Furuki talk to the truck driver also when he talked to you that day?
A. No.

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

The commission did not desire to examine this witness.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Utsunodaira, Hirotsugu, sergeant, Imperial Japanese Army.
2. Q. Are you presently confined on Guam?
A. Yes.
3. Q. If you recognize the accused state as whom.
A. Furuki, Hidenaka.
4. Q. Were you ever stationed with the Japanese forces on Jaluit Atoll in the Marshall Islands?
A. I was.
5. Q. Between what dates were you stationed on Jaluit Atoll?
A. From January 1944 to 11 October 1945.
6. Q. Was the accused, Furuki, also stationed on Jaluit?
A. Yes.
7. Q. To what organization on Jaluit was he attached?
A. First South Seas Detachment.
8. Q. What was his position with that organization?
A. He was the commander of the second battalion.

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James P. Kerry, Jr. USA

9. Q. During 1945, and before the occupation of Jaluit by the United States forces, were you given an assignment in connection with the Marshallese native prisoners?

A. I was.

10. Q. Will you tell us what that assignment was and what you did as a result of that assignment.

A. As I remember it, it was around the tenth of August of 1945, I think it was in the afternoon about 3:00 p.m. that I was in the office of the defense section when an orderly from the battalion commander came to call me. At this time the battalion commander was head of the defense section and I was a member of the defense section. When I went to the battalion commander's quarters he said, "Be armed as a guard immediately", and when I went back to make preparations and came back to the front of the defense section there was a truck there and also Major Furuki. Major Furuki told me to get on the truck and the truck started to move. The truck stopped in front of the Second Ammunition Dump, the battalion commander got off the truck, a short time later brought a native woman. He ordered me to place the native on the truck and for me to watch that she did not escape and then the truck started off toward Ainean. The truck again stopped, in front of Ainean Transmitter Station, the battalion commander getting off the truck; a short time later brought another native, who was a male. The native was placed on the truck and the truck started off toward Eniboru. The battalion commander ordered the truck to stop when it came to about the middle of Ainean Island and he said to take the two natives off of the truck and they were taken off. The battalion commander told me to watch here and taking the two natives with him went into the jungle which was toward the lagoon. The truck had backed off there about fifty meters and while I was waiting by the road I heard several shots and, as I was wondering what had happened, the battalion commander came out and called me, so I went there. When I had gone into the jungle, which was toward the lagoon, the two natives were lying on the ground. Then the battalion commander ordered me to bury these natives, respectfully. When I said there were no implements with which to dig, he said, "there should be some on the truck," so I went to get them and I dug a hole in which to bury the natives. And when I reported that the hole had been dug, myself and Major Furuki buried the natives and after the dirt had been piled on the grave and I had placed stones so that no one would walk on the grave, Major Furuki was looking for flowers in the neighborhood. After everything had been taken care of, the battalion commander said, "we shall pray for them and go back", so the battalion commander and myself prayed that they might rest in peace and returned. We returned to the main island.

11. Q. Is Ainean one of the islands of Jaluit Atoll?

A. Yes.

12. Q. Were either of these natives when Furuki took into the woods armed?

A. They were not armed.

13. Q. Was Furuki armed?

A. He was in the same sort of appearance as he usually was.

14. Q. Will you describe for the commission what you saw by "same sort of appearance"?

A. The battalion commander usually wore a pair of khaki short pants and a black shirt or an officers shirt.

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James P. Kenney Lt USN

15. Q. Did he usually carry arms?

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

The judge advocate withdrew this question.

16. Q. Was Furuki armed?

A. He had a pistol and a steel helmet.

17. Q. How much time elapsed between the time you heard the shots and the time Furuki called for you to come with him?

A. It was about seven or eight minutes from the time he entered the jungle and the shots were heard; after the shots hardly any time elapsed when he called me. OK

18. Q. When he called you did he say anything to you?

A. As I remember he said nothing other than to bury the natives.

19. Q. Will you describe the native's bodies as they appeared to you after you reached the site where they were lying on the ground?

A. The natives had been shot in the head and there was blood coming from the head.

The accused moved to strike out this answer on the ground that it was opinion evidence.

The judge advocate replied.

The commission directed that the words "The natives had been shot in the head" contained in the answer should be stricken from the record.

20. Q. Did you notice from what part of the heads of these natives the blood was flowing?

A. As I did not look close I can not say exactly, there was just blood coming from the head.

21. Q. Did you assist in the burial of both natives or did you just bury one of them?

A. I buried both of them.

22. Q. While burying them did you observe the wounds from which the blood was flowing?

A. I do not remember where the wounds were.

23. Q. After reaching the spot where the bodies of the two natives were and during the course of the burial did Furuki make any further statements?

A. As I remember it he said nothing else.

24. Q. Did he say anything about what had happened to the natives?

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

The judge advocate withdrew this question.

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James P. Kennedy Jr USN

25. Q. Has Furuki ever told you the names of the two natives involved in this incident?

A. After the war had ended I heard this from the battalion commander.

26. Q. What did he say to you?

A. He said the man was Malein and the woman was Nejrane.

27. Q. After being called by Furuki and reaching the spot where the natives bodies were lying, did you note the presence of anyone else besides yourself and Furuki?

A. There was no one there.

Cross-examined by the accused:

28. Q. What was the attitude of Major Furuki when you went in and saw the dead bodies?

A. It was the same expression on his face when a fellow soldier of mine had died which was one of his subordinates.

29. Q. You testified that Major Furuki told you to bury the natives respectfully and you testified that dirt was piled on the grave and stones placed on it. Was this by the order of Major Furuki?

A. Major Furuki ordered it.

30. Q. You testified that flowers were placed on the grave and you prayed and you returned. Were the flowers placed directly by Major Furuki?

A. The person who placed the flowers was Major Furuki.

31. Q. How did you offer a prayer?

A. Like we did at home, by Buddhist ritual.

32. Q. What sort of rituals are these?

A. Clasping the hands in front of you and bowing your head.

33. Q. Was Major Furuki very sorrowful about the death of these natives?

A. I saw the same expression that he had on when a fellow member of us had died.

34. Q. You testified that you had been confined on Guam, how long have you been confined on Guam?

A. It is almost a year.

35. Q. Are you still confined on Guam?

A. Yes.

36. Q. How long was Major Furuki stationed on Jaluit?

A. He came to Jaluit at the same time I did.

37. Q. Did he leave the same time you did?

A. Yes.

38. Q. Now, these natives you testified to, were they tied that day?

A. They were tied; but loosely.

39. Q. What else did you observe about them?

A. I would like to have the question clarified.

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James P. Kenny Lt USN

40. Q. How were they dressed?

A. The man was wearing a white shirt and black short pants, the woman was wearing a Mother Hubbard dress; they were dressed neatly.

41. Q. From what you observed about them, what was your opinion as to why they were tied?

This question was objected by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

42. Q. Do you know why the victims were tied?

A. Because they were persons who had committed a wrong.

43. Q. What kind of a wrong had they committed?

This question was objected to by the judge advocate on the ground that it called for opinion evidence and that the proper foundation had not been laid.

The accused replied.

The commission announced that the objection was not sustained.

A. They were planning to escape from Jaluit.

The judge advocate moved to strike out this answer on the ground that it was the opinion of the witness.

The commission announced that the motion to strike was not sustained.

The witness was cautioned that his answers should be in direct reply to the question and he should testify to only things of his own knowledge unless the answer is qualified in some manner.

44. Q. When did Major Furuki tell you the names of these two victims?

A. I do not remember the time and the date, but I think it was shortly after the end of the war.

45. Q. Where were you at that time?

A. As I was a helper in the defense section I was meeting Major Furuki frequently.

46. Q. He told you the names of these two victims while you were still on Jaluit?

A. Yes.

47. Q. It was after the war had ended?

A. It is not distinct, but I think it was after the end of the war.

48. Q. Did he say anything else to you at that time?

A. As I had asked him many questions many times I do not remember.

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James P. Kenney Lt USN

49. Q. You asked Major Furuki what the names of the two victims were?

A. Whether I asked him or Major Furuki told me, I do not remember.

50. Q. But that is the way you found out the names of these two victims?

A. Yes, and also later I saw the names in the records of the defense section.

51. Q. What did you see in the records of the defense section about these two?

A. The one I saw was the one on the native incident of Pingelap Island.

52. Q. Tell me what you saw in the records.

This question was objected by the judge advocate on the ground that it called for hearsay.

The accused made no reply.

The commission announced that the objection was not sustained.

A. In the record office I saw what the natives had tried to do and what they had done. This was a record or papers used in training guards, and I do not remember exactly when they had done it and what they had done.

53. Q. What happened to this record?

A. Those papers were circulated to all personnel above warrant officer as "military secret".

54. Q. Was the record destroyed after the war?

A. After the end of the war before the occupation, American ships arrived, and orders to burn all papers were put out and the papers were burned at that time.

55. Q. You were still working in the defense section at that time?

A. It was before the defense section was disbanded.

56. Q. Were you still working in the defense section at this time?

A. Yes.

57. Q. You had access to these records?

A. These records were long and also there was not enough paper to go around so I had to rewrite these records.

58. Q. That was your job on Jaluit at that time?

A. Yes.

59. Q. So as part of your job you knew about these records?

A. Yes.

The witness was duly warned.

The commission then, at 11:35 a.m., adjourned until 9 a.m., Monday, 10 March 1947.

SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, March 10, 1947.

The commission met at 9:04 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president, JK
Colonel Vernon E. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy, and
Lieutenant Commander Bradford W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Borna Heine, official native observer from the Marshall Islands, JK
Magg Jude, official native observer from the Marshall Islands,
Lafore, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Utsumiya, Hirotsuke, sergeant, Imperial Japanese Army, the witness under cross-examination when the commission adjourned on 8 March 1947, entered. He was warned that the oath previously taken by him was still binding and continued his testimony.

(Cross-examination continued)

60. Q. Where did you pick up that native woman that day?

A. The Second Ammunition Dump.

61. Q. And the man, where did you pick him up?

A. At the Transmitting Station on Aianan.

62. Q. How long did it take you to reach this coconut grove after you reached Aianan?

A. From the Transmitting Station it was about from seven to eight to ten minutes.

63. Q. How long did Major Furuki stay in the grove with the natives?

A. I think it was from seven to eight minutes after he entered the grove and I heard the shots, he came out shortly after I heard the shots.

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James P. Kenny *USN*

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64. Q. These graves you buried the victims in, were they marked with identification markings?

A. Rocks were piled on the grave respectfully and the grave was marked. JPK

65. Q. Marked with the names of the persons?

A. The names were not marked.

66. Q. Did you ever go back to this spot again?

A. No.

Remained by the judge advocate:

67. Q. Is it the custom for the Japanese to feel sorry for all dead bodies?

A. Yes.

68. Q. They feel sorry for good citizens after they die, don't they?

A. I would like to have the question repeated.

69. Q. They feel sorry for good citizens after they die, don't they?

A. Not only for good citizens, respect is also shown for persons who have died.

70. Q. So you would tell us then that they show respect for a dead person regardless of what their lives had been, is that true?

A. Yes, all persons who have died become Buddha.

71. Q. What do you mean when you say they "become Buddha"?

A. Because I think no matter how bad the person is when he is dead he becomes a God.

The judge advocate did not desire to further examine this witness.

The accused did not desire to further examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

I sincerely believe that the battalion commander did not execute these natives with any malice.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Sakuda, Sawaki, former lieutenant, Imperial Japanese Navy. JPK

2. Q. Are you presently confined in Guam?

A. Yes.

3. Q. If you recognize the accused state as when.

A. Furuki, Hidesaku.

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James P. Kennedy *JP*

4. Q. Were you ever stationed on Jaluit Atoll, Marshall Islands?

A. I was.

5. Q. During what period of time?

A. I had duties on Jaluit from September 1943 till the end of the war.

6. Q. During the period of time you were stationed on Jaluit was Major Furuki stationed there?

A. Yes.

7. Q. Do you know what Major Furuki's command was at that time?

A. He was the Battalion Commander of the Second Battalion of the First South Seas Detachment.

8. Q. What was the nature of your duties on Jaluit Atoll?

A. I was attached to the headquarters of the 62nd Naval Guard Unit.

9. Q. Will you explain briefly what the command organization was with regard to Admiral Masuda, Major Furuki and your own status?

A. From what period.

10. Q. During the period from May of 1945 until the middle of August.

A. Major Furuki as a member of the defense garrison worked as head of the defense section under Admiral Masuda and I worked under Major Furuki.

11. Q. In the course of your duties on Jaluit did you have occasion to deal with any of the natives?

A. I handled native affairs from the middle of May 1945 until August 1945.

12. Q. Do you recall the names of any of the natives in connection with whom you had any official duties?

This question was objected to by the accused on the ground that it was irrelevant and no proper foundation had been laid.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember them all, I remember some.

13. Q. Do you recall the names, Leschr and Koshri?

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

The judge advocate replied.

The commission announced that the objection was sustained.

14. Q. Would you state what names you recall in connection with your official duties?

A. Leschr, Arden, Makui, Tiagrik, Koshri, that is all.

15. Q. What do you recall in connection with Leschr and Koshri?

A. I investigated into these natives when they planned a revolt on Iroodj Island.

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James P. Kerry Jr. USA

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16. Q. Do you recall any other natives connected with Leschr and Kohri in that incident?

A. Leschr, Kohri, Kogina, Arden, Echibaru.

17. Q. In connection with the investigation, did you make any report concerning these natives?

A. I did.

18. Q. In the course of your duties did you observe any official records concerning these natives other than your own reports?

A. I saw practically all of the documents that were put out by the defense section.

19. Q. Did you see any records with the names of Leschr, Kohri and Kogina on them?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I did.

20. Q. Will you describe these official records?

A. I saw one that had the opinion of Major Furuki in punishing the natives who had committed crimes and on it was the verdict of the commanding officer.

The accused moved to strike out this answer on the ground that it was prejudicial to the rights of the accused.

The judge advocate stated that he was agreeable to striking this question and the answer from the record.

The commission announced that the question and answer should be stricken from the record.

21. Q. Do you know what happened to the official records of the unit to which Major Furuki was attached?

A. At the end of the war all documents of the Jaluit Garrison were burned.

22. Q. In connection with the paper you described, the official document you described, concerning Leschr, Kohri and Kogina, was there a sentence of these natives on that document?

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

The judge advocate withdrew the question.

23. Q. Will you describe the documents that referred to Leschr, Kohri and Kogina?

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James P. Kenny Et. USN

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A. I do not remember it exactly, but on it was the name of the criminal, the law applied to the crime, the specifications of the crime, the degree in which the criminal was involved, Major Faruki's opinion on the crime and the admiral's verdict. I would like to change the first part of my answer. What I mean when I say I do not remember exactly is, that I do not remember word for word what was written down and not that I do not remember. It is not vague, everything on there I remember, but I do not remember the details word for word. JK

24. Q. In your answer you used the word "Hanketsu", do you mean thereby the same as you would mean when you say "Kettai"?

(Judge advocate to the commission: "Hanketsu" means verdict, "Kettai" means decision.)

A. I think it is the same thing.

25. Q. On the records referring to Leschr, Kohri and Kogina, what was the decision?

A. It was the sentence of death.

26. Q. Besides the names of Leschr, Kohri and Kogina, were there any other names on this list?

A. Yes.

27. Q. How many other names were on this list which contained the names of Leschr, Kohri and Kogina?

A. At that time there was another name which became unknown, due to the document being burned. There was one person whose name became unknown. JK

28. Q. Did you see the names of Tiagrik, Arden and Makui on one of these lists?

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

The judge advocate replied.

The commission announced that the objection was sustained.

29. Q. Returning to your discussion of the record with regard to Leschr, Kohri and Kogina, you referred to a death sentence in your answer. Do you know what date of execution was given?

A. I do not remember.

30. Q. Can you approximate the date of sentence from your recollection?

A. I think it was about the twentieth of May.

31. Q. Besides your reports on Tiagrik, Arden and Makui, did you see any other official records relating to them?

A. I saw the same sort of paper of Major Faruki's opinion of natives who had committed crimes, as I have stated before.

32. Q. What was the decision with regard to Tiagrik, Arden and Makui?

A. I think probably it was a sentence of death.

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James P. Kenny Lt. USN

33. Q. Do you recall if the documents gave a date of execution?

A. I do not remember.

34. Q. Did you see similar documents with regard to any other natives indicating the decision that they would be executed?

A. All the members of the defense section were supposed to see these papers.

35. Q. Do you recall the names of any of the natives listed on these documents in addition to the ones you have mentioned?

A. I do not remember.

36. Q. Do you believe you could recall these names if I were to mention them to you?

A. Yes.

37. Q. Do you recall in connection with these documents you have described the names of any other natives?

A. I do not remember exactly, if I am told the names I think I can remember.

38. Q. Do you recall the names of Chuta and Chemschle as being on that list?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I recollect the names that you just mentioned, but I do not remember in what papers I saw them.

39. Q. Do you recall the names as being in connection with an official document regarding a death sentence?

This question was objected to by the accused on the ground that it was leading and calls for an opinion of the witness.

The judge advocate replied,

The commission announced that the objection was sustained.

40. Q. Can you recall the nature of any of the documents that you saw in connection with Chuta and Chemschle?

A. I think I read a report on the plotting of Chuta and Chemschle.

41. Q. Did this report contain any recommendation?

A. I do not know.

42. Q. Do you recall any documents similar to the ones you previously described with regard to the natives Mandala and Laperia?

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

The judge advocate made no reply.

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James P. Kerry Jr. VSN

The commission announced that the objection was not sustained.

A. I can not remember clearly where I saw these names.

43. Q. Does the witness recall the names of Malain and Majkens in connection with any of the documents he has described?

A. I remember the names well, but I do not remember the papers in which I saw them.

44. Q. In addition to the official reports which you made and other investigators made, and in addition to these sentence documents, were there any other kinds of documents listing the names of natives?

A. I can not recollect.

45. Q. Were these official documents containing the death decision signed?

A. They were signed.

46. Q. Whose signature appeared on these documents?

A. I think they were signed by Admiral Masuda, Major Furuki, Shintone, and Inoue.

47. Q. Did Major Furuki ever talk to you about the natives I have mentioned?

A. Yes.

48. Q. Did he say anything to you about the disposition of these natives?

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

The judge advocate withdrew the question.

The commission then, at 10:25 a.m. took a recess until 10:50 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

49. Q. What did Major Furuki talk to you about in connection with these natives?

A. Major Furuki related to me what natives had been executed, when and where.

50. Q. Did Major Furuki tell you anything in addition to that with regard to the executions?

A. What do you mean by "in addition to"?

51. Q. What circumstances did Major Furuki relate with regard particularly to persons involved, the place and the time?

A. Is it in connection with the execution?

52. Q. Yes.

A. He related to me what natives had been executed, when, and where.

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Jones D. Karry *28.12.52*

53. Q. Will you tell us what he told you in connection with individual instances of execution, if you recall the names of the victims involved?
A. I had been given the duties by Major Furuki of protecting and watching the natives, and whenever a native was executed or when he was returned to his island I was always contacted by him, but I do not remember in detail what happened to the natives and when it happened.

54. Q. Do you know the names of the natives who were executed?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There are some that I remember and some that I have forgotten.

55. Q. Will you tell us the names of those you remember?

A. I remember Kohri, Kozina, Tiagrik, Arden, Makui, Chuta and Chomohle.

56. Q. What did Major Furuki tell you in connection with the execution of Kohri and Kozina? JK

This question was objected to by the accused on the ground that the answer calls for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember the details of when and what natives had been executed, but in every case a native was executed I was always contacted, told the names, the time and the place they were executed, but I do not remember the details.

57. Q. Were you told who executed them?

A. I do not remember if he said who had executed them or not.

58. Q. At any other times did Major Furuki discuss with you the execution of the natives? JK

A. No.

59. Q. Did you ever participate in any trials while you were stationed on Jaluit Atoll?

A. I have not heard that there were any courts which were held, such as this one, on Jaluit.

This question and answer were objected to by the accused on the grounds that they were irrelevant and immaterial and requested that the same be stricken from the record.

The judge advocate replied.

The commission announced that the objection was not sustained.

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James D. Kenny Esq. USN

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0130

60. Q. Did you ever participate as a witness or as an officer in any trials in which natives were the accused?

A. No.

61. Q. In the course of your official duties serving with and under Major Furuki did you ever hear of trials of any of these natives?

A. I have.

62. Q. Do you recall any trial, the knowledge of which came to you in the course of your official duties serving with Major Furuki, which involved any of the natives which you have spoken about in the course of this trial?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. As I have stated before, I have not seen or heard of or been in a trial which was public such as this one, but I have seen Admiral Masuda, Major Furuki, Shintone and Inoue arguing about these natives many times in the office of the commanding officer. OK

63. Q. Your answer is not responsive to the question, I did not ask you if you heard any arguments concerning these natives, I asked you, and I repeat, did you hear of any trial of these natives?

A. I have not seen or heard of any trial such as this one.

64. Q. What do you mean by "such as this one"?

A. I mean a trial. Such a trial as this one which is made public, - open by an order, a convening order. OK

65. Q. In your testimony you referred to certain arguments between Admiral Masuda, Commander Shintone, Major Furuki and Captain Inoue which were held in Admiral Masuda's quarters, did you ever appear before them and testify during the period of these arguments?

A. No.

66. Q. Did you ever see any of the natives present in the quarters of Admiral Masuda when these arguments were going on? OK

A. No.

67. Q. Other than these incidents of arguments in Admiral Masuda's quarters, were there any other incidents on which you based your statement that you had heard of trials?

A. I can not recollect clearly.

68. Q. To whom did you submit your reports on your investigation of the natives?

A. A report addressed to Admiral Masuda was handed to Major Furuki.

69. Q. With regard to what natives did you make such reports to Major Furuki?

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James P. Kenny Lt USN

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0131

A. Reports were entered on Leschr, Kohri, Kosina, Tiagrik, Arden and Makui and others who had been sent to headquarters from Iroodj Island and which I had investigated.

70. Q. With regard to the persons whom you have testified were executed, were there any others beside Leschr, Kohri and Kosina and those you have just mentioned in whose investigation you assisted?

A. I was ordered to assist First Lieutenant Kadota in investigating the native incident of Medyai Island.

71. Q. Who were the natives involved in that incident who were executed?

This question was objected to by the accused on the ground that it was not a point in issue and if the natives were executed it is a matter for the judge advocate to prove. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I think it was Chuta and Chomohle.

72. Q. How long after you submitted your report of investigation on Leschr, Kohri and Kosina and the unknown person were they executed?

A. I do not remember exactly, but it was from two to three to ten days.

73. Q. How long after you submitted your investigation report on Tiagrik, Makui and Arden were they executed?

A. About one week to ten days.

74. Q. Did you submit an investigation report concerning Chuta and Chomohle?

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

The judge advocate replied.

The judge advocate withdrew the question.

75. Q. Was an investigation report submitted in regard to Chuta and Chomohle?

A. First Lieutenant Kadota submitted the report.

76. Q. Do you know how long after Kadota submitted his report, Chuta and Chomohle were executed?

A. I do not remember.

The witness was warned.

The commission then, at 11:35 a.m., took a recess until 2:05 p.m., at which time it reconvened. JK

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

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Jane P. Kenny St. USN

Robert Oldham, yeoman third class, U. S. Navy, and Robert R. Miller, yeoman first class, U. S. Navy, reporters.

No witnesses not otherwise connected with the trial were present.

Sakuda, Sawaki, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

Cross-examined by the accused:

77. Q. You testified in answer to the judge advocate's question concerning the description of the documents in which Leschr, Kohri and Kosina were mentioned and in describing that document you stated that the name of the criminal; the name of the crime; the law applied to the crime; the degree in which the criminal was involved in the crime; opinion of Major Furuki as to the crime; and the verdict of the admiral. Was that verdict written in Chinese characters meaning decision?

A. I do not remember exactly whether it was "opinion" or what or it was "decision."

78. Q. Then you are stating that you do not know whether the Japanese characters for "decision" were written there or not?

A. I do not remember exactly whether the character for "decision" was written or whether it was another character.

79. Q. You testified in answer to the question of the judge advocate that you had investigated the crimes of the natives, Leschr, Kohri, Makui and so forth. Did you investigate them personally?

A. I investigated them personally.

80. Q. You testified this morning that you submitted a report addressed to Admiral Masuda via Major Furuki. From when did you receive the order to investigate?

A. An order to investigate the natives crimes was . . . Major Furuki was ordered by Admiral Masuda to investigate the native's crimes.

81. Q. Then the order was originated by Admiral Masuda?

A. Yes.

82. Q. Were there persons other than the ones you named this morning that were investigated?

A. Do you mean persons who investigated them or natives who were investigated?

83. Q. Natives other than the ones you named, Leschr, Kohri, and so forth, that you investigated.

A. I did.

84. Q. How many others were there?

A. I think there were about ten more.

85. Q. How were they disposed of after their investigation?

A. Persons who are not sentenced to death were returned to their original island.

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James A. Kenny JR USN

86. Q. Then these people were acquitted as the result of a trial?

This question was objected to by the judge advocate on the ground that the witness had not testified that there was any trial.

The accused replied.

The commission announced that the counsel would be given an opportunity to reframe the question.

The accused reframed the question.

87. Q. The witness testified this morning that he had seen a paper put out by the commanding officer in which the name of the criminal; the law applied to the crime; the specifications of the crime; the degree the criminal was involved in the crime; Major Furuki's opinion and the verdict of the Admiral. I would like to know if the persons were released by the same form?

A. Yes.

88. Q. What was the period of time it took you to investigate?

A. In the Iwodoj incident it took me from the morning of the 14th of May to the end of May to investigate.

89. Q. In investigating, what evidence and what witnesses did you use?

A. The information was taken from the crimes the natives committed; confessions of the natives; testimony taken from the natives and other information.

90. Q. Did you interrogate any Japanese witnesses?

A. I also interrogated Petty Officer Okamoto as a witness and also took affidavits of the same and directed interrogations.

91. Q. What sort of a person was this Petty Officer Okamoto?

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

The accused withdrew the question.

92. Q. This Okamoto whom you looked into, investigated as a witness. What relationship did he have to this incident; if he had any relationship what was it?

A. Okamoto was a person that Ishihara, Leach, Arden planned to kill.

The judge advocate moved to strike this answer from the record on the ground that it was the opinion of the witness, it was outside the scope of direct examination, it called for hearsay, and it was irrelevant, immaterial and inconsequential. *JK*

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission announced that the motion to strike out the answer was not sustained.

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James P. Kenny Lt USN

93. Q. You testified that Petty Officer Osumoto was about to be killed by the natives. How did this incident become investigated?

The judge advocate objected to the words "about to be killed" in that he believed the words the witness used were "planned to kill".

The accused withdrew the question.

94. Q. Give us in outline what the natives were about to do to Petty Officer Osumoto?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused withdrew the question.

95. Q. What were the reasons for this investigation?

A. On the night of the 19th of May, Osumoto brought five natives to headquarters and reported an incident to Major Furuki which had happened on Iroodj Island. JK

96. Q. What did Osumoto report?

This question was objected to by the judge advocate on the grounds that it went beyond the scope of direct examination and called for hearsay.

The accused replied.

The commission announced that the objection was not sustained.

A. In the evening of that day when Petty Officer Osumoto was going down by the north end of Jeluit Island, by Ben Island, Iroodj and Medyni, and as he came by a channel there, Eshihara, who was in the same canoe with him tried to strangle him with a cord from behind. Petty Officer Osumoto unconsciously moved his head and Eshihara did not succeed. Recovering, Osumoto threw Eshihara into the sea. At this time Arden and Leach, who were in the same canoe both came at him with oars, but, because he had overcome Eshihara so quickly, they became subdued in the canoe. In another canoe, the one which Osumoto was pulling, the natives in the other boat were about to assault a gunacha, named Muracha, but, as Osumoto had overcome the other so quickly, they did not do anything. Guarding them, he brought them in and reported on his arrival.

97. Q. Did you also investigate - interrogate Muracha who was to be used by the other natives as a witness?

A. Muracha had to remain on Iroodj Island to do duties and Osumoto reported Muracha's testimony.

98. Q. You testified that you also had interrogated native witnesses. Do you remember their names?

A. Other than the natives that Osumoto brought in on the evening of the 19th, I remember Tiagrik and Kairi.

99. Q. Did you ever call natives other than the native criminals?

A. Five natives, about five natives, from Iroodj Island and the Chief of the Village on Ben Island, Naur and four others were called as witnesses.

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James P. Keany Lt USN

100. Q. What was the result of this investigation that you made?

A. From April 1945, the American policy of kidnapping natives from the island which was very pronounced, became more intense and the natives of Iruodj Island became unsettled and tried to leave the island. Eshiberu, who was in one of the fishing details, became the headman and tried to overcome the Japanese guards, take their weapons away and surrender to the American forces. They planned this on the 14th of May. They planned to overpower Petty Officer Ohnato on the way back from Ben Island, by the pass, and go to an island named Ribon on the inner side of the pass. Eshri and the others had established, on Iruodj Island, that they, on the same night, should overcome the guards, kill the guards on Iruodj and also proceed to Ribon Island. Tiagrik, who was on Medyai Island, was also to do the same and assemble at Ribon. The rest of the people of Jalnit were to go to the islands in the northwest of Ngain Island (Dauruk Island). From there they planned to put out to sea to where the American forces were waiting. JK

101. Q. What part did Eshiberu, Eshri, Kosing and the other have in this plan? JK

A. They were the principals in this incident.

102. Q. What happened to Eshiberu?

A. After Eshiberu was thrown into the sea, he was able to escape to Iruodj, where he told the natives things had gone wrong.

103. Q. After this were you able to capture him?

A. No.

104. Q. You testified that the kidnapping of natives by the Americans had increased. Were there any instances such as this previously?

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

The accused withdrew the question.

105. Q. Were there any natives who had deserted previously?

The judge advocate objected to this question on the ground that it was irrelevant and immaterial.

The accused replied,

The commission announced that the objection was not sustained.

A. On the fifth, sixth, and seventh of May 1945 - two to three American destroyers, six to seven LST's, seaplanes, and several dozen other planes came and kidnapped six hundred natives.

106. Q. Was this "group-desertion"?

A. Yes.

107. Q. Were there measures taken against the desertion - the kidnapping of natives by the American forces?

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James B. Kenney *JBK*

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A. From the beginning of 1945, U. S. pamphlets - leaflets released by planes, broadcasts from IGH's to rebel and surrender were made.

108. Q. What measures were taken?

A. As measures against this, in December of 1944, persons were despatched from the main island of Enroji to watch against this. In April of 1945, when the kidnapping of American forces was intensified, the whole atoll was divided into six parts and in all native villages army and navy men were despatched to watch them.

109. Q. Were there any proclamations or ordinances put out by Admiral Haguda concerning this? OK

This question was objected to by the judge advocate on the ground that it went beyond the scope of direct examination, is hearsay, irrelevant and immaterial.

The accused replied,

The commission announced that the objection was not sustained.

A. I do not remember the exact date, but around April there was a proclamation to the natives in Jaluit that they should cooperate in self support and that they should not desert the island.

110. Q. Was anything written that stated what should be done in case this was violated?

A. It was written that if this was violated they would be severely punished.

111. Q. Was it after this proclamation that was put out that this incident occurred?

A. Yes.

112. Q. Did the Americans ever employ any direct tactics of kidnapping natives?

This question was objected to by the judge advocate on the ground that the defendant, Major Furuki, was on trial and not the armed forces of the United States. The judge advocate further objected on the ground that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was sustained.

113. Q. After you made this investigation and you were to report, did you ever go together with Major Furuki to report to Admiral Haguda?

A. No.

114. Q. This morning you testified that there was no trial on Jaluit, such as this one. Then what sort of a trial was held on Jaluit?

This question was objected to by the judge advocate on the ground that it presumes a trial was held. OK

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James P. Kennedy Lt USN

The accused withdrew the question.

115. Q. Was any type of trial held?

A. I do not know.

116. Q. You testified that the commanding officer, Inoue, Furuki, and Shintone were arguing in the office of the commanding officer concerning natives. Was this based upon the report of your investigation?

A. I do not remember whether it was my report or someone else's.

117. Q. Can you say that it was on the crimes that the natives had committed?

A. Yes.

118. Q. Did the commanding officer, Masuda, ever use the words, "The President of the court"?

The judge advocate objected to the words "The President of the court" on the ground that it presumed the existence of a trial and also on the ground that it was hearsay.

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., Tuesday, March 11, 1947.

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James P. Kearney LT US N

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SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, March 11, 1947.

The commission met at 9:14 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guymon, U. S. Marine Corps,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, United States Naval
Reserve, members, and,
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates. JK
Duorn Heine, official native observer from the Marshall Islands.
Mark Juda, official native observer from the Marshall Islands,
Lajere, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present. JTC

Sakuda, Sawaki, the witness under cross-examination when the
adjournment was taken on March 10, 1947, entered. He was warned that the
oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

119. Q. In yesterday's testimony you testified that you were attached to
the Sixty-second Naval Guard Unit and that Major Furuki was the battalion
commander of the Second Battalion, First South Seas Detachment. Who was
the commanding officer of the Sixty-second Naval Guard Unit?

A. Rear Admiral Masuda, Hishio.

120. Q. In direct examination by the judge advocate you testified that
Major Furuki worked as head of the defense section under Admiral Masuda.
Is this correct?

A. Yes.

121. Q. Then tell us the relationship between the Defense Garrison on
Jaluit, the Sixty-second Naval Guard Unit and the Second Battalion.

A. The Jaluit Defense Garrison was an over-all command of the Sixty-second
Naval Guard Unit, the South Seas Government, Guasaku's who were working
at Jaluit, Construction Corps, and other miscellaneous units. The Second

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James P. Kenny *et al*

Battalion of the First South Seas Detachment was under the command of the commanding officer of the Sixty-second Naval Guard Unit, Masuda. Under the Sixty-second Naval Guard Unit came the construction corps and other units.

122. Q. Then under battle conditions, or any circumstances, Furuki was under Masuda, was it not so?

A. Yes.

123. Q. Where was the headquarters of the First South Seas Detachment?

A. It was on Mille Atoll.

124. Q. Then did Major Furuki receive direct orders or commands from this headquarters?

A. No.

125. Q. You testified that Furuki was head of the defense section. What was the relationship between the Jaluit Garrison and the defense section?

A. The defense section was directly under the command of the commanding officer of Jaluit.

126. Q. What was the nature of the duties of the defense section?

A. They were responsible for the counter measures taken against the American native-kidnaping tactics.

127. Q. What other sections, such as the defense unit, did the Jaluit Garrison have?

A. All I can recall clearly was, there were such commissions for measures in self-support in food, commission for propaganda, commission for what could be called guerrilla tactics, on Jaluit.

128. Q. You were asked by the judge advocate whether there was a trial. In answering this, what was your understanding of the word "trial?"

A. I was thinking of the arguments they had on the natives by the commanding officer, Major Furuki, Shintani and Inoue, and also I was thinking of the opinion sheet of Major Furuki on the natives.

The commission announced that the answer of the witness was not responsive to the question, and directed that the witness answer the question if he could.

A. (continued.) What I understand of trial is that there is a presiding judge, other judges, the judge advocate, and the trial was based upon investigation and it was the result of the specifications of the crime. What makes up a trial I do not know, as I am not familiar with the procedure.

129. Q. Then in answering the questions of the judge advocate and the counsel about trials, you did not know exactly what a trial was, and especially what a trial was in Japan, or by law?

A. Yes.

130. Q. Then all you testified concerning trial, especially all as to the judge advocate, was based on your opinion, and what you thought it should be. Is it not so?

A. This was what I judged from what I had seen concerning the natives on Jaluit.

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131. Q. You stated that by a trial you meant there was a presiding judge, other judges and a judge advocate and they determined on the specification. Was there such a forum in the cases you investigated?
A. I think there was.

132. Q. Who was the presiding judge?
A. I do not know what persons did what duties, but I believe the commanding officer judged the case as a presiding judge.

The judge advocate moved that the answer to the last question be stricken from the record on the ground that it was the opinion of the witness.

The accused replied.

The commission directed that the question and answer be stricken from the record.

133. Q. I am not asking your opinion, I am asking what you saw, what you know of your own knowledge. As you heard, there is a difference between Japanese and English and the commission cannot understand. What I am asking is, who acted as the presiding judge?

This question was objected to by the judge advocate on the ground that since there has been no testimony to show that a trial was held, no proper ground had been laid.

The accused withdrew the question.

The witness was cautioned to testify as to facts that he had knowledge of and not his opinion. The commission announced that in its opinion the witness was being evasive.

The witness was warned.

The commission then, at 10:17 a.m., took a recess until 10:43 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters. JK

No witnesses not otherwise connected with the trial were present.

Sakuta, Sawaki, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

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James P. Kearney JR. USN

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134. Q. You testified yesterday that you were a former lieutenant in the Navy. When did you first enter the navy?
A. In September 1942.

135. Q. In September 1942.
A. Yes.

136. Q. Are you a graduate of the Japanese Naval Academy?
A. No.

137. Q. Tell me very briefly about your naval experience from 1942 until the present time. *JR*
A. Up to August 1943 I received training at a reserve officers' school. I came out to Jaluit in September of 1943 as an ensign and from that time to April 1944 I commanded an anti-aircraft battery. From that time till the end of the war I was attached to headquarters.

138. Q. You also testified that you were confined on Guam. What do you mean by that? Were you a suspect?
A. I was confined as a witness.

139. Q. From what time?
A. I was on Guam from last March.

140. Q. March of 1945?
A. March of 1945.

141. Q. Were you trained or schooled in investigation work?
A. No.

142. Q. Were you given any special instructions before you started your investigating on Jaluit in April of 1944?
A. We were instructed by Major Furuki to investigate into the motives, when, how, and the degree of the crimes of the natives that you investigate.

143. Q. Can you remember specifically what his instructions were to you?

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

The accused replied,

The commission announced that the objection was not sustained.

A. I remember almost all of it.

144. Q. Tell what it was.
A. It was like I said just before.

145. Q. Describe just exactly what you did in investigating Leach.
A. Using Okamoto's testimony as reference, by direction of Major Furuki I investigated all the natives who were brought from Iwojima Island.

146. Q. Specifically, just how did you investigate Leach?

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James P. Leamy *JP*

A. First, I asked the other natives who were involved, about him. Next, I looked up the reference to Leschr in Okamoto's testimony. Then, I questioned the other natives from Inredj about Leschr. I also questioned Namur and the four native witnesses from Ren Island. Fifth, I questioned Leschr directly.

147. Q. What language did Leschr speak?
A. The native language.

148. Q. And you questioned Leschr through an interpreter then?
A. Yes.

149. Q. How long did it take you to investigate Leschr?
A. I think it was about five to six days.

150. Q. How did you investigate Kohri?
A. As Kohri confessed to his part in the crime right away, I questioned his accomplices to confirm what he said. I also confirmed what he said through testimony of Okamoto and also questioned Namura.

151. Q. What language did Kohri speak?
A. As I remember, Kohri could speak Japanese very well.

152. Q. How long did it take to investigate Kohri?
A. I do not remember exactly, but I think it took about the same period of time.

153. Q. How did you investigate Kozima?
A. All these natives I investigated the same way.

154. Q. Did Kozima confess?
A. Yes.

155. Q. Did he speak Japanese?
A. I do not remember.

156. Q. How long did it take you to investigate him?
A. I think it was five to six days.

157. Q. You testified that the records were burned and that you could not remember the name of the fourth victim. How do you remember the names of these other victims?
A. I remember the others because I investigated them thoroughly and I have been interrogated about them many times afterwards.

158. Q. Do you remember the name of the fourth man now?
A. I can not remember since that time.

159. Q. These records that were burned, who ordered these records burned?
A. Admiral Masuda.

160. Q. You testified that you made reports on a certain form in the case of Leschr. How was the form made out on him, the law applied to the crime, the crime, and so forth?
A. I do not remember exactly what law applied to what crimes and what natives.

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Jane P. Kenny *by USN*

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161. Q. Do you remember the verdict in the case of Leschr?

A. It was a sentence of death.

162. Q. Not the sentence, but the verdict.

This question was objected to by the judge advocate on the ground that it has not been proved that there was both a verdict and sentence.

The accused withdrew the question.

163. Q. What was the sentence then?

A. As I remember it as a sentence of death was written in by Admiral Masuda.

164. Q. Who decided on the sentence of death in the case of Leschr?

This question was objected to by the judge advocate on the ground that the witness had not indicated a knowledge of who made the decisions, he had only testified that it was signed by Masuda.

The accused made no reply.

The commission announced that the objection was sustained.

165. Q. Do you know who decided on the sentence in the case of Leschr?

A. Admiral Masuda.

166. Q. What were the war conditions on Jaluit at the time you investigated Leschr?

A. The food on Jaluit was very short and weakness by malnutrition was very frequent, morale was very low because of the news of the continuous defeats, over this there was the continual bombing and strafing by American aircraft. The officers and men of Jaluit, of which there were 2,000, faced starvation or being killed in action, and also the American forces were trying to kidnap the natives who were invaluable in supplying food.

167. Q. In the case of Kohri, what was the law applicable to this crime? OK

This question was objected to by the judge advocate on the ground that it called for an expert opinion requiring technical legal knowledge and the witness had previously disavowed any such knowledge.

The accused withdrew the question.

168. Q. In the case of Kohri, how was the form made out as to the law applicable to the crime?

A. The Naval Penal Code, the Japanese Penal Code, the Law of Military Secrets, but I do not know what law applied to Kohri.

169. Q. How was Kohri involved in the crime?

A. He was the main person who planned to kill the guards, take their weapons away from the guards of that island on the night and go by boat to Riben Island on the night that Kohibaru had tried to kill Okamoto.

170. Q. What was the sentence in the case of Kohri?

A. Supposedly a sentence of death.

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James P. Kenny LSPH

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171. Q. Do you know who decided on this sentence in the case of Kohri?
A. It was Admiral Masuda.

172. Q. Were the war conditions on Jaluit the same at the time you investigated Kohri as they were when you investigated Leschr?
A. Just the same.

173. Q. How long after you submitted your report was Kohri executed?
A. It was from two to three to ten days.

174. Q. In the case of Kosina how was the form made out in the case of the law applicable to the crime?
A. I do not remember.

175. Q. How was the accused Kosina involved in the crime?
A. He was an accomplice of Echibaru who tried to kill Okamoto and the "Gunsoku", take the boat and go to Ribon Island.

176. Q. What was the sentence in the case of Kosina?
A. It was supposedly a sentence of death.

177. Q. Do you know who decided on the sentence of Kosina?
A. It was Admiral Masuda.

178. Q. Were the war conditions on Jaluit the same you described as when you investigated Leschr?
A. Yes.

179. Q. In the case of the fourth victim, the unknown one, how was the form made out as to the law applicable to his crime?
A. I think it was the same as it was for the other three, I do not remember exactly.

180. Q. What did the form show as to how the accused, the unknown, was involved in this crime?
A. It was the same as in the case of Kosina.

181. Q. What was the sentence?
A. It was a sentence of death.

182. Q. Do you know who decided on this sentence?
A. Admiral Masuda.

183. Q. Were the war conditions the same as in the case of Leschr?
A. It was the same.

184. Q. How long after you submitted your report was the unknown executed?
A. I think it was the same as the others named.

185. Q. What was that?
A. From two to three to ten days.

The witness was warned.

The commission then, at 11:25 a.m. took a recess until 2:10 p.m., at which time it reconvened.

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James P. Kenny for USN

Presents:

All the members, the judge advocates, the three official native observers, from the Marshall Islands, the interpreters, the accused and his counsel. *OK*

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

No witnesses not otherwise connected with the trial were present.

Sakuda, Sewaki, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Cross-examination continued.)

186. Q. From your investigation of Leschr, Kohri, and Kozima, what was the incident that gave rise to their crimes?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

187. Q. Did the Japanese garrison at Jaluit make any rearrangements in the disposition of the garrison or the natives that made it possible for these three individuals to take this opportunity to commit the crimes that they are alleged to have committed?

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

The accused replied.

The commission announced that the objection was sustained.

188. Q. Describe just exactly what you did in investigating Arden?

A. I investigated petty officer Okamoto and also the natives who were on the same boat, Namur and four others and also the native witnesses from Inrodj Island.

189. Q. What language did Arden speak?

A. As I remember it was the native tongue.

190. Q. How long did it take you to investigate him?

A. About ten days.

191. Q. What did you do in investigating Makui?

A. The same as Arden. I investigated testimony of Okamoto, Namur and the four other natives and the witnesses from Inrodj Island and the testimony of gunsoku Muraoka.

192. Q. Did Makui speak Japanese?

A. I think he spoke good Japanese.

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James P. Kennedy Lt USN

193. Q. How long did it take you to investigate him?

A. About ten days.

194. Q. In the case of Tiagrik, how did you investigate him?

A. Do you mean how many days did it take to investigate?

195. Q. Yes, you told how you investigated Arden and Makui, was the same investigation conducted on Tiagrik?

A. It was the same methods.

196. Q. Were all three of these individuals that you investigated, connected with the same crime?

A. Yes.

197. Q. In the case of Arden how was this report made out as to the law that was applicable to the crime?

A. I do not remember.

198. Q. How was the accused Arden involved in the crime?

A. Arden together with Echibaru planned and tried to carry out the killing of Okamoto and Murasaki as they came by the channel.

199. Q. What was the sentence in the case of Arden?

A. It was the sentence of death.

200. Q. Do you know who decided upon the sentence in the case of Arden?

A. It was commanding officer Masuda.

201. Q. Were the war conditions on Jaluit the same as you described before when you investigated Arden, Makui and Tiagrik?

A. Yes.

202. Q. In the case of Makui, how was the report form made out on Makui as to how he was involved in the crime?

A. The same thing as Arden.

203. Q. In the case of Tiagrik, did he do the same thing as Arden and Makui?

A. Tiagrik was the main person in planning to overcome the guards, and kill the guards, on Medyai Island and with the natives of that island assemble at Ribon Island on the night that Echibaru tried to kill Okamoto.

204. Q. Was this a different incident then then the one in which Arden and Makui were involved?

A. The work they did was different but was a part of it. They had contacted each other, established the time, etc.

205. Q. Do you know who pronounced the sentence in the case of Makui?

The judge advocate objected to the word "pronounced" on the ground that it characterized the testimony of the witness.

The accused withdrew the question.

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James P. Kenny Jr. WPN

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206. Q. In the report form do you know who decided upon the sentence as it was written in the report form?

A. This was not a report form but a judgement paper which Major Furuki made up and Admiral Masuda the verdict.

207. Q. What was the verdict?

A. It was the sentence of death.

208. Q. Was it the same in the case of Tiagrik?

A. Yes.

209. Q. What did you do in investigating the case of Chuta?

A. I assisted First Lieutenant Kadota in interrogating five to six natives who had been called to headquarters.

210. Q. Did Chuta speak Japanese?

A. I do not believe he was able to speak it.

211. Q. How long did it take you to investigate him?

A. I do not remember the details in the case of Chuta and Chomohle.

212. Q. In this judgement form do you remember how the accused Chuta was involved in the crime?

A. They were principals in a plan to attack the guards of that island, take a boat and go away; also they had been building a boat in secret.

213. Q. Do you know who wrote the sentence in on this judgement paper in the case of Chuta?

A. Admiral Masuda.

214. Q. What was the sentence?

A. It was probably death.

215. Q. Were the war conditions on Jaluit the same at the time you investigated Chuta and Chomohle as you previously described?

A. It was the same.

216. Q. In the case of Chomohle what was there on the judgement form regarding how Chomohle was involved in the crime?

A. I do not remember.

217. Q. Do you know who wrote the sentence in the case of Chomohle?

A. It was Admiral Masuda.

218. Q. What was the sentence?

A. It was death.

219. Q. How long after you submitted your report on Chuta and Chomohle, were they executed?

A. As I had not submitted the report I do not know.

220. Q. This office in which you testified that you heard Admiral Masuda, Major Furuki, and Lieutenant Commander Shintone, was there anyone else present in the office when they were talking?

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The judge advocate objected to this question on the ground that he believed the witness had said in the "quarters" and not "office".

The accused withdrew the question.

221. Q. In what place did this Admiral Masuda, Lieutenant Commander Shintone, and Major Furuki talk about these natives?

A. When I saw them it was in the room of the commanding officer.

222. Q. This room that you saw them in, was that used as an office for the commanding officer?

A. It was also an office and also his private room.

223. Q. Who else was in this office?

A. There was Admiral Masuda, Major Furuki, Lieutenant Commander Shintone and Inoue.

224. Q. Did you investigate Mandala?

A. No.

225. Q. Laperia?

A. No.

226. Q. Nejkane?

A. No.

227. Q. Melain?

A. No.

228. Q. You testified, regarding the proclamation of Admiral Masuda, that the punishment of natives who violated the proclamation was severe. What was the penalty?

A. There is no clear statement on severe punishment showing that such crimes would be punished as such.

229. Q. Was there a proclamation issued declaring martial law in effect on Jaluit?

A. I do not know of any facts that martial law had been declared.

230. Q. Were your investigations made on the basis of the civil law that was still in effect on Jaluit?

This question was objected to by the judge advocate on the ground that there had been no indication that the witness was qualified to answer this question.

The accused withdrew the question.

231. Q. Do you know whether or not civil law was in effect on Jaluit at the time you conducted these investigations?

A. I do not know.

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James P. Kennedy B. W. N.

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Reexamined by the judge advocate:

232. Q. Yesterday, in connection with your description of the decision form on which Admiral Masuda's sentence appeared, you testified with regard to the crimes and the alleged violation of certain kinds of laws and you specifically mentioned violation of the Japanese Criminal Code. Were the crimes alleged to have been violated crimes under effective law on Jaluit?

This question was objected to by the accused on the ground that it was beyond the scope of the cross-examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I do not know what laws were effective on Jaluit, but when the defense section was organized, Admiral Masuda said that the Naval Criminal Law, the Japanese Criminal Code, and Military Secrets Code shall be applied to all natives, military, and gunsohus who tried to desert.

233. Q. Do you know?

A. I do not know.

234. Q. On cross-examination, you testified that Admiral Masuda ordered Major Furuki to investigate these natives. Did you ever see this order? *JK*

A. No. I believe all these orders were relayed orally.

235. Q. Did you ever hear an oral order from Admiral Masuda to Major Furuki ordering him to investigate these natives?

A. I do not remember.

236. Q. This morning you testified about a document on which, in addition to other things, Major Furuki gave his opinion as to the facts investigated and Admiral Masuda gave his decision. This afternoon you testified about a document and called it a judgment paper. Do you mean the same document?

A. Yes.

237. Q. In cross-examination you testified regarding certain documents that were prepared when natives were released. Were there documents similar to the ones where the sentence was execution?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. On the same form Major Furuki expressed his opinion of the crimes, punishment and the handling of those on which Admiral Masuda gave his decision.

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James P. Kandy Lt. USN 79

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238. Q. With regard to these documents on natives who were released, did Major Furuki give his opinion of the facts and say that he believed these natives should be released?

A. His opinion was expressed.

239. Q. Was his opinion that these natives should be released?

A. Yes.

240. Q. In cross-examination you testified regarding the documents concerning all of the natives who were executed. With regard to these documents, did Major Furuki, in each case that you mentioned, give his opinion that the natives should be punished?

A. In some the opinion was expressed that they should be punished. In some that they should be released.

241. Q. Where did you investigate all the natives?

A. At the Second Ammunition Dump.

242. Q. Did you ever interrogate any natives, or other witnesses, at any place other than the second ammunition dump?

A. There were two to three special cases when I took a native to houses nearby and I interrogated him there.

243. Q. Did you ever go to any other island to investigate these cases?

A. Because of my duties, my position was that I could not leave the main island of Inrodj.

244. Q. What were these other duties that you had, besides investigating?

A. The work as a member of the headquarters of the 62nd Naval Guard Unit. JPK

245. Q. Did these duties consume a great deal of your time?

A. Yes.

246. Q. Did you continue these duties during the period of time when you investigated the natives?

A. During those periods there was time when I had another officer take over.

247. Q. During the period when you investigated Lesohr, Kohri, Kozima, and the other native, were you also investigating the case of Arden, Makui and Tiagrik?

A. Yes.

248. Q. During this period, when you investigated both groups of natives, had you given up your other duties?

A. As there were ten petty officers attached to headquarters under me - work that could be done by them I had them do - others, I had another officer take over. Some that had to be done by myself I did during this period.

249. Q. You did some of this work yourself during that time?

A. Yes.

250. Q. During the period of two to three days, to ten days, that you testified it took you to investigate Lesohr, were you also making and completing your investigations of the other natives, Kohri, Kozima, the unknown, Tiagrik, Arden, and Makui?

A. Yes.

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James P. Kenney Lt. USN 80

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251. Q. You testified using an interpreter, when the natives did not understand Japanese. Was this interpreter Japanese?

A. Yes.

252. Q. Was he a member of the Japanese armed forces?

A. He was a civilian who was on Jabor.

253. Q. When you questioned these witnesses did you use any particular formalities?

A. I do not know the meaning of "particular formalities".

The judge advocate withdrew the question.

254. Q. Did you swear any of the witnesses, when you were making your investigations?

A. I do not recollect such a thing.

255. Q. Did you threaten them with punishment, if they did not answer your questions?

A. No.

256. Q. Did you threaten them with any punishment, if they did not answer your questions truthfully?

A. No.

257. Q. Was all the information that you derived, concerning the commission of these alleged crimes by the natives, derived from this type of interrogation of witnesses?

A. I would like to know what you mean by these methods.

258. Q. You have testified as to certain witnesses, who gave you information. You have indicated that they were not compelled to swear, they were not told there would be a penalty for telling an untruth and that all the information that you got concerning the alleged crimes was derived from the questions of these natives. Is that not so?

A. Yes.

259. Q. In cross-examination you testified regarding the documents that Admiral Nagata signed and you testified that they bore the sentence of death. Do you know who executed this sentence?

A. When Major Furuki said that the natives had been executed, he said that he had executed them himself.

260. Q. Who was the battalion commander of the Second South Seas Battalion?

A. Major Furuki.

261. Q. Was he the highest ranking army officer on Jaluit?

A. Yes.

262. Q. Was the Second Battalion, under Major Furuki, in charge of the defense section which was taking the countermeasures against the natives?

A. The defense section had no relation with the second battalion, it was just a section of the Jaluit Garrison.

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James P. Kanny Lt. USN

The witness was duly warned.

The commission then, at 3:20 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Presents:

All the members, the judge advocates, the reporter, the three official native observers from the Marshall Islands, the interpreters, the accused, and his counsel.

No witnesses not otherwise connected with the trial were present.

Sakuda, Sawaki, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Reexamination continued.)

263. Q. Was Major Furuki responsible for the counter measures taken against natives?

A. I think so.

264. Q. In the event of the death of Admiral Masuda, who would take over command of both the army and navy forces on Jaluit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I forget how it was to be.

265. Q. Who was the senior naval officer below Admiral Masuda?

A. Lieutenant Commander Shintome.

266. Q. Do you know if Major Furuki outranked Lieutenant Commander Shintome?

A. He is senior rank.

267. Q. You testified, in cross-examination, as to certain objectives of the group of Lechr, Kohri, and Kesima, and one unknown, and of the group of Arden, Makui and Tiagrik. Will you tell us what these objectives or purposes were, as you determined them to be from your investigation?

A. I do not understand. I would like the question repeated.

268. Q. You testified that the natives intended to kill certain members of the Japanese forces and to take boats with oars and escape. Were there any other things that they planned to do, according to the result of your investigation?

A. I do not remember any of the facts concerning this.

269. Q. In your investigation, did you ascertain whether the natives were trying to secure information concerning the Japanese forces?

A. I do not remember such details. I do not remember finding any such facts.

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James A. Kenney Lt. USN

270. Q. On the form signed by Admiral Masuda, did the named charges indicate that these natives had secured information concerning the Japanese armed forces for the purpose, or with the intention, of delivering that information to the American ships that they hoped to encounter when they escaped?
A. I do not remember if there were things like that or not.

271. Q. Did you ever hear, in the course of your investigations, of such charges?

A. Admiral Masuda relayed through Major Furuki that any persons that deserted Jaluit Island, whether they intended to or not, the result would be that they would relay intelligence.

272. Q. Then, with regard to these natives, since you investigated and found that they intended to escape from the island, you were forced by Admiral Masuda's orders to conclude that they intended to carry information to the enemy. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Not that we were forced, but, we were told that it would come to such a result and the punishment for doing so was up to Admiral Masuda to decide and had no relation to myself.

273. Q. When you determined that these natives intended to escape, did you then determine that they intended to pass information to the enemy?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate withdrew the question.

274. Q. In your investigations, when you determined that these natives intended to escape, did you then determine that they intended to pass information to the enemy?

A. To determine this was not our duties. My duties were to investigate the cases.

275. Q. Do you know if Admiral Masuda made that determination?

This question was objected to by the accused on the ground that Admiral Masuda is not on trial and it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, he did.

276. Q. Have you ever seen a trial, or heard of a trial, while you were in Japan?

A. I have heard many times about it, but I have never seen one.

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James A. Henry Jr. USN

277. Q. Are your ideas, of what a trial is, based upon what you have heard or read concerning trials?

A. Yes.

278. Q. In connection with the trials you have heard or read about, was the accused always present at the trial?

A. I do not know how that was.

279. Q. Do you recall anything concerning any of these trials you heard or read about?

A. There are many and I can not talk about any one in particular.

280. Q. With regard to the many trials you have heard or read about, do you recall any trial in which the accused was not present?

A. I do not know whether the accused should be present in court or not.

281. Q. I am not asking whether you know whether the accused should be present but I am asking with regard to the many trials you have heard of, whether in any of these trials the accused was not present?

The accused objected to this question on the ground that it was immaterial, irrelevant, and beyond the scope of the cross-examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember any.

282. Q. Do you remember, in regard to the many trials that you have heard about or read about, any case in which, when the witnesses against the accused were brought in, the accused was not present?

The accused objected to this question on the grounds that it was immaterial. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember.

283. Q. By that, do you mean that you do not remember any case in which the accused was not present?

A. I do not know of any case.

284. Q. Do you know of any case in which the accused did not have the right of having a lawyer, or let us say a counselor, to represent him in the trial?

A. I do not know if there are any cases like that or not.

285. Q. Did you ever hear of any case, or do you know of any case, in which the accused did not have the opportunity to call witnesses to present his side of the case?

A. I do not know if there was such a case or not.

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Jane P. Kenny, Jr. USA

286. Q. Do you know if, in all these cases, the witnesses who appeared against the accused, were sworn to tell the truth?

A. No, I do not know.

287. Q. Then with regard to all the cases of trial that you know of, the defendant was always present, the defendant was always present when witnesses against him were brought before the court, the defendant always had the right of having a lawyer or counsel to represent him, the defendant always had the opportunity to call witnesses in his own behalf and the defendant always had the protection of having witnesses sworn to tell the truth. Is that not so?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know in detail how court procedure should be.

288. Q. That was not responsive, I asked, you in regard to the many cases that you know of and have heard of, whether you know of any case in which the defendant was not present, whether you know of any case in which the defendant was not present when the witnesses against him were brought before the court, whether you know of any case in which the defendant was not permitted to have a lawyer or counsel to represent him, whether you know of any case in which the defendant was not allowed to call witnesses in his own behalf and if you know of any case in which the witnesses against the defendant were permitted to testify without being sworn or warned of the punishment for not telling the truth? In short, I am asking you, so far as you know, with regard to the trials that you have heard or read about, whether all these safeguards were present?

A. I do not know if these things were such or not.

289. Q. You have been asked with regard to any of the many trials that you have heard or read about whether certain things were present and you stated that you did not remember any case in which these safeguards were not present. You are therefore asked whether these safeguards were present in all the cases you remember hearing or reading about?

A. I do not mean to say that witnesses or accused were not present. I mean to say that I do not know if there were any cases when accused were absent in the trial or defense counsel not in court, because I do not know how the trials should be.

290. Q. We have asked you not how trials should be, but, with regard to trials you read or heard of, whether there was any trial in which the accused was not present. You said you did not know of any such cases. You were also asked whether there were any trials in which the defendant was not present when the witnesses testified against him and you answered you did not know of any such cases. You were also asked whether you know of any trials in which the defendant was not permitted to have counsel during the trial and you answered you did not know of any such cases. You were also asked whether you know of any cases in which the defendant was not permitted to call witnesses in his defense and you answered you did not know of any such cases.

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James P. Kenney Lt. USN

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You were also asked whether you know of any cases in which the witnesses were not sworn or otherwise warned to tell the truth and you answered you did not know of any such cases. This would indicate that in all the cases you know of, there was no case in which these safeguards were not present. Is this what you intended by your testimony?

A. No, I mean to say, I do not remember if there were trials such as the present one. I mean I do not remember, as I do not. I mean I do not know if there was a trial in which the accused was present or not. When I said I do not remember I meant to say I do not know if there were any such facts or not. In that I do not know that there were such trials in which the defendant or accused was absent from the court or the defense counsel or anything was wanted.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., Wednesday, March 12, 1947.

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James P. Kennedy Jr. 032

EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, March 12, 1947.

The commission met at 9:21 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy, and
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buorn Heine, official native observer from the Marshall Islands.
Mark Juda, official native observer from the Marshall Islands.
Lajore, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not other wise connected with the trial were present.

Sakuda, Sawaki, former Lieutenant, Imperial Japanese Navy, the witness
under reexamination when the adjournment was taken on 11 March 1947,
entered. He was warned that the oath previously taken was still binding,
and continued his testimony.

(Reexamination continued.)

291. Q. You were asked the question yesterday, "Have you ever seen a trial
or heard of a trial while you were in Japan". You answered, "I have heard
many times about it, but I have never seen one." Do you mean by that
answer that you have heard and read of many trials? OK
A. Yes.

292. Q. You were asked, "I am not asking whether you know if the accused
should be present, but I am asking with regard to the many trials you have
heard of, whether in any of those trials the accused was not present." You
answered, "I do not remember any". Do you mean by that answer that you do
not remember any case in which the accused was not present?

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A. By that what I mean is, that I remember what persons were tried and what incidents were tried, but about the accused I do not know, as I have read very little about law, I do not know.

293. Q. What do you mean, "I do not remember any"?

A. I mean from the standpoint of names that I do not know of any.

294. Q. Are you able to say whether you do or do not remember something?

This question was objected to by the accused on the ground that it was double and also that it was leading.

The judge advocate replied,

The commission announced that the objection was sustained.

295. Q. You were asked the following question, "Do you remember in regard to the many trials you have heard about or read about in which the witnesses against the accused were brought in in which the accused was not present." You answered, "I do not know of any cases." Did you mean, thereby, that you do not know of any case in which the witness against the accused were brought in that the accused was not present?

A. I know of what trial was held for what person, but I do not remember the law.

296. Q. Do you remember any case in which you have heard the accused was not present during the trial?

A. This is something for a man in the law profession to think about and not for me who is an outsider.

The commission cautioned the witness to be more responsive.

297. Q. Do you remember any case in which you have heard the accused was not present during the trial?

A. I do not know if I had read or heard about it.

298. Q. Do you remember any case that you have read or heard about in which the accused was not present?

A. No, I do not know of any case in which the accused was not present.

299. Q. Do you remember any case in which the accused was not present when the witness testified against him?

A. I do not know of any case in which the accused was not present when the witness testified against him.

300. Q. Do you remember any case in which the accused did not have the right to have a lawyer present when he was on trial?

A. I do not know of any trial in which the accused did not have the right to have counsel.

301. Q. Do you remember any trial in which the accused did not have the opportunity to call witnesses in his own behalf?

A. I do not know of any case in which the accused did not have the right to call witnesses.

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302. Q. Do you remember any case in which the witnesses against the accused were not either sworn, or otherwise warned, that they must tell the truth, on threat of penalty if they did not tell the truth?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not know of any case in which the witnesses were not either sworn, or otherwise warned, that they must tell the truth, on threat of penalty if they did not tell the truth.

303. Q. You were asked yesterday, "Are your ideas of what a trial is, based upon what you have heard or read concerning trials?" You answered that with the word "Yes." Do you have any ideas of what a trial is based on, other than what you have testified to before this commission?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. No.

304. Q. What did you do before you joined the Navy?

This question was objected to by the accused on the ground that it was beyond the scope of the cross-examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I was a student at a Teachers College.

305. Q. Did you graduate?

A. I did.

306. Q. Did you ever teach?

A. I have practiced teaching, but never a regular teacher.

307. Q. What subjects were you trained to teach?

A. It was English.

308. Q. Did you study government in normal school?

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

The judge advocate withdrew the question.

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The commission then, at 10:05 a.m. took a recess until 10:23 a.m., at which time it reconvened.

Present:

All the members, the judge advocate, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Sakuda, Sawaki, the witness under reexamination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony. JK

(Reexamination continued)

309. Q. Yesterday you were asked certain questions with regard to Major Furuki's opinion, written on the sheet, signed by Admiral Masuda and containing the sentence. You were asked with regard to the documents on natives who were released, "Did Major Furuki give his opinion and say that the natives should be released?" You answered, "Yes." Is that correct?

A. Yes.

310. Q. You also testified with regard to documents on natives who were executed, what Major Furuki's opinion in each case was and you stated in some the opinion was expressed that they should be punished, in some that they should be released. What did you mean when you testified that in some of the documents of the natives that were executed Major Furuki said the natives should be punished?

A. Is it Major Furuki's or the commanding officer's?

311. Q. With regard to some of the natives who were executed, Major Furuki in some cases said in his opinion that the natives should be released. In some cases of the natives who were executed, you testified that Major Furuki, in his opinion, said that they should be punished. What do you mean by the statement that Major Furuki's opinion was that they should be punished?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. By punishment he meant hard labor, or to release them on the main island on probation.

312. Q. Did any of Major Furuki's opinions recommend execution?

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

The judge advocate replied.

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The commission announced that the objection was sustained.

313. Q. What other punishment did Major Furuki recommend?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There were death and life imprisonment opinions.

314. Q. You testified that you examined certain natives, who were brought to headquarters. When you were through with these natives did you send them back to their island, or did you hold them?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Until there was an order from Major Furuki to release them, they were confined on the main island.

Recross-examined by the accused:

315. Q. In doing the work of the defense section was Furuki under the supervision of Admiral Masuda, or was he on his own?

A. Naturally, he was under the supervision and direction of Admiral Masuda. *OK*

316. Q. When you were asked whether Major Furuki was responsible for the natives you testified, "I think so." Did you mean Major Furuki was the ultimate person in charge of the natives, or not?

A. I meant that Major Furuki had the duties of prevention of the kidnapping of the natives.

317. Q. Did you see Major Furuki execute any of these condemned natives?

A. No.

318. Q. Were you ever criticized by Admiral Masuda for doing a poor job of investigating these natives?

A. No.

Examined by the commission:

319. Q. In your testimony you spoke of Shintone and Inoue as participating in certain discussions or arguments in the commanding officer's room. Will you please tell the commission briefly what the official capacity of these two persons were, that is, Shintone and Inoue?

A. Lieutenant Commander Shintone was the executive officer of the 62nd Naval Guard Unit and acted in place of Admiral Masuda as the commanding officer of the 62nd Naval Guard Unit. Inoue was attached to the Second Battalion headquarters at the same time he was the head of a special police which was organized at Jaluit by the Jaluit Defense Garrison. I believe the interpreter misinterpreted my remarks pertaining to Lieutenant Commander Shintone and I would like to repeat my answer, "He was acting executive officer of the 62nd Naval Guard Unit and assisted the commanding officer of the 62nd Naval Guard Unit." *OK*

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320. Q. Do you know where these persons are now?
A. Captain Inoue is now confined in the war criminal stockade on Guam.
Lieutenant commander Shintone is in Japan.

322. Q. You have testified that Major Furuki gave an opinion in the case of each accused native and that Admiral Masuda added his decision. For the purpose of clarification, of your testimony, I would like to tell the commission if Admiral Masuda's decision in each case agreed with Furuki's opinion?

A. There were many cases in which the decision of Admiral Masuda was more severe than the opinion of Major Furuki.

None of the parties to the trial desired further to examine this witness.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Kadota, Itsuro, first lieutenant, Imperial Japanese Army.

2. Q. Are you presently confined on Guam?

A. I am not confined.

3. Q. Where are you staying on Guam?

A. I am at the witness camp.

4. Q. If you recognize the accused, state as whom.

A. Major Furuki, Hidesaku.

5. Q. During what period were you stationed with the Japanese forces on Jaluit Atoll?

A. From January 1944 to October of 1945.

6. Q. Was the accused, Furuki, also stationed there at that time?

A. Yes.

7. Q. To what organization was he attached?

A. He was attached to the First South Seas Detachment.

8. Q. What was his position with that organization?

A. He was commander of the second battalion.

9. Q. During the year 1945, and before the occupation of Jaluit by the American forces, were you assigned to investigate certain Marshallese natives on Jaluit Atoll?

A. Yes.

10. Q. What native, or group of natives, were first investigated by you?
A. They were Gato, Chomohis, Eto, Ain, Enoshi and one other, I forget his name.

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11. Q. When was this investigation conducted by you?

A. From the beginning of June 1945 to the end or it might have ^{been} the middle of June. JK

12. Q. Did any other Japanese officers work with you on this investigation?

A. Lieutenant Sakuda, Sawaki, also investigated.

13. Q. Who assigned you the duty of conducting this investigation?

A. I was relayed an order of Admiral Masuda by Major Furuki.

14. Q. What instructions were given to you by Major Furuki when you received the assignment to carry on this investigation?

A. We were instructed to investigate into the crimes, or the action, of the natives who were supposed to have committed the crime, whether he had committed murder, whether they had attacked guards in a group, whether they had destroyed military materials, whether they were spying and others I do not remember; also whether they were the principals in the crime or a main accomplice or what is the crime, whether they had succeeded or not, what the evidence was, what witnesses there were and whether their intent was strong or not and to investigate them impartially.

15. Q. After the completion of your investigation on Chua, did you decide what crimes Chua was guilty of?

A. I did not decide whether he was guilty or not, all I did was to investigate the specifications.

16. Q. You have stated that Major Furuki told you to find out if these natives were guilty of any acts of espionage or other crimes. Did you not, in your report, tell him whether or not Chua was guilty of any of the crimes?

The accused objected to this question on the ground that it was leading and also that it was double.

The judge advocate withdrew the question.

17. Q. What did you report to Furuki with regard to Chua?

A. I reported to Admiral Masuda and Major Furuki at the same time.

18. Q. Was it a written report?

A. I made oral reports many times during my investigation and I made a written report at the end of my investigations.

19. Q. With reference to the final written report, what did you report on Chua?

A. I reported that he was the main accomplice. He directly assisted the principal plotter in trying to escape from the island as evidenced when Chumchile brought up the desertion of the island, he readily agreed and he was the most active in persuading the natives in deserting the island. He also ordered the building of a raft to be used in escaping to Rota, Roshiki, Ain and he also supervised its construction. JK

20. Q. In reaching these conclusions that you reported on Chua, did you question any witnesses suggested by Chua?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Are you asking for the motive of this incident?

The question was repeated.

A. I did not hear the names from Genta, but all the natives of Rural Village being in this plot, I interrogated some of them, but not all.

21. Q. Do you say that all of the natives of this village were concerned in this plot?

A. Yes.

22. Q. And they were the people from whom you got the facts you reported against Genta?

A. There was also Genta's confession, there was the testimony of the principal, Chomohle, and also the testimony of Ente; Ain also was the same.

23. Q. Following your final report on Genta and Chomohle to Admiral Masuda, did you see any official document concerning these natives? JK

A. I saw the judgment document of Admiral Masuda.

24. Q. What did that document contain?

A. I do not know if it was a native or the crime, but there was a name, the law applied, what article, there was the specifications, such as murder and so forth, the opinion of Major Furuki and the decision of Admiral Masuda. Outside of the form there was also two or three lines of words, but I do not remember what they were. It was signed by the Commanding Officer of the Jaluit Defense Section, Admiral Masuda. JK

25. Q. Do you recall what this document had to say under the heading of specifications, with reference to Genta?

A. Do you mean under specification or some other place?

26. Q. Under specifications, just as the question was worded.

A. Do you mean under specifications, or under the column headed specifications?

27. Q. Under the column headed specifications.

A. I think there was desertion, murder, attacking a guard in a body, and the destruction of military property, but I do not remember exactly.

28. Q. Were those the things you had reported to Admiral Masuda on Genta?

A. Yes.

29. Q. In the document on Chomohle, under specifications, did it also have a listing of things you had determined as a result of your investigation?

A. I do not know what you mean by "as a result of my investigation."

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The judge advocate withdrew the question.

30. Q. In the column headed specifications in the case of Chomohle, what was listed there?

A. It was just about the same as in the case of Chomohle.

31. Q. And these were the things you had determined as a result of your investigation of Chomohle, is that correct?

The accused objected to this question on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Are you asking what was written in the judgment form, or in my report?

32. Q. I am referring to the official document you have described and I am referring to the particular one on Chomohle.

A. What was written there was not the result of my investigation, but the result of a review after I had handed in my report.

The witness was warned.

The commission then, at 11:31 a.m. took a recess until 2:10 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Kadota, Itsuro, lieutenant, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

33. Q. With reference to the official document of Chomohle, which you have referred to, under the heading of specifications, were the facts listed there the same as those you had reported in your final investigative report to Admiral Basada?

A. No.

34. Q. What was the difference?

A. All I did was to report the facts of the case. What was written in was a result of a review after I had handed in the report.

35. Q. It was the result of a review of your final report, isn't that right?

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

The judge advocate withdrew the question.

36. Q. In the case of Chuta, what were the recommendations of Major Furuki?
A. I do not remember.

37. Q. What was the decision of Admiral Masuda as stated on that document?
A. It was death.

38. Q. In the case of Chuta, what did the document state as to the law applied to the case?

A. I think the article of the law applied and such as desertion, murder, attacking a guard in a body, and so forth.

39. Q. Will you please explain, to the best of your recollection, what else was in what you call "and so forth"?

A. There may have been others to desertion, murder, and attacking a guard in a body and the destroying of military property, but the others I do not remember.

40. Q. What was the law applied, as stated on that document, with reference to Chomohle?

A. It was the same as Chuta.

41. Q. What were the recommendations of Major Furuki, with reference to Chomohle?

A. That I do not remember clearly.

42. Q. What was the decision, as recorded by Admiral Masuda, with reference to Chomohle?

A. It was death.

43. Q. What was the law applied to the case?

A. The law applied was the Japanese Penal Code, the Criminal Code, Naval Code and others, but I can not remember. I think there were others. JK

44. Q. Did the document mention what particular section of the Japanese Penal Code was being applied? JK

A. It was written "Article number such and such" of the Japanese Criminal Code and if it was murder that article would be written in.

45. Q. Who was involved in the next case investigated by you?

A. Do you mean the investigator or the natives?

46. Q. The natives.

A. It was Mandala and Iaporia.

47. Q. When did you investigate the case of Mandala and Iaporia?

A. I do not remember exactly, but I think it was from the beginning or the middle of July, until the end of July.

48. Q. Did you make a final written report on the cases of these natives to Admiral Masuda?

A. Yes.

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49. Q. Did you, following the submission of your report, see an official document, similar to what you have described in the case of Guts and Chomble, with reference to these natives?
A. I did.

50. Q. Did the specifications, as listed in the reports with reference to Mandala and Iperia, list the facts as stated in your final report to Admiral Masuda?
A. Specifications were written in as a result of a review based upon my report.

51. Q. What were the recommendations of Major Furuki in the case of Mandala?
A. As I had seen all the opinion papers, I do not know in what instances and in what cases I saw the sentence of death and what ones I did not.

52. Q. What was the decision of Admiral Masuda as recorded, with reference to Mandala and Iperia?
A. It was death.

53. Q. Who were the natives involved in the next case investigated by you?
A. Melain and Majkane. The following names were the names I investigated: Melain, Majkane, Ichiro, Mark, Saburo, Obetto, Paul, Ismark, Letegas.

54. Q. When did this investigation take place?
A. I think it may have been the middle or the end of July, to the beginning of August.

55. Q. At the conclusion of your investigation did you release certain of these natives?
A. Yes.

56. Q. Why did you release them?
A. They were released through the judgment document of Admiral Masuda.

57. Q. What was the sex of Majkane?
A. She was female.

58. Q. In the final written reports submitted by you to Admiral Masuda, what did you say with reference to Majkane?
A. Majkane was persuaded by Melain to try to escape from the island and she acted as an agent for Melain to carry a letter of Melain's off Pingelap Island to Oca Island. During this period she was instructed to investigate the organization, armament, and strength of the Japanese forces, and instructed her that if she was found out, or when she came back to Pingelap, to act crazy. She escaped from Pingelap, as ordered, and started out. On the way she investigated Oca Island, the natives of which had all escaped from the atoll. In the night she crossed the southwest channel - hid on Mejiruriku (Elizabeth) Island for three days, where she watched the detached garrison there. Also, during that period she tried to hand the letter to Obetto who was the leader of the natives there. As the work was hard and there was little time, she could not meet him, so she handed the letter to a woman named Najok in an air raid shelter, who relayed this to Obetto. Obetto recognized this and, hiding for three days, she went to Jaluit Island (Hange Island) and handed the letter to Paul. With living on the side of the island

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facing the lagoon she was then told by Paul that to go further should be dangerous, so went back to Majiruriku and hid for three days. As she was told to go back, she again crossed the southwest channel at night and returned to Pingelap and acted crazy, as ordered. During this period she reported to Malein the conditions of the various islands.

59. Q. The official document that was prepared with reference to Majkane; did it contain a statement under the heading of specifications, referring to this spying of Majkane? OK

A. What I said was written in my report to Admiral Masuda.

60. Q. I am asking you - was it also in the official document that was prepared on the case of Majkane and listed under specifications?

A. It wasn't written in such detail.

61. Q. How was it characterized - what did it say about this event?

A. Items such as desertion, spying and being an accomplice were listed.

62. Q. What was the recommendation of Major Furuki, in the case of Malein?

A. I do not remember.

63. Q. What was the decision of Admiral Masuda?

A. It was death.

64. Q. What was the recommendation of Major Furuki in the case of Majkane?

A. I remember this particular instance because it was a woman and, as I remember, it was not death.

65. Q. What was the decision of Admiral Masuda with reference to Majkane?

A. It was death.

66. Q. Did you learn whether these executions, that had been decided upon in the cases of Chute, Chomohle, Mandala, Laperis, Malein and Majkane were carried out?

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

The judge advocate replied.

The commission announced that the objection was sustained.

67. Q. Did you have a conversation with Major Furuki in reference to the disposition of the natives, Chute, Chomohle, Mandala, Laperis, Malein and Majkane?

A. No.

68. Q. I show you a four page written report and ask you if it is written in your handwriting, and if it contains your signature? OK

A. Yes, it is signed by myself.

69. Q. When did you make that report?

The accused objected to the witness being allowed to testify from a written document.

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The judge advocate replied that the witness was not asked to testify from the document.

The commission announced that the objection was not sustained.

A. It was made around the beginning, or the middle, of February.

The commission then, at 2:55 p.m. took a recess until 3:10 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the reporter, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Kadota, Itsuro, lieutenant, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

70. Q. Do you recall having a conversation with Major Furuki in which he told you of the disposition of the natives Guta, Chomohle, Mandala, Iaporia, Melain, and Majkane?

A. I remember.

71. Q. What do you remember?

A. I do not remember what incident it was, but he said that such and such natives had been executed.

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion to strike out the answer was not sustained.

72. Q. When you say "such and such natives" what do you mean by that?

A. The natives who were executed.

73. Q. Who were those natives?

A. I do not remember.

74. Q. At the conclusion of your investigation of the cases of these different natives, tell us how you prepared the report that you submitted to Admiral Masuda?

A. I wrote the following things, the personnel history, how it came to be investigated, the outline of the incident, acts of each one concerned, and the things which I had testified before as having been told to investigate and evidence. OK

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75. Q. Did you base this report on the basis of what you remembered of your investigations?

A. It is not from memory, as it was right after I investigated them, it was just as I investigated them.

76. Q. When was your final report made, with reference to Chuta and Chonochile?

A. I do not remember the day, but I think it was the middle of June. The day, or a day after, I finished the investigation.

77. Q. How long had you investigated the case?

A. About ten days.

78. Q. So that after a ten day investigation you sat down and made a report, incorporating what you remembered, concerning the investigation that had been going on for ten days; is that not right?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I had made a record of what I had investigated.

79. Q. What kind of a record did you make?

A. The records were not statements, but notes, which I took down and which I gathered together at the end.

80. Q. Did you administer an oath to any of these natives before you interrogated them?

A. I told them to tell the truth, but I did not make them take a formal oath.

81. Q. How much time did you spend investigating Mandala and Laperis?

A. This also took about ten days.

82. Q. When was this investigation completed?

A. I think it was the middle of July, but it may have been the end. I think it was the middle of July.

83. Q. When did you finish this investigation on Malein and Majhane?

A. I think it was around the sixth or seventh of August.

84. Q. Do you know whether, or not, the bodies of these natives were dug up after the end of the war?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

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85. Q. Did you take part in the digging up of the bodies of these natives?
A. I was shown the site of the graves and I went to show the site, but I know nothing about the digging up of the graves.

86. Q. Who showed you where the graves were?
A. I was shown by Major Furuki.

87. Q. When he showed you the graves, what did he tell you?
A. I was told to show these places to a worker of the construction corps whose name I do not remember.

88. Q. Do you know what was done with the bodies after they were dug up?

This question was objected to by the accused on the ground that there was no testimony that the bodies had been dug up.

The judge advocate withdrew the question.

89. Q. Do you know whether, or not, the bodies were dug up?
A. I do.

90. Q. What was done with the bodies of the natives?
A. They were cremated and a funeral was held for all of them.

91. Q. Was this just prior to the occupation of the island by the American forces?

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

The judge advocate withdrew the question.

92. Q. When did this take place?
A. It was after the end of the war, but I do not remember the date.

The accused requested a short recess before the cross-examination of this witness.

The request of the accused was granted and the commission then, at 3:40 p.m. took a recess until 3:55 p.m., at which time it reconvened.

Present:

All the members, the judge advocate, the reporter, the three official native observers from the Marshall Island, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

Edote, Ituro, lieutenant, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

93. Q. In testifying to the questions of the judge advocate, concerning Gura and Chomohle in what you were instructed to investigate by Major Furuki, you said you were instructed to investigate the following: what the crime was, whether murder was committed, attacking the guards in a body, destroying military material, spying, and others, and in the judgment document of Admiral Masuda you said murder was listed. What facts concerning a murder did you find out in your investigation?

A. At that time all boats were assembled in one place and a guard placed over them. There was a plan to kill the guard and to take the boats. JK

94. Q. In testifying about Gura and Chomohle you testified that all the natives of Rural Village were related in this case. What was the number of natives?

A. I think it was about thirty.

95. Q. What was the position of Gura and Chomohle in that village?

A. Chomohle was the leader of that village and Gura was a man of influence in that village.

96. Q. What did you find out about the character of these two men, as a result of your investigation?

A. I do not know whether this was so in the case of Chomohle, but Gura's nature was bad and he was disliked by all the natives.

97. Q. What were their ages?

A. Chomohle was about from thirty to thirty-five. Gura was about forty.

98. Q. Including Gura and Chomohle, what was the number of natives that you investigated out of the thirty?

A. Six at the main island and five to six influential people at the other islands.

99. Q. And in this case, the others, except Chomohle and Gura, were released. How many of the others were released as not guilty?

A. All of the persons that were in Rural Village were released as not guilty, but out of the six who were brought to the main island, two of which were Chomohle and Gura, the other four I believe received sentences of hard labor.

100. Q. You testified that you made reports of your investigation to Admiral Masuda and at the same time to Major Furuki. Did you make this report of the investigation to Admiral Masuda a day to day?

A. Yes.

101. Q. At these times were Admiral Masuda and Major Furuki at the same place?

A. Yes.

102. Q. What steps were taken between the time you handed in your investigation report and the time the judgment document was put out? J4

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

The accused withdrew the question.

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103. Q. You testified that you handed in a report and that there was a judgment document. Do you know what steps were taken - what was done in this period?

A. Admiral Masuda, Major Furuki, Lieutenant Commander Shintone, and Captain Inoue were reviewing it.

104. Q. Then as a result of this review, the judgment was made?

A. Yes.

105. Q. Was the Japanese character "Hanketsu" written in it?

A. There was a column with the character "Hanketsu" and in this column were the characters "Hanketsu".

Interpreter's note:

Hanketsu means verdict, judgment or decision.

106. Q. There has been some difficulty between the meaning of "Hanketsu" and "Kettai". I am asking you, what is the meaning of "Hanketsu", or in what instances is it used?

The judge advocate objected to the portion of the question which read, "in what instances is it used", on the ground it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. "Kettai", as I understand it, is when you determine upon something whether it is bad or whether it is good. If you have reached a decision whether it be even by one person is what I mean - is what I take as the meaning of "Kettai". In "Hanketsu" it would be a decision reached after consideration from all authorities on all phases and all the things that came to light / bring this together and upon judgment determined.

107. Q. Then, in Japan, in what instances is the word "Hanketsu" used?

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

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a. m., Thursday, March 13, 1947.

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THIRTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, March 13, 1947.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon E. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Duorn Heine, official native observer from the Marshall Islands,
Mark Jude, official native observer from the Marshall Islands,
Lajero, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Kadote, Itsuro, first lieutenant, Imperial Japanese ^{ARMY} Navy, the witness
under cross-examination when the adjournment was taken on March 12, 1947,
entered. He was warned that the oath previously taken was still binding,
and continued his testimony.

(Cross-examination continued.)

108. Q. I shall ask you, concerning what you found on investigation of
Mandala and Iaperia. What sort of persons were Mandala and Iaperia as to
character and their position in the villages? JMK

A. Mandala was a leader of a group of twenty natives who moved from Chitogan
village, which is a village composed of all the small islands in the northern
part of Jaluit, which moved to Jarushi village, which was at the southernmost
part of Jaluit, and there were no bad points about him. Iaperia was a
person who lived in Jarushi village and he was of bad nature and was shunned
by the natives.

109. Q. What were the ages of Mandala and Iaperia?

A. Mandala was about thirty. I think Iaperia was about thirty-five.

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110. Q. How did the Mandala and Laperia cases come to be investigated?
A. At this time a "gunachu" named Kawacha went to Kinsayang Island, where he met this woman, named Rionimachi, which was an acquaintance of his. This woman had moved there from Chitogen village and she told him that all of the natives were planning to escape. That was how this case came to be investigated.

111. Q. What did you do after hearing this?

A. As this became known, the officer in charge of that district made an investigation. As a result of the investigation by the district commanding officer, Mandala had been influenced by an incident about twenty days before, when fifteen to sixteen natives escaped from the island on a barge which they had taken and influenced by this, he planned to escape with the twenty natives he had brought from Chitogen. Laperia was not a member of this group, but having heard about this decided to join. He told Mandala what he intended to do. He helped Mandala as a main accomplice. He also was a carpenter, so he made cars and poles at that time. The natives were not allowed to have cars or poles in their possession at that time. There was also a plan to attack the guards, take the boats, and Laperia had the duties of leader of this group. The plan was made and the escape was to be the next dark night. This was discovered by the commanding officer and Mandala and Laperia were sent to headquarters. Upon investigation, the above facts were verified.

The judge advocate moved to strike out this answer on the ground that it was not responsive.

The commission announced that the motion to strike out was not sustained.

112. Q. You testified that in a group they planned to attack the guards and take the boats. Upon investigation what facts came to light about this?

A. Ten of the strongest natives were selected and Mandala acting as leader was supposed to attack the guards watching the canoes, kill them, and take the necessary canoes to the middle of the island. At that time the canoes were assembled at one place and a guard placed, and the various positions of that group had already been planned.

113. Q. You testified that, in preparing for the escape, cars and poles were being made. Did you take custody of those cars and poles as evidence?

A. Yes.

114. Q. Did you use this as evidence, when you investigated?

A. The commanding officer of the district took both of the natives to the actual spot and showed them the cars and poles. The two natives acknowledged this.

115. Q. In investigating this incident, how many natives and Japanese personnel did you investigate?

A. I investigated six natives and about six Japanese, including the commanding officer of the district and in addition to this Kawacha, a "gunachu".

116. Q. After your report of the investigation was handed in to Admiral Masuda and the decision made, were steps taken the same as in the case of Guta and Chomohle?

A. They were the same.

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117. Q. I shall ask you a question concerning Malsin and Majkane. As you have explained this fairly well in detail, I shall ask you one question. In this case, was desertion, murder, and the taking of boats, planned?
A. Yes.

118. Q. In this case when you handed in your investigation report to Admiral Masuda and the decision was made, were the steps taken the same as before?
A. Yes.

119. Q. How long have you been on Guam?
A. About one year.

120. Q. You have been retained all that time as a witness for the prosecution?
A. Yes.

121. Q. When did you first enter the Army?
A. In February 1942.

122. Q. Will you describe the war conditions on Jaluit at the time Ghuta and Ghomohle committed the crimes you investigated?

A. I can hardly describe the war condition which prevailed at this time, when I am cool and quiet, but I shall give you an outline of the conditions. The conditions on Jaluit were very miserable. Every day was dangerous. Every day was spent on the verge of danger. It was an island that had been isolated for a long time in enemy territory. It had been a long time without any help. Under these conditions, there was continuous bombing by planes and bombardment by ships. At Jaluit all things were very short. Next, was the destruction of the means of continuing warfare. The personnel was very short and the greater part of the armament was destroyed. Provisions, clothing, shelter, was scarce, especially the condition and amount of food was miserable. What food had been stored was destroyed. We had to revert to food which was native to the island, but this was not sufficient to feed the four thousand people of Jaluit. The ration for one day was one corn and one sho of coconut toddy. This was our main food, in connection with self support, all animals, such as dogs, cats, lizards and so forth were eaten. Leaves, grass, anything that was edible was eaten up. As there was no food value in this, we got tired. In walking one hundred meters, much rest was needed. Great effort was needed to walk a few steps. Because of this shortage of personnel, duties were very hard. One person may have had four or five duties to perform. Also the bombing and bombardment continued. Then began the kidnapping of natives and Japanese military personnel by the American forces.

123. Q. These alleged crimes, committed by Ghuta and Ghomohle, they were committed in the face of the enemy?
A. Yes.

124. Q. Were the conditions on Jaluit, at the time when Mandala and Laperia were said to have committed the crime, the same as the description when Ghuta and Ghomohle were alleged to have committed the crimes?
A. It was the same.

125. Q. Were the war conditions the same when Malsin and Majkane were said to have committed the crimes you investigated?
A. Yes.

126. Q. Mandala and Laperia, Melain and Najkane, did they commit the alleged crimes, that you investigated, in the face of the enemy?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The commission was cleared.

The commission was open. All parties to the trial entered.

The commission announced that the objection was not sustained.

The question was repeated.

A. Before the face of the enemy.

127. Q. Describe, in more detail, how the enemy tried to kidnap the natives and the Japanese military personnel?

A. There were three main methods in which they tried to kidnap native personnel. One was to drop leaflets by plane. One was to broadcast from LCI's. Another was to kidnap the natives under fire by LCI's, and another one was to have natives sneak into Jaluit. In the kidnapping tactics by leaflets, some said for the commanding officer to surrender Jaluit. Another kind was to bring about bad feeling in the military personnel. Another was to call attention to the defeats of Japan. Another told about democracy, to create bad feeling against military personnel. Some said to kill the commanding officer and desert, and to the natives it was told, in their native language, that Jaluit would soon be occupied by American forces and it would become an island of flame. Some said that natives were living well on occupied American places and to come. To the Koreans the same, as to what was told the military personnel, was relayed to them by planes with leaflets, and to the natives also, they said if there are ten Japanese on your island, twenty of you attack them and kill them and escape. If there are twenty Japanese on your island, forty of you attack them and kill them and escape. And then speaker broadcasts from the LCI's and American destroyers. There was an American lieutenant who broadcast. Some Japanese prisoners of war were used. They relayed how they were living a better life and told them to come away. On the natives, the same tactics were used. Another means was to have natives of other islands, or natives of Jaluit who had escaped, sneak back into the island and try to get them to escape. On the third of May, six hundred natives escaped from Jaluit. This was done by a native named Tauru, who was a native of Auru Island, who sneaked back to Bikijin Island and got the natives to escape. This also spread to Mafai Island. There were other cases in which natives had sneaked into the island, but was not verified. In this incident by Tauru, six hundred natives escaped. There was also a case in which Bar Najifuru, two of whom sneaked into Jorushi Village and told them to escape. Whether they succeeded or not, I do not remember, but I think they were discovered before and the two escaped. There were cases when one or two natives sneaked into Chitogan and Inodij Island. One case I know of was in April of 1945 when eight natives who had escaped from Mille Island were picked up by an American destroyer and in two parties came in to Jaluit as spies.

128. Q. The judgment sheets you described, were they always published by Admiral Masuda after the completion of a trial?

This question was objected to by the judge advocate on the ground that the accused was characterizing the testimony of the witness and there was no evidence that a trial was ever held.

The accused replied,

The commission announced that the objection was sustained.

129. Q. When did Admiral Masuda publish judgment sheets?

A. I believe there was a period of five to ten days after the investigators had investigated the incident.

130. Q. What happened to the accused during this interval of time?

A. They were confined in the place of confinement.

131. Q. Did the accused stand trial during this time?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I do not know.

132. Q. Was Admiral Masuda authorized to carry out a death sentence when the penalty was death?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

133. Q. Do you know whether Admiral Masuda was authorized to carry out a death sentence in the case when the penalty was death?

A. He did.

134. Q. You stated that the Japanese Criminal Code and the Japanese Naval Penal Code were applied to these cases. Was there a proclamation made by Admiral Masuda to the natives that these laws were applicable to the natives? OK

A. Admiral Masuda put out the following policy: (1) concerning criminals, I would like to send them back to where there are courts, but there is no means of doing so due to the transportation, (2) natives are under the judicial laws of Japan and under my command, this island is isolated and is under bombardment and bombing by planes and ships. I have all the authority over the following (3) natives, military personnel, and gunnery who desert OK

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do great damage to the defense of Jaluit and make operations in the future impossible, anyone who deserts shall be severely punished and the extreme penalty applied, (4) the motive for self support is that there be no starvation, crimes related to this shall be prevented beforehand, any one committing such crimes shall be severely punished and the extreme penalty applied, (5) persons who are sentenced to life imprisonment, as there are no means for imprisonment, they shall be executed. This policy was shown to us by Major Furuki in April when the defense section was organized and he said it had been put out by Admiral Masuda.

135. Q. How was it possible for American destroyers and LCI's to come in so close to Jaluit?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused withdrew the question.

136. Q. Did you have land batteries and ammunition to repel the American destroyers and LCI's that came in so close?

A. As I stated before, the main armament was destroyed. If arms were left at outlying islands or were taken to outlying islands, the main island could not be defended.

137. Q. What arms did you use to ward off the American LCI's and destroyers that came in so close to Jaluit?

A. There were two or three times when we tried to repel the LCI's and destroyers, we used rifles and light machine guns.

Reexamined by the judge advocate:

138. Q. When you made your daily reports on your investigations, to whom did you make them?

A. It was usual that I was to report to Admiral Masuda and Major Furuki was to be there to hear the report, but at times when Admiral Masuda was busy, the report was made to Major Furuki, who reported this to Admiral Masuda.

139. Q. You did not make daily reports to anyone else, did you?

A. No.

140. Q. To whom did you make your final report on these investigations?

A. Is it the report by document?

141. Q. Yes.

A. Admiral Masuda.

142. Q. Other than the document report, did you make any other final report?

A. No.

143. Q. To whom did you make this final documentary report?

A. To Admiral Masuda.

144. Q. Then it is true that you never reported to anyone other than Major Furuki and Admiral Masuda?

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

The judge advocate withdrew the question.

145. Q. In reply to the defense counsel's question, you spoke about a document prepared by Admiral Nagata containing certain information which was shown to you by Major Furuki when you became attached to the defense unit in April 1945. Have you ever seen that document again?

A. I have heard many times afterward about it, but I have never seen it again.

146. Q. The only time you saw it was the time Major Furuki showed it to you; is that correct? OK

A. Is it the document?

147. Q. It is the document.

A. I may have seen it, but I do not remember.

148. Q. On cross-examination you stated that these natives committed these crimes in the face of the enemy. Were you referring to the crimes as listed under the specifications in the official documents that have been referred to in which Admiral Nagata's decision appeared? OK

A. Yes.

149. Q. Now, in the case of Chuta, with reference to the official document, is it not true that you have stated on direct examination and cross-examination that under "specifications" the crime listed against Chuta was murder?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

150. Q. And did that document under the heading of "law applied" stipulate the law that was applied to the crime of murder?

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

The interpreter explained the question to the witness.

The question was repeated.

A. Yes, it was applied.

151. Q. In your final report in the case of Chuta, did you report that murder was one of the offenses committed by Chuta?

A. What I stated in my final report was that he was the main helper of Mandala and was the most forward in escaping. He thought of building a

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raft and he directly supervised it. In escaping from the island it is not by raft, but by canoe that they were to get out, but as they might not be able to carry all the personnel, the raft was prepared and did the same sort of work as Chomohle. Chuta did the same things as Chomohle.

The witness was warned.

The commission then, at 11:25 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the interpreters, the accused and his counsel.

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

No witnesses not otherwise connected with the trial were present.

Kadota, Itsuro, lieutenant, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Reexamination continued.)

152. Q. Did you in any of your reports to Major Furuki and Admiral Masuda, written or oral reports, ever report that Chuta had committed murder?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Because of what the two of them confessed was the same, I reported that Chuta had the same intent as Chomohle.

The commission directed the witness to answer the question.

A. (Continued) In the case of Chomohle, as he had strong intent to attack the guards at the boat and kill them I wrote it down clearly, and in the case of Chuta, as I remembered it, I believe I wrote down the same intent as Chomohle.

153. Q. Did you report that Chomohle and Chuta planned to do these things?

A. Yes.

154. Q. Did you ever report that either Chuta or Chomohle did these things?

A. No.

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155. Q. With reference to the document which you testified you saw, which came from Admiral Masuda stating that it was his desire that criminals be sent back to Japan for trial and concerning certain other information, where did you see that document?

A. I saw it in the office of the defense section.

156. Q. Was the document addressed to Major Furuki?

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

The judge advocate withdrew the question.

157. Q. To whom was that document addressed?

A. It was addressed to no one.

Recross-examined by the accused:

158. Q. When you say that the document "was addressed to no one", you mean that it was a document that pertained to all personnel on Jaluit, do you not?

The judge advocate objected to counsel testifying and originating evidence.

The accused replied.

The commission announced that the objection was not sustained.

A. I interpreted it as being addressed to everyone.

The judge advocate moved to strike out this answer on the ground that it was the mere opinion of the witness.

The accused replied.

The commission announced that the motion to strike out the answer was not sustained.

159. Q. Was it common knowledge on Jaluit that Admiral Masuda had issued the document that you testified to, in which he proclaimed all military personnel and natives were under his command?

This question was objected to by the judge advocate on the ground that it called for hearsay and objected to counsel characterizing the document as a proclamation.

The accused withdrew the question.

160. Q. Was this document promulgated by Admiral Masuda?

A. I do not know whether it was promulgated or not.

161. Q. Do you know whether military personnel were aware of the document?

A. I have never asked each person if they knew, but actually this was what was practiced on Jaluit.

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The judge advocate moved to strike the words "but actually this was what was practiced on Jaluit" from the answer on the ground that it was not responsive to the question.

The accused replied.

The commission directed that this portion of the answer be stricken.

162. Q. Was this document, that you have testified to, in effect on Jaluit from April to the 25th of August 1949?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. The exact contents of that document were effective until the end of the war.

163. Q. Was this document effective and was it applied to the natives on Jaluit during this period of time?

A. Yes.

Reexamined by the judge advocate:

164. Q. Isn't it true that the only time you ever saw this document was when you became attached to the defense unit under Major Furuki?

The accused objected to this question on the ground that it was leading.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I saw the document right after the defense section was organized and I do not remember if I saw it afterwards.

165. Q. Other than this time when you saw this document, were the contents of this document ever discussed by you with any body?

A. I may have discussed it at that time, but I do not remember.

166. Q. You never had a conversation in which this document was discussed did you?

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

The judge advocate replied.

The commission announced that the objection was sustained.

167. Q. Were the contents of these documents given to you as orders by Major Furuki?

A. It was not an order. He showed us this and said that it had been put out.

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Examined by the commission:

168. Q. Will you please tell the commission, if you know, by what means, if any, contents of this document were made known to the native population?
A. I remember a proclamation that was made to the natives, it said, "You are citizens of Japan and if you cooperate with the Japanese forces, even though American planes and warships may come, your life and property shall be preserved and if you try to run away you shall be considered as enemies".

169. Q. That does not answer the commission's question. I asked "by what means, if any, contents of this document were made known to the native population?" I would like the witness to answer it, if he can.
A. I do not remember by what means, or if, it was promulgated to the natives. COK

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

The witness made the following statement:

I would like to say I was an investigator of the natives and I was to investigate them on orders by Admiral Masuda to investigate them. I would like to say that the methods used, the time spent, and the best possible investigation was conducted fairly.

The witness was duly warned and withdrew.

A witness called by the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.

A. Eugene E. Herrick, Junior, lieutenant, U. S. Naval Reserve, Staff, Commander Marines.

2. Q. If you recognize the accused, state as when.

A. Furuki, Hirotsugu.

3. Q. What are your duties?

A. I am an interpreter in the war crimes office.

4. Q. I show you this document. Do you recognize it?

A. I do.

5. Q. What is this document?

A. It is a statement of the accused in this case, Major Furuki, Hirotsugu.

6. Q. Will you state what you know concerning the circumstances surrounding the writing of this statement?

A. In the early part of December of last year I went to the War Crimes Stockade on Guam with Lieutenant Field from the War Crimes Office who was investigating this incident. We went to the witness room, or the witness hut, right immediately inside the gate at the War Crimes Stockade, and had

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Major Furuki called from his cell to come to talk to us. Lieutenant Field asked Major Furuki two or three preliminary questions and then he asked him if he was willing to make a statement about the incidents that occurred on Jaluit Island. Major Furuki freely agreed to make this statement and we supplied him with the necessary paper and pencils and we left the stockade, to an adjoining interview room, while he proceeded to write his statement, when he was alone. He had in his possession at the time, a piece of paper which he had this table on from which he apparently copied this table, in this present statement. Lieutenant Field and I interrogated some other witnesses to this incident in the adjoining building and during that time we had our eyes on Major Furuki to see that he was writing the statement alone. We then returned to the witness but where he had just about completed his statement. He signed it and then we asked him if he would add a portion, or a sentence to the effect that he had written it of his own free will and he readily agreed to do it. Lieutenant Field told him that he wanted the true facts in the case and to give the pertinent points, such as dates, names. That's about all I can remember.

7. Q. Was Major Furuki promised any reward of special treatment or special consideration if he prepared or signed this statement?
A. He definitely was not.

8. Q. Was Major Furuki warned or threatened that if he did not write this statement or that if he did not sign, that he would suffer any consequences?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Absolutely nothing of the kind was told to him.

The original statement, in Japanese, of the accused, Major Furuki, Hideoaki, Imperial Japanese Army, and an English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the admission of this document and read a written objection, appended marked "Y."

The judge advocate replied,

Cross-examined by the accused:

9. Q. When was this document written by Major Furuki?
A. It was in the early part of December of last year.

10. Q. Do you remember the exact date?
A. From the document it is written the third of December.

11. Q. Do you remember if this was the date?
A. No, I do not.

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12. Q. Where was this document written?

A. It was written in the War Crimes Stockade at Guam.

13. Q. Was the accused, Major Furuki, in confinement in the War Criminal Stockade?

A. He was.

14. Q. Do you know how long he had been in confinement at the War Criminal Stockade?

A. He was in solitary from some time in the previous month. Before that, he had been loose inside the fence surrounding the stockade.

15. Q. Do you know whether he had been given the right to have counsel to represent him during the time he was in confinement?

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

The accused replied.

The commission announced that the objection was sustained.

16. Q. How long did it take Major Furuki to write this document?

A. About half an hour to an hour. He rewrote it into a clean copy after he had written a rough draft.

17. Q. After he had written it, did he sign it?

A. I believe he did.

18. Q. Did you see him sign it?

A. Yes, we asked him if he had signed it.

19. Q. Did you see him sign it?

A. Yes.

20. Q. Who was with you at this time?

A. Lieutenant Edward L. Field.

21. Q. As the document was originally written by Major Furuki, was this satisfactory to Lieutenant Field?

A. I do not understand the exact meaning of this question.

22. Q. Did Lieutenant Field ask Major Furuki to make any statements or any additions to the document as it was originally written?

A. He did. He asked him to add that part about writing it freely, and Major Furuki readily agreed. 9x

23. Q. Were you present all during the time Major Furuki was writing this statement?

A. Not in the same hut.

24. Q. But you were in the immediate vicinity?

A. Yes.

25. Q. Was Lieutenant Field in the immediate vicinity?

A. He was.

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26. Q. When you and Lieutenant Field went down to the stockade that day, do you remember what Lieutenant Field said to Major Furuki?

A. He asked him to write that statement including the pertinent facts of the incident.

27. Q. Did you act as an interpreter for Lieutenant Field?

A. I did.

28. Q. Do you remember the exact language that Lieutenant Field used in asking Major Furuki to write this statement?

A. I do not.

29. Q. Do you know whether or not Lieutenant Field had talked to Major Furuki about this case before this date?

A. I do.

30. Q. Had he?

A. Yes.

31. Q. How many times?

A. Immediately before that time; it was either once or twice.

32. Q. Do you know how many people had talked to Major Furuki about this question and interrogated him during the time he was in confinement?

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

The accused replied.

The commission announced that the objection was not sustained.

A. I do not know exactly, but very few.

33. Q. Do you know if he was in confinement for a long period of time on Guam?

A. It depends on your definition of confinement.

34. Q. Were you selected to act as interpreter on this particular occasion because you knew a great deal about this particular case?

A. I do not believe so.

The commission was cleared to consider the objections made to the admission of the accused's statements into evidence.

The commission was opened. All parties to the trial entered.

The commission announced that the objections of the accused were not sustained and that this document would be received into evidence.

The original statement of Major Furuki, Hidesaku, Imperial Japanese Army, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

35. Q. Will you read the English translation of the statement by Major Furuki?

The witness read the English translation of the statement of Major Furuki, Hidenaku, Imperial Japanese Army, copy appended marked "Exhibit 2".

An interpreter read the original statement in Japanese of Major Furuki, Hidenaku, Imperial Japanese Army, appended marked "Exhibit 1".

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

The commission did not desire to examine this witness.

The witness stated that he had nothing further to say.

The witness resumed his seat as a court interpreter.

The prosecution rested.

The defense made a motion to the commission that a directed verdict of "not guilty" be entered in behalf of the defendant on the ground that the evidence did not support the charges and specifications as drawn against him.

The commission was cleared.

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

The accused requested an adjournment until Friday, March 21, 1947, at 9:00 a.m. in order to prepare his defense.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission then, at 4:25 p.m., adjourned until Wednesday, March 19, 1947, at 9 a.m. *OK*

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TENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Wednesday, March 19, 1947.

The commission met at 9:15 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon E. Guyson, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Barbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner E. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Buena Heine, official native observer from the Marshall Islands,
Mark Juda, official native observer from the Marshall Islands,
Lajero, official native observer from the Marshall Islands,
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

The judge advocate introduced Thirman E. Schwenneker, civilian, and Joseph Kase, junior, yeoman second class, U. S. Navy, as reporters, and they were duly sworn.

No witnesses not otherwise connected with the trial were present.

The defense began.

The accused read a written opening statement, appended marked "A".

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and present duties.
A. Akinoto, Yuichiro, I am a defense counsel for the accused in the War Crimes Trials.
2. Q. If you recognize the accused state as whom.
A. Major Furuki, Hidesaku.

Examined by the accused:

3. Q. I show you a document. Can you identify it?

A. I can.

4. Q. What is it?

A. It is a document made up by the Head of the Second Demobilization Department in Japan.

5. Q. Is the document duly authenticated by the Chief of the Second Demobilization Department?

A. Yes.

6. Q. Has this document been translated?

A. Yes.

7. Q. Do you desire to introduce this document as evidence?

A. Yes.

The original document from the Chief of the Second Demobilization Department in Japan in Japanese was submitted to the judge advocate and to the commission and the English translation thereof was submitted to the judge advocate and to the commission and by the accused offered in evidence.

The judge advocate objected to the commission receiving this document in evidence as follows:

The judge advocate strongly objects to the receipt of this document in evidence. The document is a copy of an unsigned memorandum prepared by an investigation department of the demobilization section of the Japanese Navy. It is a document obviously prepared for the purposes of the defense after Furuki was a war criminal. It was allegedly prepared in April 1946 and certified as a "true description" in November of 1946.

The subject of the document is "reply" concerning the duty and so forth of Admiral Masuda. The dates of the document indicate it was prepared subsequent to his death.

The first paragraph of this document reads in part, "Since the documents concerned were burnt and the officers of the 4th Fleet Headquarters have not been repatriated." It is apparent from this that the pertinent documents were not available to the alleged investigators. Similarly, the only witnesses who would presumably know the duties and authority of Rear Admiral Masuda as an officer under the 4th Fleet were, by admission of the investigator, unavailable. There is no statement in the record as to whether witnesses were ever examined or any official documents of any kind were ever used in the preparation of this so-called "due investigation." There is not even any indication of who the actual investigator was. Surely a document of such nature has absolutely no evidential value and no conceivable basis of reliability or credibility. 876

It should also be noted that the second portion of this document reads: "Organization of the trial for civilians in Jaluit Atoll and the laws applied in the trial." This portion is additionally objectionable in that it is not only speculative opinion by an unknown, perhaps legally unqualified, investigator, but that it also seeks to invade the province of the commission by implying that there was a trial of the natives and alleging what laws and trial procedure were applicable.

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The latter portion of the document purports to give the content of various regulations for various naval units, viz, Special Sea Boat Unit, clearly such alleged regulations extracted from their full content, and taken from sources not available to the commission should not be permitted into evidence as part of such a document.

The judge advocate strenuously objects to the admission of this entire document or any part thereof. It has no basis of reliability, no credibility, and no conceivable evidential value.

The accused made no reply.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission announced as follows:

Before making a ruling we desire to be further enlightened as to the method of obtaining the document offered into evidence, who originated it, how it was obtained, together with a brief description of the official functions of the Provisional Head of the Second Demobilization Section.

Examined by the commission:

S. Q. Tell us what you know about this document.

A. I shall explain first how I came to be in possession of this document. In November of last year when I was to be despatched to Guam as a counsel in the war crimes trial I went to the Provisional Investigation Department of the Second Demobilization Bureau and talked with the officials there. I asked if there was anything I could use as reference in the trials and I was given the above document. This document is a reply to an inquiry made of the Second Demobilization Bureau by the First Demobilization Bureau. This inquiry was made due to an explanation asked by Major Furuki about a year before he was brought to trial, asking the opinion of the Japanese government. As Furuki was with the Army his inquiry went to the First Demobilization Bureau. The First Demobilization Bureau inquired about this of the Second Demobilization Bureau and this document is a reply to that inquiry. The one I was shown was in a file and this document is a copy of that and I had it signed by the Head of the Second Demobilization Bureau to show that it was an authentic copy. As to the duties of the investigation section I do not know what its duties are, but a part of its duties is concerned with war crimes trials of various areas and one official said that it was also helping the various legal departments. Other than this I do not know what their duties are. This is not a copy of a document that is on file in the Second Demobilization Bureau, but a copy of a reply that was sent to the First Demobilization Department and which was on file. This copy I had signed and authenticated as being true.

The commission asked if there were any further comments to be made regarding the entering of this document into evidence.

The judge advocate made the following statement:

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I wish to point out that if the original document were offered here, the objection to receiving it into evidence would be substantially the same. The fact that this document may be a true copy of an inadmissible document does not in any way render it admissible as an exception under the hearsay rule. Under the novel theory of the defense in offering this document, it would be permissible for the judge advocate to offer and the commission to receive in evidence any filed unsigned memorandum or unauthenticated paper by any war crimes investigator, with regard to pure speculative matter as to which he has had no documentary or other authentic source of information. Such material has no evidential value whatsoever and should clearly be inadmissible. The testimony of Mr. Akimoto does not in any way alter the fact that this document is not admissible. EX

The commission announced that the objection of the judge advocate was not sustained and the document in question was received in evidence.

The copy of the document by the Head of the Second Demobilization Bureau in Japanese, and the English translation thereof were so received and are appended marked "Exhibit 3" and "Exhibit 4" respectively.

Examined by the accused:

9. Q. I will ask the witness to read the document in Japanese. EX

The witness, Mr. Akimoto, Yuichiro, read the document in Japanese, copy appended marked "Exhibit 3."

An interpreter read the English translation of the document of the Head of the Second Demobilization Bureau, appended marked "Exhibit 4."

Cross-examined by the judge advocate:

10. Q. The covering letter on the document which is signed by Maeda, Minoru, as chief of the Second Demobilization Bureau indicates that there was a request from the chief of the Investigation Section of the Prisoner of War Section, First Demobilization Department, for information concerning the duties of Rear Admiral Masuda. Were you the person who originated the request for this information?

A. No. This originated from an inquiry made by Major Furuki to the First Demobilization Department and the First Demobilization Department inquired about it to the Second Demobilization Department.

11. Q. Then Major Furuki originated the original request for this information?

A. The one who asked for this document was the First Demobilization Department.

12. Q. But this was pursuant to a request from Major Furuki. Is that correct?

A. This was due to an inquiry made of the Japanese government by Major Furuki.

13. Q. Do you know the date of that inquiry by Major Furuki?

A. I do not know, but it was a year or a year and a half previously.

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14. Q. Do you know where Major Furuki was at the time he made this inquiry?
A. No.

15. Q. Do you know if he was a war crimes prisoner at that time?
A. I do not know.

16. Q. Do you know if it was subsequent to the end of the war that this inquiry was made?
A. I think it was after the war.

17. Q. Is the Second Demobilization Department a branch of the Japanese Navy?
A. It's staff is made up of men who formerly belonged to the Japanese Navy.

18. Q. Do you know anything of the method of conducting this investigation?
A. I do not know.

19. Q. Do you know of your own knowledge if they consulted any documents in the preparation of this reply?
A. I do not know as I did not engage directly in this, but I can say the following: Whenever a government. . . .

The judge advocate made the following motion:

If it please the commission, it is now apparent that the witness is testifying of things beyond his own knowledge and I request that the rest of the reply beginning with the words "but I can say" be stricken from the record.

The accused made no reply.

The commission announced that the motion to strike out was sustained.

20. Q. The last paragraph of the covering letter from Masuda states, "I certify that the following is a true description." Do you know what he means by a "true description" or what he referred to?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It certifies that the form and contents of it are true.

21. Q. The first paragraph reads concerning the duties and authority of Masuda, "Since the documents concerned were burnt and the officers of the Fourth Fleet Headquarters have not been repatriated, the exact description of the duty and the authority of the commanding officer of the Jaluit Defense Garrison is unknown, but the outline is as follows:". In view of the fact that the documents concerning this entire source of authority were destroyed and the officers of the Fourth Fleet Headquarters were not available for purposes of investigation, do you know that this alleged outline of true facts is based on?

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A. This was based on investigation and on documents that are now existing and when it was said that it was not clear in detail because people concerned with this had not yet been repatriated, but this was drawn up with documents that were in their possession and is made as clear as possible with the present remaining documents as a basis.

The commission then, at 11:30 a. m. took a recess until 2:05 p. m., at which time it reconvened.

Present: All the members, the judge advocate, the three official native observers from the Marshall Islands, the accused, his counsel, and the interpreters.

Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Yuichiro, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued)

22. Q. Are you one of the defense counsel for the accused?

A. Yes.

23. Q. Are you an attorney by profession?

A. Yes.

24. Q. Did you practice law during the war?

A. Yes.

25. Q. Were you a member of the armed forces of Japan during the war?

A. No.

26. Q. Are you generally familiar with the more important laws passed in Japan during the war?

A. I think I am fairly familiar with the laws.

27. Q. What is your basis for saying that Major Furuki asked the Japanese Investigation Section of Prisoners of War to investigate the duty and authority of Admiral Masuda?

A. I think it was because Major Furuki had the belief that what Admiral Masuda did was right, but in that regard he wanted to hear the opinion of the Japanese government.

The judge advocate moved that the answer to the last question be stricken from the record as it was not responsive.

The accused made no reply.

The commission directed that the answer be stricken from the record.

28. Q. You testified that Major Furuki requested this investigation be made. How do you know that Major Furuki made this request?

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A. When I was handed this document in the Demobilization Department, as it was addressed to the First Demobilization Department, I asked what connection would this document have as reference. I forgot who the officer was, but the officer of the Demobilization Department said that a person named Furuki had inquired of the Japanese Government and this inquiry had been made to the First Demobilization Department.

29. Q. Did you ever see Furuki's letter to the First Demobilization Unit?
A. No.

30. Q. Could you approximate the date when Major Furuki's request was made?
A. As this document was drawn up about a year before I left Japan in November of last year, I can say that it was before this time, but not exactly.

31. Q. Do you know whether this request was made after Admiral Masuda committed suicide on October 5, 1945?

This question was objected to by the accused on the ground that the fact that Admiral Masuda had committed suicide had not been proved by evidence heretofore submitted.

The judge advocate replied.

The commission announced that the objection was sustained.

32. Q. Do you know whether Admiral Masuda is alive?
A. I did not know at that time, but after I came to Guam I heard that he had committed suicide.

The accused moved to strike this answer from the record on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion of the accused to strike this answer from the record was not sustained.

33. Q. Do you know the date of Admiral Masuda's death?
A. No.

34. Q. Do you know whether Furuki made his request for this report after October 5, 1945?
A. I do not know.

35. Q. Do you know whether this report, certified on 27 November 1946, was made after the death of Admiral Masuda?
A. In thinking now, I think it was.

36. Q. When you were examined this morning, you were shown this document and asked what it was and you stated that it was a document made up by the head of the Second Demobilization Department in Japan. The document itself reads from the Chief of the Provisional Investigation Section. Is it the Chief of the Provisional Investigation Section rather than the Chief of the Bureau who submitted this investigation report?
A. I think it is the head of the Second Demobilization Department.

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37. Q. Does this document read from the Chief of the Provisional Investigation Section or from the Second Demobilization Department?

A. I misunderstood the last question. This report was made up by the Chief of the Provisional Investigation Section, but was certified by the Head of the Demobilization Department.

38. Q. The man who submitted this investigation report has stated in it that the documents concerning the duty and authority of Rear Admiral Masuda were burned, but you on the contrary have told us that some of the documents were available and used by him. What is your source of information that the investigator used documents that he himself declares were burned?

A. This original Japanese sentence can be interpreted and I interpret it as, "There were some documents that were burned, some people were not repatriated, but there were others," and according to this basis this report was made.

The judge advocate requested the permission of the commission to have the interpreter give an authentic reinterpretation of this portion of the Japanese report.

The commission announced that the interpretation of this document had already been offered and received in evidence.

39. Q. Did you personally assist in the investigation on which this report is based?

A. No.

40. Q. Did you personally see any documents that were used for these investigations?

A. No.

41. Q. How do you, of your own personal knowledge, know that documents were used by them in their investigation?

A. Because I know that when it is written in such a form as this, it is a form which there is basis for.

The judge advocate moved that this answer be stricken from the record as not responsive.

The accused replied.

The commission announced that the motion was not sustained.

42. Q. Do you know the names of any persons who helped in the preparation of this report? JTC

A. No.

43. Q. Do you know if any of the witnesses were sworn?

A. In Japan there is no form such as "sworn in witness" in making such a report.

44. Q. Do you know if any witnesses were questioned by the investigators preparing this report?

A. No.

45. Q. Do you know the names of the Japanese naval or army officers who drew up this report on behalf of Major Furuki?

A. No.

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46. Q. Do you know if any of them are former fellow officers of his?

A. I do not believe so. I have heard nothing about it.

47. Q. Have you ever seen an alleged document or order under which personnel of the civilian government and other Japanese civilians were taken into military service in April 1944?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not get the true meaning of the question.

48. Q. Have you ever seen an order or law which provides that all Japanese civilians are taken into the military service?

A. The Japanese system was one in which all persons were considered military, but there was no such thing as all civilians being military personnel. Persons, according to their skills or abilities, were taken in as military personnel, and I do not think that all civilians could ever be placed in the military service.

49. Q. Then, this portion of this document which so states is inaccurate?

This question was objected to by the accused on the ground that it was irrelevant as the document had already been offered and received in evidence, and this document pertains to Jalut Atoll and not the entire of Japan.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I consider the last question as asking about the conscription system, and I answered as such.

50. Q. The statement in this document that all personnel of the civilian government and all other Japanese civilians were taken into military service in April 1944, is not accurate, is it?

A. When I answered the question I answered it as asking about the conscription system. Civilian workers not actually in the military service but working, such as laborers, or those working for the military service as working in factories. These and also others, the government could order to do certain work as civilians to do military work and the citizens could not object to it. It was an order promulgated in Japan, an order which enabled the government to give orders to all civilians and to have authority over people and materials. The government could order them to do anything it wished.

The judge advocate moved to strike the answer from the record on the ground that it was not responsive.

The accused replied.

The commission announced that the motion was not sustained.

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51. Q. Were these workers considered in military service?

A. They were not regular military personnel as the regular military or Gunseikus, but they worked under the orders of the military.

52. Q. Did you work under the orders of the military?

A. No.

53. Q. This document states that in 1944, there was a discussion in General Headquarters as to whether martial law had to be enforced in Jaluit, but that they "reached the conclusion that it was not necessary now to enforce martial law for these islands." Do you know whether it was the duty of General Headquarters to determine whether martial law should be put into effect?

A. General Headquarters considers all direct and indirect conditions concerning operations and I naturally think that General Headquarters should consider this.

54. Q. Do you know if the Japanese forces of Jaluit maintained radio communication with General Headquarters by Airmen or any other transmitting station?

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

The judge advocate replied.

The commission announced that the objection was sustained.

55. Q. Did you read this document when you received it?

A. I did.

56. Q. Have you discussed this document and shown it to anyone?

A. When I received this document I knew nothing about this case, therefore, I discussed it with no one.

57. Q. Since you commenced the defense of this case have you discussed the content of this document with any of the witnesses?

This question was objected to by the accused on the ground that it was irrelevant, and that it was going into the relationship of the counsel with the accused.

The judge advocate withdrew the question.

58. Q. When you received this document did you discuss it with the Chief of the Bureau?

A. No.

59. Q. Did you ever seek to find out why General Headquarters was never advised of the existence of martial law on the islands, if there was such martial law.

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate withdrew the question.

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60. Q. Have you ever seen an official record indicating that martial law was established on Jaluit Atoll?

A. I have seen no other document than this.

61. Q. The document states, section 2, "Organization of the trial for civilians in Jaluit Atoll and the laws applied in the trial." Do you know what basis the investigators had in declaring that there had been a trial for the natives?

A. This document just tells us about trial procedure in Jaluit. This is all regulated by law. The Japanese Government Office should naturally know about it and this was just written down.

62. Q. Then this does not refer to any alleged trial of the natives on Jaluit. Is that correct?

A. What is written down is the procedure in settled times or under normal conditions.

63. Q. The document refers in the first paragraph, paragraph 1(a), to an alleged operation order of the Fourth Fleet pursuant to which Admiral Masuda commanded and defended the Jaluit Defense Area. Do you know if this alleged operation order was turned?

A. I do not know either.

64. Q. Do you know of your personal knowledge whether there ever was such orders?

A. If you asks me if I knew about this in my capacity, then I would be able to answer this more clearly.

65. Q. Have you ever seen such official orders?

A. I have not seen any.

66. Q. Have you ever seen the orders, regulations, purported copies of which, or excerpts or summaries of which, are appended to this report?

A. I have.

67. Q. Where have you seen the official Fleet Regulations?

A. As a lawyer I have a chance to look through all laws or regulations. Especially in the Second Demobilization Department, these were well kept.

68. Q. Did you personally read the Fleet Regulations?

A. I have.

69. Q. Are you familiar with these regulations?

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

The judge advocate replied.

The commission announced that the objection was sustained.

Reexamined by the accused:

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70. Q. You were asked by the judge advocate if you were familiar with the laws of Japan. Will you tell the commission what you know about the law courts and procedures in Japan, as they may have a bearing on this case? OK

The judge advocate asked the commission if the accused was trying to qualify this witness as an expert witness, and to elicit testimony beyond the original scope of direct examination.

The accused replied,

The accused withdrew the question.

71. Q. The judge advocate asked you a question concerning a phrase in the document to the effect that in April, 1944, all civilians were inducted into the military service, and you answered this. You also answered that you had read this document and in reading that document you read the part before and after this phrase and what you would discern of this. Was it about the civilians in Jaluit or was it about Japan in general?

A. I read this document, but unless I can see it again I could not say exactly. When I answered the question of the judge advocate previously, I was under the impression that it was about the government of Japan in general.

72. Q. When you read this document, we expect it that you understood it.

A. I would like to see the document.

The document was given to the witness.

73. Q. Will you read from paragraph 1; also in paragraph 1, the first sentence and (b) of the same paragraph? OK

A. "The duty and authority vested in Rear-Admiral Hasegawa, the Commanding Officer of the Jaluit Defense Garrison." "(b) On military administration. There was none except his original ones which were strategically necessary and regulated in concerning ordinances. But since all personnel of South Seas Civilian Government and all other Japanese civilians were taken into military service in April, 1944, it may be considered that he became to have substantial duty and authority concerning civilian administration, because these personnel and civilians had two characteristic functions on account of the special circumstances of the Atoll which had become a battlefield." This is naturally concerned with the Jaluit area.

74. Q. You were asked by the judge advocate if you knew the fleet orders had been burned or not and you answered that you did not know. In Japan, is it considered that orders or regulations are considered not legal if they are burned or are they considered not legal after they had been proclaimed as such. What is your understanding of this?

A. I answered that I did not know whether the documents had been burned or not. A law is not something that would become ineffective if the documents were burned. There would have to be a law or other regulation retracting or taking away its effectiveness. It is not something that would lose its effectiveness if the document was burned; and if I answered as such, I answered under the impression that the question was whether the document was burned or not. OK

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

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James A. Kenney Lt. USN

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The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The commission then, at 3:20 p. m., took a recess until 3:47 p. m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the three official native observers from the Marshall Islands, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

The accused made the following statement:

We respectfully ask the Commission to take judicial notice of the following:

Naval Criminal Law Act No. 48, April 10, 1908. Revised in 1942, Law No. 36. We have sanctioned Naval Criminal Law which obtained the approval of the Imperial Diet and hereupon have it promulgated. Particularly Article 2 of Part I which reads: "This law shall also be applied to those who commit the crimes mentioned below, though they may not be naval officers or sailors:

1. The crimes of Articles 62 to 65 and these attempted crimes.
2. The crime of Article 72.
3. The crimes of Articles 78 to 85.
4. The crimes of Articles 86 to 89.
5. The crimes of Articles 91 to 93 and the attempted crimes of Articles 91 to 92.
6. The crimes of Articles 95, 96, Clause 2 of Article 97, 98 and 100.

Article 9. The following persons shall be treated the same as the naval officers and sailors:

2. The civilians in the naval service.

Article 16. When death penalty will be executed in the navy, the condemned shall be shot to death, at the place where the commander, who has control over the naval judicial establishments, decides.

Article 17. The action which has been done in order to quell the people who used violence, or to keep the naval discipline in face of the enemy or when the ship is in danger, shall not be punished.

When the action was beyond moderation, the punishment to it shall be able to be taken the extenuating circumstances into consideration, and reduced or exempted.

Article 18. The previous article shall also be applied to actions prescribed as crimes in Naval Criminal Law or other laws or ordinances.

Part II. Crimes.

Chapter 1. Crime on Rebellion.

Article 20. Those who have formed a clique and have been in arms engaged in rebellion shall be condemned as follows:

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1. The leader shall be condemned to death.
2. Those who have been engaged in the plan or led a crowd shall be condemned to death, or to life term or above five years' servitude or confinement.

Article 21. Those who have with the purpose of starting rebellion formed a clique and stolen arms, ammunitions and other munitions shall be condemned according to the previous article.

Article 22. Those who have done the following action shall be condemned to death:

2. To spy for the benefit of the enemy or help the enemy's spy.
3. To give the naval secret to the enemy.

Article 23. Those who have done the following action for the benefit of the enemy shall be condemned to death:

7. To spread false information or to make uproars in the face of the enemy.

Article 24. Those who have given naval facilities to the enemy or injured the Japanese Navy with ways other than those stated in the foregoing two articles shall be condemned to death, or life term or above five years' imprisonment.

Article 25. Those who have done the action of the above three articles for the benefit of those who have raised rebellion or civil war shall be condemned to death, or life term or above three years' imprisonment or confinement.

Article 26. The attempted crimes of the above six articles shall be punished.

Chapter 3. Misconduct in Office.

Article 53. One who, for the purpose of escaping from the service in the Navy or from the dangerous service, feigns illness, injures himself his body or commits other frauds, shall be condemned to such penalties as follows:

1. In the face of the enemy, death or life term or above five years' imprisonment.

Article 54. The attempted crimes prescribed in the Art. 35 to 37, 40 to 42, 46, 49 and 51 to 53, shall be punished.

Chapter 4. Crimes of Resisting Order.

Article 55. One who resists the superior officer's order or who is not subordinate to it, shall be condemned to such penalties as follows:

1. In the face of the enemy, he shall be condemned to death or life term or above ten years' confinement.

Article 56. Those who, forming a clique, commit the crime of the preceding article, shall be condemned to such penalties as follows:

1. In the face of the enemy, the ringleader shall be condemned to death and the others to death or to life confinement.

Chapter 5. Crimes of Violence, Threat, Murder and Injury.

Article 57. One who injures the superior officer or who violates or

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threatens the same shall be condemned to such penalties as follows:

1. In the face of the enemy, above one years' terminable servitude or confinement.

Article 59. Those who, forming a clique, commit the crimes in the preceding article shall be condemned to such penalties as follows:

1. In the face of the enemy, the ringleader to life or above ten years' servitude or confinement, and the others to above three years' imprisonment or confinement.

Article 60. One who, resorting to arms or weapons, commits the crime of Article 58, shall be condemned as follows:

1. In the face of the enemy, death or life or above ten years' imprisonment or confinement.

Article 61. Those who, forming a clique, commit the crime of the preceding article shall be condemned as follows:

1. In the face of the enemy, the ringleader to death, and the others to death or life term imprisonment or confinement.
2. In other cases, ringleader to death or life term imprisonment or confinement, and the others to death or life or above five years' imprisonment or confinement.

Article 64. One who, resorting to arms or weapons, violates or threatens the guard shall be condemned as follows:

1. In the face of the enemy, life or above five years' imprisonment or confinement.

Article 65. Those who, forming a clique, commit the crime of the preceding article shall be condemned as follows:

1. In the face of the enemy, the ringleader to death or life imprisonment or confinement, and the others to life or above seven years' servitude or confinement.
2. In other cases, the ringleader to death or life or above seven years' imprisonment or confinement, and the others to life or above two years' servitude or confinement.

Article 67. Those who commit violence or menace to officers or sailors on duty other than their superiors or the guards, with arms or weapons, shall be condemned to above one year to ten years' imprisonment or confinement.

In case of committing in a group the crime of the above clause, the ringleader shall be condemned to life or above three years' confinement or imprisonment, and the others to above one year's terminable imprisonment or confinement.

Article 70. The attempted crimes of Articles 58 to 61, 61-3 and 62 to 66 shall be punished.

Chapter 7. Crime of Escape.

Article 73. Those who leave from or do not engage in their duties without good reason shall be condemned as follows:

1. In face of the enemy, death or life or above five years' imprisonment or confinement.

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Article 74. Those who commit the crime of the preceding article in a group shall be condemned as follows:

1. In the face of the enemy, the ringleader to death or life imprisonment or confinement, and the others to death or life or above seven years' imprisonment or confinement.

Article 76. Those who desert to the enemy shall be condemned to death, or life imprisonment or confinement.

Article 77. The attempted crimes of Article 73, Item 1; Article 74, Item 1, and the preceding article shall be punished.

Chapter 8. Crime of Destroying the Things for Naval Use.

Article 78. Those who burn down the vessels, aircrafts, tanks, factories, buildings, trains, electric-cars, motor-cars or bridges for battle use, or warehouses in which the articles for Naval use are stored, shall be condemned to death, or life or above ten years' imprisonment.

Article 79. Those who burn down arms, ammunitions, provisions, clothing or other goods for Naval use piled up outdoors, shall be condemned to such penalties as follows:

1. Committed in war time, to death or life imprisonment.

Article 84. The attempted crimes of Articles 78 to 82 shall be punished.

Supplementary Rules (Law No. 36, 1942).

The date for the enforcement of this Law shall be set by Imperial Ordinance. (Enforced on March 15, 1942.)

Those, who committed the crime in Chapter 22 of the Criminal Law before the enforcement of this Law and come under the revised provision of the first clause of the Article 88-2, shall not be punished even after this law takes effect unless with complaint.

Japanese Criminal Code, Law No. 45, 24 April 1907, amended by Law No. 61, 1941, particularly:

Article 35. Acts done in accordance with laws and ordinances or in pursuance of a legitimate business (or occupation) are not punishable.

Article 36. Unavoidable acts done in order to protect the rights of oneself or another person against imminent and unjust violation are not punishable.

According to circumstances, punishments may be mitigated or remitted for acts exceeding the limits of defense.

Article 37. Unavoidable acts done in order to avert present danger to life, person, liberty, or property of oneself or another person are not punishable, provided the injury occasioned by such acts does not exceed in degree the injury endeavored to be averted. According to circumstances, however, punishment may be mitigated or remitted for acts exceeding such limits.

The provisions of the preceding paragraph do not apply to persons under special obligation because of their calling or occupation.

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Article 38. Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable.

A person who without knowledge (of the fact) has committed a grave offense (crime) cannot be punished in proportion to its gravity.

Ignorance of the law cannot be invoked to establish absence of design, but the punishment may be mitigated according to circumstances.

Article 81. Every person who by conspiring with a foreign power has caused hostilities to commence against the Empire, or who has joined an enemy power in taking hostile action against the Empire, shall be condemned to death. SK

Article 82. Every person who has delivered to an enemy power a fortress, camp, body of troops, vessel, or other place or structure for military (or naval) use shall be condemned to death.

Every person who has delivered to an enemy power arms, ammunition, or other goods for military (or naval) use shall be condemned to death or punished with penal servitude for life.

Article 85. Every person who has acted as a spy for an enemy power, or has aided a spy of an enemy power shall be condemned to death or punished with penal servitude for life or not less than five years.

The same (punishment) applies to every person who has disclosed a military (or naval) secret to an enemy power.

Article 86. Every person who by methods other than those of the preceding five Articles has given an enemy power any advantage or has injured the interests of the Empire shall be punished with limited penal servitude for not less than two years.

Article 87. Attempts of the crimes of the preceding six Articles shall be punished.

Article 88. Every person who has made preparations or has plotted for any of the crimes specified in Articles 81 to 86 shall be punished with penal servitude for not less than one year nor more than ten years.

Article 203. Attempts of the crimes of Article 199, Article 200, and the preceding Article shall be punished.

Japanese Martial Law (DAJOKAN) Prime Minister's Proclamation of 5 August 1882, amended by Imperial Ordinance No. 74, 1882, particularly Articles 1, 2, 4, 6, 10, 12, and 13. SK

Japanese Naval Court Martial Law, promulgated by Law No. 91, 26 April 1921, amended by Law No. 9, 1941, particularly:

Chapter 1. Jurisdiction of Court-Martial.

Article 1. Court-Martial shall have power to try the following persons of their crime.

1. The person mentioned in the Art. 8 No. 1 and 2; and the Art. 9 of the Naval Criminal Law.

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2. The crew of Naval transport.

3. Persons who are members of a naval unit or belong to it except those mentioned in the preceding two clauses.

4. Prisoners of war.

When there are, among the persons mentioned above in No. 2 and 3, some who should be omitted specially, then it shall be determined by order of Court.

Article 2. Court-Martial has power to try those persons mentioned above, of the crimes committed by them prior to their present standing also. Court-Martial has power to try the persons even though he has lost his position, if, during his former standing, report on his crime was received or he was already arrested or detained.

Article 6. Court Martial, at the time of Military operation, if necessary, in order to maintain safeguard of the navy, may exercise power of jurisdiction over crimes of persons other than mentioned in the Art. 1.

Chapter 2. Jurisdiction of Court-Martial.

Article 3. Court-Martial are organized as follows:

1. Higher Court Martial.
2. Tokio Court Martial.
3. Naval District Court Martial.
4. Guard District Court Martial.
5. Fleet Court Martial.
6. Isolated Court Martial.
7. Temporal Court Martial.

Article 9. Higher Court Martial, Tokio Court Martial, Naval District Court Martial and Guard District Court Martial are organized permanently. However, at Guard District, it might not have Court-Martial. Fleet Court Martial, when it is necessary, is organized specially in a fleet commanded by Commander-in-Chief of a fleet or Commander of an independent fleet or a detached fleet, as well as a man-of-war sent to foreign countries. Isolated Court Martial is established especially in a district surrounded by enemy when a declaration of Martial Law is made. Temporal Court Martial is established especially in a case of necessity during war and naval operation shall be specially established in a naval unit.

Article 10.

(a) Higher Court Martial or Tokio Court Martial makes the Minister of Navy its president.

(b) Naval District Court Martial makes the Commander-in-Chief of the District its president.

(c) Naval Guard District Court Martial makes the Commander of the District its president.

Specially established Court Martial makes the Commandant of the unit or district where the said court martial is established its president.

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Article 16. Court Martial in a territory surrounded by enemies has jurisdiction over the following cases:

1. Case of an accused person who is subordinate of Commandant of the said territory or one who received supervision of the Commandant.
2. Case of accused person whether he be a resident of the district or not has committed crime in the said district and is mentioned in the Art. 1-3.
3. Accused case which belongs to the jurisdiction defined in the Art. 1-3.

Article 17. Temporary Court Martial has jurisdiction over the following cases:

1. Case of an accused person who belongs to or receives the supervision of the Commandant of unit where a court martial is established.
2. Case of accused person who, whether he be a resident of the District or not, has committed crime in the said district and mentioned in the Art. 1-3.
3. Case of accused person mentioned in the Art. 6 and resides in Guarded District of a unit where Temporal court martial is established.
4. Accused case which is transferred to, in accordance with the Arts. 322 or 333.

Part II. Judicial procedure.

Chapter 1. General Rules

Section 2. Defence and Advice.

Article 87. The accused is free to select, at any time, a counsel for his defence after the indictment against him is lodged, a Legal representative, an adviser; or husband of the accused can select a counsel independently.

Article 88. A counsel shall be selected from the persons mentioned below:

1. Naval officer or ranking officers.
2. Naval Higher Civil Officer or Probationer.
3. Lawyers designated by the Minister of Navy.

Article 89. Selection of counsel should be done at every trial. Selection of counsel should be made by a letter jointly signed with a person for counsel.

Article 90. A member of counsel should not be above two for each accused.

Article 91. A counsel is allowed to read or look over any document or evidential object or to copy in the Court Martial any document relating to the accused case.

Article 92. Counsel has right to make judicial procedure independently only where there is a special stipulation for it.

Article 93. Regulations of the preceding six articles shall not be applied to a Special Court Martial.

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Japanese Fleet Regulations, particularly Articles 16 and 18.

The judge advocate objected to judicial notice being taken of certain matter requested by the accused as follows:

In view of the fact that the judge advocate has not been given any previous notice concerning the laws and regulations which the accused is now seeking to have accepted by judicial notice, the judge advocate requests permission to reserve further objection to the provisions and translation thereof, until he has had an opportunity to verify and authenticate such provisions and translations. In view of the desire to expedite these proceedings, the judge advocate will at this time enter the following objections to the requested judicial notice.

The judge advocate makes no substantive objection to the taking of judicial notice of the provisions of the Japanese Criminal Code. The Commission has already taken judicial notice of this code, as applicable in the Marshall Islands.

The judge advocate objects to the request that judicial notice be taken of the Japanese Naval Criminal Law and the Japanese Naval Court Martial Law. So far as any authentic official information reveals, these laws were not the effective local law of Jaluit, Marshall Islands. These may have been the effective law for the Japanese navy, but this commission is not required to take judicial notice of the laws of the Japanese navy. The commission is not sitting as a court of the Japanese navy, it is sitting as a court of the Marshall Islands. It is empowered to take judicial notice of local law; but the law of the navy has not been shown to be the local law of Jaluit, Marshall Islands. With regard to the Japanese Criminal Code, it should be noted that there is a well-known law of general application, Ordinance 26, of 1923, which made certain basic laws of Japan applicable to the mandated islands. Approximately fifty general laws, including the Japanese Criminal Code and the Japanese Law for Criminal Procedure were included amongst those laws. The Naval Criminal Law and the Japanese Naval Court Martial Law were not included. PK

Before this commission can properly be asked to take judicial notice of the Naval Criminal Law and the Japanese Naval Court Martial Law, it must be affirmatively proved that these laws were in effect in the Marshall Islands with regard to the native population, and were the effective local law applied by the Marshall Island courts, and applicable to non-military personnel. PK

With regard to DAJOKAN (The Prime Minister's) Proclamation of 5 August 1882, as amended by Japanese Ordinance No. 74, 1882, the judge advocate strenuously objects to the taking of judicial notice of this alleged proclamation or ordinance. The accused has neither cited nor proved any law making such alleged proclamation applicable to the Marshall Islands. Nor has the accused cited anything to establish that this alleged proclamation or ordinance was still effective in Japan. The alleged proclamation etc. is dated 1882, more than thirty years prior to the time Japan entered the Marshall Islands, and more than sixty years prior to the date of the alleged crimes. Surely the law was not originally applicable to the Marshall Islands. Similarly, in view of the fact that it is not

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included in those basic Japanese Laws made applicable to the mandated islands by Ordinance 26 of 1923, revised in 1933, it appears clear that it was not made applicable to the Marshall Islands at that time....expressio unius est exclusio alterius. The judge advocate is not familiar with this alleged Japanese Proclamation, nor does he know whether it purports to be a general proclamation with regard to all future declarations of martial law, or whether it was a specific proclamation with reference to existing conditions in 1882. No copy of this document in its entirety was made available to the judge advocate, and he has no means of determining whether it was still in effect in Japan more than sixty years after its proclamation.

The judge advocate respectfully suggests that the accused must first be made to prove that Martial Law was proclaimed and made effective in the Marshall Islands, secondly that this specific Daijoken Proclamation or ordinance of 1882 was still effective law, thirdly that it was effective law in the Marshall Islands, and then the commission should require the accused to prove from an authentic reliable source, the content of this proclamation.

Clearly judicial notice should not be taken of the Japanese Fleet regulations. The accused has not established whether these purport to be general fleet regulations applicable to all naval units or fleets, or whether these are general naval regulations similar to our Navy Regulations, or whether these are regulations issued by one of the six Japanese Naval fleets. Regardless of the nature of these regulations, they are inadmissible under judicial notice. These are not the regulations of the United States Navy or United States Army, with which the commission might be deemed familiar by virtue of their knowledge of naval and army law and regulations. These are not matters of common knowledge or public information, nor are they matters which are readily ascertainable or verifiable. These alleged fleet regulations are not part of the local law of the Marshall Islands. It is respectfully suggested that the accused must be required to prove the existence of the regulations, their full content so that it can be ascertained what other provisions of these regulations modify, qualify, or control the application of the provisions which the accused desires to establish, and finally it must be proved how these regulations were made applicable to the treatment of natives of the Marshall Islands.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Thursday, March 20, 1947. OK

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ELEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, March 20, 1947

The commission met at 9:09 a. m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Duorn Heine, official native observer from the Marshall Islands,
Mark Jula, official native observer from the Marshall Islands,
Lajore, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission announced as follows:

Judicial notice has previously been taken of the Japanese Criminal Code. The commission further takes judicial notice of the following: Japanese Naval Criminal Law and Japanese Naval Court Martial Law. The commission does not take judicial notice of the Japanese Martial Law Proclamation of 5 August 1942, and the Japanese Fleet Regulations.

In view of the voluminous nature of the documents of which the commission has taken judicial notice, the right of the judge advocate to make further objections to particular portions thereof, as may from time to time be referred to, is granted.

The commission then, at 11:22 a. m. took a recess until 2:05 p. m., at which time it reconvened.

Presents: All the members, the judge advocate, the three official native observers from the Marshall Islands, the accused, his counsel, and the interpreters

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Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and your rank?

A. Lieutenant Iwanami, Kenichi, Imperial Japanese Army. J-K

2. Q. If you recognize the accused, state as whom.

A. As Furuki, Hideoaki, Major in the Imperial Japanese Army.

Examined by the accused:

3. Q. Where are you at present?

A. I am at the witness camp on Guam.

4. Q. Where were you before you came to the witness camp on Guam?

A. I was in Knejaia.

5. Q. Have you ever had duties with the Japanese Naval Forces on Jaluit?

A. I have.

6. Q. During what period?

A. From September 1943 to October 1945.

7. Q. What was the name of the unit that you were attached to during that period?

A. The Sixty-second Naval Guard Unit.

8. Q. Who was the commanding officer of that unit?

A. Rear Admiral Masuda, Hideoke, Imperial Japanese Navy.

9. Q. What were your duties while you were on Jaluit?

A. At first I was the head of the tank unit and in January 1944 I was attached to Headquarters. In July 1944 I became head of a high angle machine gun battery.

10. Q. Tell us about the air battles from the period of April to August 1945.

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

The accused replied.

The commission announced that the objection of the judge advocate was not sustained.

A. At that time as I was commanding a high angle machine gun battery which consisted of two 25 mm. machine guns and several smaller arms, I am one of the persons who has experienced the tragedy of a battlefield. At that time the battery position was one of the most temporary ones. It was

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James P. Kennedy *W. W. H.*

almost a living hell. In November of 1943 I had fifty-three men under my command out of which forty were wounded. By the end of the war there were several replacements but including the wounded there were only twenty-six. All of the remaining twenty-six had been wounded at one time or another. They had to fight every day continuously. I do not know all of the conditions on Jaluit but concerning the bombing I know this very well. On Jaluit it was an endless continuation of hardships. From November 1943 continuous bombing and bombardment by American forces destroyed all on Jaluit. In February 1944, with the fall of Kwajalein, the supply route being cut off, the ammunition, food and clothing situation became very bad. This was true especially in food. One copra and coconut teddy could not satisfy all. Dogs, cats, lizards, and all grasses that were edible were eaten. The fighting was continued. All installations on the island had been wrecked. There were no shelters. Admiral Masuda lived in a small shelter one and one-half ken to two ken square. (Interpreter's notes: A ken is six feet.) The fighting strength of the Jaluit Garrison had become very negligible. All it was able to do was to barely keep a person alive and to keep the military service in tact. At that time the American forces attack on Jaluit was very fierce. Morning and night at regular times, two to three small craft were attacking Jaluit. In addition to this, large and medium bombers would bomb at all times. On the eighteenth of June 1945 in Enidj, there was a battleship and two destroyers, three hundred small aircraft bombed and bombarded the Enidj Island. Night bombing was continued throughout April of the same year over a period of several hours every night. We could not sleep and therefore could not recover from the fatigue of the day. Enidj was in ruins. There was no place to bomb so the headquarters area, the gardens, and the boats were targeted and bombed. Leaflets were dropped telling us to surrender. In February 1944, Jaluit had six mounts of 13.7 machine guns which equal twelve guns. All twelve of them were destroyed. In May of 1945, all that remained were two 25 mm. machine guns. That was all that made any resistance, but even these 25 mm. machine guns were bad. There had been two mounts of six machine guns. Three direct hits had hit them. Out of the two mounts only three guns remained. Out of this three two had received near hits, and one of the guns which had been splattered with flesh and bones of the crew had been repaired and was being used. Again, the ammunition was low and there was no resupply. No matter how many planes came only two hundred rounds could be shot. All firing was restricted and the sky above Jaluit was at the mercy of American planes. In November 1943, there were two radars on Jaluit. All were destroyed and the anti-aircraft lookout was by eye. Because of this, due to the weather and other circumstances, surprise attacks were frequent and everybody was always on the alert while the sun was out. As for myself, there was only about once or twice that I ventured over a distance of fifty yards from my position in a month. As I have stated, the damage on Jaluit was great. This affected greatly the war effort and the food. There was no installation that had not received a bomb, a direct hit. The only things that were not destroyed were the Second Ammunition Dump, the Receiving Station and the Medical Shelter, which were hit but not completely destroyed. All positions had been destroyed. All the 13.7 mm. guns had been destroyed. The gardens and the ports received great damage and many times the regular ration was not coming. I have stated a few conditions on Jaluit, but the actual living was very much greater; the hardships there was very much greater.

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11. Q. At that time were the American warships in the water around Jaluit?

A. I was on the main island and every once in a while, destroyers and submarine chasers would come near it. I have heard that out in the outlying islands, American warships came every day.

12. Q. Were you able to have communications with other islands?

A. The only means of communications we had with other islands was by wireless. That also, I have heard, was not too good because of the power.

13. Q. At that time on Jaluit were there civilian personnel other than the military?

A. There were.

14. Q. What sort of work were they doing?

A. I cannot state exactly but I know that mainly they worked at self-support measures.

15. Q. What do you mean by self-support measures?

A. That is to be able to eat.

16. Q. What sort of work were the natives doing?

A. I do not know exactly what the natives were doing, but I have heard that they were engaged in taking coconut toddy.

17. Q. You stated that the natives had been taking toddy. Do you know if they natives were taking this toddy on their own behalf or on the orders of the military?

A. It was taken for all the personnel on Jaluit and on the orders of the military.

18. Q. What do you mean by coconut toddy?

A. Before a coconut bears fruit there is a flower of which the point is cut off and the drippings from this caught in bottles and used as a food.

19. Q. Do you know if coconut toddy was used as a staple food on Jaluit at that time?

A. Together with copra, it was a staple on Jaluit.

20. Q. How long have you been in Guam?

A. I have been on Guam since March of last year, and it's almost a year.

21. Q. Are you in the stockade, or where are you?

A. I am in the witness camp.

Cross-examined by the judge advocate:

22. Q. Were you on Jaluit during the month of May, 1945?

A. I was.

23. Q. During that period did you receive any orders from Major Furuki to send a working party to him?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination.

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The judge advocate made no reply.

The commission announced that the objection was sustained.

24. Q. During the month of May, 1945, did you have any duties in connection with working parties.

A. There were no established working parties, but at times working parties were put out by orders. *PK*

25. Q. During the Month of May, 1945, did you put out any such working parties? *SK*

A. I have.

26. Q. Will you tell us concerning these working parties, the circumstances of their being ordered out.

A. I would like to have the question repeated.

27. Q. During the month of May you have testified that you have sent out working parties. Will you tell us about the orders you received and any other circumstances concerning these working parties?

A. There were all sorts of working parties and I do not remember them all; but all the orders came from the junior officer of the day.

28. Q. Do you recall sending Kimura and Ikezoe out on a working party in the month of May?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination and repetitions.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

29. Q. Do you recall during the same month sending Sugahara and Miyazaki out on different working parties?

A. I do.

30. Q. Do you know what work these working parties did?

A. I know at this time after the end of the war. At that time I did not know.

31. Q. What was the work that these working parties did?

A. In what I heard after the war, was that they had acted as guards on natives.

32. Q. Did you also hear that they had buried the natives?

This question was objected to by the accused on the ground that it was hearsay. *SK*

The judge advocate withdrew the question.

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James P. Keany Lt. USN

33. Q. Do you know whether these working parties also buried the natives.
A. I do not know.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 3:10 p. m., took a recess until 3:30 p. m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the three official native observers from the Marshall Islands, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. First Lieutenant Morikawa, Shigeru, Imperial Japanese Army.

2. Q. If you recognize the accused, state as whom.

A. Furuki, Hidenaka.

Examined by the accused:

3. Q. Where are you now living on Guam?

A. Since March of last year, I was brought from Kwajalein, I have been living in the witness camp at the war crimes stockade.

4. Q. Have you ever had duty with the Japanese Armed forces on Jaluit Atoll?

A. I have had service with the army forces on Jaluit from the 30th of November 1943 to the 11th of October 1945.

5. Q. What was the name of the unit that you were attached to?

A. The Second Battalion, First South Seas Detachment.

6. Q. What sort of a unit was the Second Battalion of the First South Seas Detachment?

A. The Second Battalion of the First South Seas Detachment was one of two battalions which made up the First South Seas Detachment. The second battalion was made up of battalion headquarters, three rifle companies, one machine gun company and one battle artillery company. First we came over from the Chinese front to the island, and other units went to the other islands. The second battalion, which was at Jaluit, was commanded by Major Furuki and he also commanded the other units which were on the other islands, making up the regular strength of the First South Seas Detachment.

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James P. K. Army *JP*

7. Q. When did your unit, the Second Battalion of the First South Seas Detachment, arrive on Jaluit?

A. I recall the date that the Second Battalion arrived on Jaluit. The 19th of January, 1944.

8. Q. At this time, did Major Furuki as the commanding officer also arrive?

A. Yes.

9. Q. Were there other units on Jaluit at that time?

A. At that time on Jaluit was the Sixty-second Naval Guard Unit, which was navy, and also a detachment from the First South Seas Detachment, which was army, and also navy units of the 952nd Air Squadron, the First Detachment of the Sixth Communications Corps, and the 111th Construction Battalion. There were several other small units.

10. Q. Who was the commanding officer of the Sixty-second Naval Guard Unit that you mentioned?

A. It was Rear Admiral Masuda.

11. Q. What was the relation between the Sixty-second Naval Guard Unit and the Second Battalion of the First South Seas Detachment that Major Furuki commanded?

A. Upon its arrival on Jaluit, the Second Battalion of the First South Seas Detachment was commanded by Major Furuki. It was attached to the Sixty-second Naval Guard Unit, commanded by Admiral Masuda, and therefore, under the command of Admiral Masuda.

12. Q. What duties have you had since you arrived on Jaluit?

A. I was originally the officer in charge of communications of the Second Battalion, First South Seas Detachment under Major Furuki and on the first of September, 1944, when the American started the native kidnaping tactics on the Marshalls, I was appointed Intelligence Officer of the Jaluit Garrison and came under direct command of Admiral Masuda. In the middle of April, 1945, I was further given the duties as a member of the Jaluit Defense Section and in this section I was in charge of personnel, records, communications, and sanitation.

13. Q. Do you know the physical aspects of Jaluit Atoll?

A. I do.

14. Q. Explain this to the commission briefly.

A. Jaluit is an atoll sixty kilometers in length from north to south and thirty-five kilometers in width from east to west. It consists of over one hundred small islands. It is all flat and it is all sand. The height above sea level is about 150 cm. In digging air raid shelters, if you would dig down 80 cm, you would strike water. Raddj, where the air base and headquarters were located, was on the eastern tip of the atoll. The island's length was about fourteen hundred meters with a width of about six hundred meters. It was a very small island. You could see from one side of the island to the other. The only other two islands which were stationed at the time the American kidnaping tactics began was Jabor, which was about twelve kilometers southwest of Raddj, and the island exactly opposite to Jabor, Eniber.

(Note: Jabor is a village on the northeast end of Jaluit Island.)

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James P. Kennedy B. VSK

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15. Q. What was the area of all the islands put together?

A. Putting all the one hundred small islands together the area was about eighty square miles. (2X)

16. Q. Do you know what means of transportation there was between the main island and the outlying islands until the end of the war?

A. Up to October, 1944, when all daihatsus (Interpreter's note: Daihatsu is a Japanese twin-power passenger small craft, similar to our LVP. Daihatsu means "large engine.") owned by the Naval Guard Unit and the Air Squadron were lost, the only means of transportation between the headquarters and the outlying islands was by canoe. Later, when they needed to bring food for self support from the other islands, a small boat 37 meters by 4 1/2 meters was made of lumber from the houses that had been destroyed. The bomb engines from the trucks which had been destroyed and nails which had been burned by incendiary bombs were used to make this boat. (2X)

17. Q. What were your communication facilities?

A. The only communication with the outlying islands and the headquarters of the defense garrison was by lookout from the Jaluit Island and also army wireless was used. To the other islands it was by canoe or by motor boat, of which there was a regular schedule once every three days. Emergency signals were prepared in case of American landings where the unit would signal by building a fire to show that American forces were attacking.

18. Q. You stated that you were appointed the Intelligence Officer of the Jaluit Defense Garrison. Tell us briefly, if you know, what the Jaluit Defense Garrison was.

A. The Jaluit Defense Garrison was made up of Army and Navy and civilian personnel on Jaluit and this command was called the Jaluit Defense Garrison. This garrison had at the end of the war eighteen operating units. The cooperation between the units was very well. As an example, navy personnel worked under army personnel, army wireless personnel would be used in a naval battery. Army N. C. O.'s would work as clerks in civilian offices. Gunboat shipbuilders would have army personnel as his helpers. The men of Jaluit took pride in their cooperation and they were convinced that it was a result of the fine character and ability of Masuda and Furuki.

19. Q. Do you know for what reasons and when this Jaluit Defense Garrison was organized?

A. The Jaluit Defense Garrison was organized in March of 1944, due to an order from the commander in chief of the Fourth Fleet. The order came by dispatch as follows: "The senior commander of the island should take charge of all units and government offices on the island." At the same time, there was a dispatch from the South Seas Governor to the Civil Officer in Charge of the Jaluit Branch of the South Seas Government saying: "I have you under my authority and I have come under the command of the Commander in Chief of the Pacific Fleet. All government officials, therefore, shall come under the command of the commanding officer of that place." Admiral Masuda as the senior officer called all the unit commanding officers and the officers in the Jaluit Civil Government Branch and showed them these dispatches and following this he gave the following order: "Myself as the commanding officer of the Jaluit Defense Garrison, I have absolute authority over all people and materials on this atoll. By this order the Jaluit Defense Garrison was organized and the civilians and the officers of the South Seas Government who were on Jaluit Island moved to Eniwetok where they were given military duty. (2X)

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James A. Kenny Jr. VSN

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The judge advocate moved to strike out the last part of this answer on the ground that it was hearsay.

The accused replied.

The commission announced that the motion was not sustained.

20. Q. You stated before that a dispatch arrived in March of 1944 from the Commander in Chief of the Fourth Fleet, and you stated what it was, and also you stated at the same time a dispatch came from the South Seas Government to the officer in charge of the South Seas Government Branch at Jaluit, as you stated it. How do you know about these dispatches?

A. The reason I know about this is at that time I was also in charge of Intelligence of the second battalion, First South Seas Detachment, and myself and Major Furuki were the two army officers who were permitted to see the dispatches sent, received, and intercepted by Admiral Masuda. OK

21. Q. What was the form of the dispatch?

A. It was in code and it was sent as an urgent operation order.

22. Q. You testified that Admiral Masuda convened all the unit commanders and civilian officers and stated such and such. How do you know about this?

A. As I was also the communication officer of the Second Battalion, First South Seas Detachment, which was directly under Major Furuki, myself, and the commanding officer of the Second Battalion were called together by Major Furuki and was relayed the information concerning the organization, the order that Admiral Masuda stated, and about the dispatches.

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Friday, March 21, 1947.

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James A. Kenney Lt. JSH

INTELLIGENCE

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, March 21, 1947.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon E. Guyton, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Bueno Heine, official native observer from the Marshall Islands,
Mark Juda, official native observer from the Marshall Islands,
Lajero, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Horikawa, Shigeru, the witness under examination when the adjournment was
taken on March 20, 1947, entered. He was warned that the oath previously
taken was still binding, and continued his testimony.

(Examination continued.)

23. Q. Will you state briefly the conditions in the Marshalls and Jaluit at
the time the defense garrison was organized?

A. At the time the Jaluit Defense Garrison was organized in March 1944, the
American forces had occupied Wajuro, Kwajalein and Eniwetok. By February of
1944 Jaluit and the other bases in the Marshalls were isolated by continuous
air and sea patrols and by the bombing which started in November of 1943.
Over half of the installations on Jaluit were useless and the men of the
island awaited attack, determined to fight to the end.

24. Q. Do you know whether the natives were inducted into the Jaluit Defense
Garrison?

A. I do. They were included in the Jaluit Defense Garrison.

25. Q. Do you know for what duties they were inducted in the Jaluit Defense
Garrison?

A. I do.

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James P. Kenny *LL. W. H.*

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26. Q. Explain this briefly.

A. At first when the Jaluit defense was organized no special duties were allotted them, but in July 1944 when Jaluit had to provide its own food they were given the duties of a working party to supply this food.

27. Q. Do you know if a declaration was made that all natives would be included in the Jaluit Defense Section?

A. I do.

28. Q. How was this made known to the natives?

A. At the time the Jaluit Defense Garrison was organized, the natives were under the Jaluit branch of the South Seas Government. I do not know how the South Seas Government relayed this to them, but in July 1944 when the Jaluit Defense Garrison started its self-supporting measures, the chief of the natives, the secretary and heads of the villages were assembled on Iroodj and Major Furuki, as the representative of Admiral Masuda, went there and ordered the following: "Hereafter the natives shall perform the duties as a working party for self-support of Jaluit Defense Section." As I recall this declaration was made by document. Again in the middle of December 1944 when the details at the outlying islands were established, an order was put out by the commanding officer of the Jaluit Defense Garrison that all military, gunnery and natives shall come under the jurisdiction of the district commander. Chiefs of the natives shall come directly under the district commander and by these two orders I know that the natives were included in the Jaluit Defense Garrison and that they were given duties in a working party in self-support measures.

29. Q. How do you know these facts?

A. When this order was given the natives at Iroodj, at that time I was the intelligence officer and also a member of the self-supporting measures committee and I had attended all important conferences. At this conference I heard Admiral Masuda plan to give this order and that it was executed, and concerning about the natives coming under the jurisdiction of district commanders, I know this well, because as I was intelligence officer I was ordered directly by Admiral Masuda to make up this report and making up the report received the signature and relayed it to the district commanders.

30. Q. Do you know basically what work the natives were performing?

A. I do.

31. Q. Tell us about it briefly.

A. Their most important job was to gather coconuts for coconut toddy. Out of two thousand natives of Jaluit six hundred worked at this, other to this they worked at fishing, gathering wild fruit, communications and transportation, by acting as crews of canoes and as all clothing had been lost, to weave mats to be used in place of blankets and weaving mats for roofing to supplement what had been lost and also acting as pilots in night navigation.

32. Q. You testified that in April 1945 you became a member of the Jaluit Defense Section. Do you know what this section is?

A. I do.

33. Q. Explain briefly.

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James A. Lenny *U.S.N.*

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A. The defense section. As the American kidnaping of natives was intense and on the other Marshall Japanese bases all the natives had been kidnaped, the only island remaining on which natives remained was Jaluit and in March, 1945, American forces had natives of the atoll sneak into Jaluit and as Jaluit faced this new threat and as the presently established intelligence officer could not cope with this the defense section was organized as a branch of the defense garrison. At the head of the section was Major Furuki and the members consisted of Army and Navy officers, non-commissioned officers and petty officers. The duties were to gather intelligence concerning the Enidj base and outlying islands and through this build a defense against these tactics.

34. Q. You stated that Major Furuki was the head of the defense section. Do you know what position Major Furuki had in the Jaluit Defense Garrison?

A. I do.

35. Q. Tell us his position in relation to Admiral Masuda.

A. Major Furuki was one of the commanding officers under the commanding officer of the Sixty-second Naval Guard Unit and it was the same position as that of the gunnery officer, the supply officer and the medical officer of the Sixty-second Naval Guard Unit. As he was the senior ranking officer among them, he was a main helper of Admiral Masuda. He was the head of the defense section; he was advisor to the transportation section, self-supporting committee and many other branches of the headquarters and he had many duties. He was the commanding officer of a unit under Admiral Masuda and head of the defense section directly under Admiral Masuda. PK

36. Q. Could Major Furuki command the second battalion of the First South Seas Detachment of which he was commander independently?

A. Major Furuki in some parts could command independently parts of his units, but in the most part he could not command his men on his own wishes.

37. Q. You testified concerning the kidnaping tactics of the natives. What do you mean by this?

A. The meaning of kidnaping natives has a broad meaning. Native kidnaping we called the American tactics of kidnaping Marshallese natives from July, 1944. It was half by force and half by plotting. It was judged that by these tactics the American forces were trying to obtain information, completely break up the self-supporting means and also to acquire labor that was needed by American forces. After the natives had been kidnaped incite the Koreans to rebel, next the Japanese military personnel or directly kidnap them and bring about the internal breakup of the Japanese forces and occupy the island bloodlessly. On the other Marshall Islands in July, 1944, an American destroyer, towing a native in a canoe from Auru Island had him sneak into Wotje and handing a letter to the chief of Wotje stated that in the near future after having.....

The judge advocate moved to strike out that portion of the answer commencing with the words "On the other Marshall Islands" on the ground that it was hearsay and that it was not responsive to the question.

The accused made no reply.

The commission directed that the words be stricken out.

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James A. K. Long & VSK

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38. Q. Do you know by what means the kidnaping tactics on Jaluit were performed?

A. I do.

39. Q. Will you explain this concretely?

A. Methods used were to have a native sneak into the island and ^{la} really ^{OK} propaganda and then the American forces would come to get them. Another method was by LCI's which came close to the islands using loudspeakers, ^{OK} contacting the natives, would spread propaganda. Another method was by dropping leaflets. Another method was by dropping "K" rations, baseballs, soda water, by plane or brought in by natives into Jaluit where things were so scarce. There was also the intimidation methods in which outlying islands were bombarded by destroyers, bombed by planes and then it was brought out that there was no food on Jaluit and then there was the method by which the natives were taken by force by seaplanes, small planes, LCI's and destroyers which attacked the islands. The only defense against this was rifle fire against their superior armament.

The commission then, at 10:27 a. m., took a recess until 10:48 a. m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Horikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

40. Q. At that time in Jaluit did the officers try to prevent the natives from deserting or did they just let them desert as they wished?

This question was objected to by the judge advocate on the ground that there had been no testimony that the natives had deserted.

The accused withdrew the question.

41. Q. The witness testified and explained the reason for organizing the defense section that it was for making a countermeasure against the kidnaping of natives. What were the reasons for the officers endeavoring to prevent the natives from being kidnaped?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and that it was repetitious.

The accused replied,

The commission announced that the objection was sustained.

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James P. Kennedy 4. 152

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42. Q. The witness testified and explained the reason for organizing the defense section that it was for making a countermeasure against the kidnapping of natives. Do you know what the reasons were for the officers endeavoring to prevent the natives from being kidnapped?

This question was objected to by the judge advocate on the grounds that it called for the opinion of the witness and that it was repetitious.

The accused made no reply.

The commission announced that the objection was sustained.

43. Q. On Jaluit at that time, do you know what were the relations between the fighting powers of the military forces there and the natives?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I know.

44. Q. Please explain briefly to the commission.

A. At that time the defense garrison at Jaluit survived only by the power of the natives. They were the base of this fighting power due to the food provided by the natives, they were also able to fight due to the food brought by the natives. They were all the fighting power, if we had lost them our fighting power would have been gone. If we were to lose these natives our isolation and our starvation would become more and more severe. And if they had escaped from these islands it would be a hint to the military personnel who had already lost all hope over the starvation, bombing and bombardment by the Americans. It would be a hint to them also to desert the islands and go to the Americans and also if we were to lose these natives the Americans would easily attack us and within a few hours it would be overtaken by them. As I have explained, due to the three reasons they were important food producers for us. From the standpoint of morale of the soldiers it was necessary to have the natives and from battle action if we were to lose these natives we would be attacked easily by the Americans. Therefore the natives were our entire fighting power and constituted our base for continuing our battle.

45. Q. Do you know of the food situation at that time?

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

The accused withdrew the question.

46. Q. You testified that without the natives it was not possible to maintain the food. For what reasons do you say that?

This question was objected to by the judge advocate on the ground that it called for an answer that would be repetitious.

The accused replied.

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James P. Kenney Lt. USA

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The commission announced that the objection was sustained.

47. Q. In April 1945 you said that the defense section was organized in the defense garrison. After this was organized do you know whether there occurred any incident concerning the kidnapping of natives?

A. Yes, I know.

48. Q. Tell the commission of the situation.

A. In the dawn of May 6, 1945, I was on my way to Oca to advise about the defense on that island. Just at that time two or three American destroyers, four or five LCI's and about thirty small type planes and two sea boats had commenced their kidnapping tactics on the whole Jaluit Atoll. I took command of the detachment unit at Oca Island and fought with them. The result was that eighty natives of Oca were kidnapped then. During May sixth and seventh, on both days, the Japanese forces fought against the LCI's all through the Atoll and during these two days fifteen men were wounded and six hundred natives were kidnapped.

49. Q. Do you know whether they had made countermeasures in order to meet the occurrence of this incident?

A. I know.

50. Q. Describe what countermeasures were taken.

A. Because these incidents occurred from the small forces we had on Rukij, we sent four hundred men to each of the outlying islands and the commanding officer of the defense garrison gave out the following order to the commanding officer of the outlying islands: the natives are subjects of the Japanese Empire, therefore they must follow the duties of the military forces, if they do so their lives and property shall be secure, if they do not and hinder the duty of the military forces they shall be severely punished. At the same time such was addressed to the Japanese military to the effect as follows: Many natives are being kidnapped from our unit. Before us lies many hardships in self supporting measures and in operations. Even though all help of the natives are lost, work hard and dispense your duties.

The witness was duly warned.

The commission then, at 11:30 a.m. took a recess until 2:00 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the interpreters, the accused and his counsel.

Robert R. Miller, yeoman first class, U. S. Navy, and Joseph Kase, junior, yeoman second class, U. S. Navy, reporters.

No witnesses not otherwise connected with the trial were present.

Marikawa, Shigoru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

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James A. Keamy Lt. USN

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51. Q. This morning you testified to an order to the district commander. Do you know to whom this order was directed?

A. I do.

52. Q. In this morning's testimony you testified that the commanding officer gave an order to the district commanding officer and stated the contents of that order. In this case, was this order pertaining to the district commanding officer or was it addressed to the natives as in the contents, who are the citizens of Japan, etc. Which was it that you understood it to be?

A. This order was addressed to the natives and was directed to the district commanding officers to relay to the natives.

The judge advocate moved to strike out this answer on the ground that it was not responsive to the question.

The accused made no reply.

The commission announced that the motion to strike out the answer was not sustained.

53. Q. Do you know if this order which was directed through the district commanding officer addressed to the natives was promulgated or not?

A. I do.

54. Q. How was it promulgated?

A. On each island, the district commanding officers assembled the natives, read the order and had a Japanese or native who was also versed in that language interpret and relay it to the natives. I know the order was also tacked up in front of the headquarters of the district commanding officer and made public. This was done by order of Admiral Masuda to do it this way.

55. Q. How do you know of these facts?

A. I know because at that time I was in charge of drawing up documents in the defense section and the order and the way of doing this, of making it public. I sent it out to the district commanding officers. OK

56. Q. Do you know if there were any natives who violated this proclamation? OK

A. I do.

57. Q. What things occurred? Tell us about them.

A. In the middle of May, an incident in which a native of Iroodj, where Behibaru tried to strangle a navy petty officer and escape with the boat. There was a case in which six hundred natives at Pikijin Island stole a canoe and escaped. In the middle of May there was an incident on Chalmoron in which fifteen natives escaped to American LCI's. In the end of May, there was on Ron Island an incident when Namur and others tried to escape. Also there was the case of Odere in which a native named Chon, in transporting copra, threw two Gunsokus into the sea and escaped. As a result two Gunsokus were missing. In the beginning of June two unknown natives attacked a guard on Chalmoron Island and the two natives took a rifle and a rope away from the guard. There was also the case in the beginning of June of Ai Island in which two hundred natives of that island escaped to a LCI. In the beginning of June, the twenty natives of Jaluit Island, stole a Japanese barge and escaped. There was the case of Hujkane who became missing from Pingelap Island. There was also the case of Mandala and Laperia who killed a guard and tried to escape. From this time to the end of the war, fourteen to fifteen cases occurred. OK

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James P. Kerry Jr. USN

58. Q. Do you know whether investigations were ordered when cases of this kind occurred?

A. I do.

59. Q. Did you have any relations to these investigations?

A. I was ordered to be the investigating officer in the case of Malein and Majkane of Pingalap, when it occurred in the beginning of July 1945.

60. Q. By whom were you ordered to do this?

A. By Rear Admiral Masuda.

61. Q. Please tell us whether you were ordered to do so directly by Admiral Masuda.

A. I was ordered directly by Admiral Masuda.

62. Q. When you were ordered to investigate by Admiral Masuda, were you given any instructions?

A. I received instructions from Admiral Masuda as follows: I, meaning Admiral Masuda, shall give, on the basis of your investigation, a trial, the best which can be given under the circumstances on Jaluit, as a regular trial cannot be held. A great deal depends on your investigation, so work hard at grasping the facts of this incident.

The judge advocate moved to strike out this answer on the ground that it was hearsay.

The accused made no reply.

The commission announced that the motion was not sustained.

63. Q. Did you receive any further instructions?

A. Other to this during the investigation when I went to report, there were many minor instructions, such as who had the most intent; did they really have intent to kill a member of the military; lock these things up at the spot where the crime was committed. These orders I received from Masuda and also from Furuki.

64. Q. By what methods did you pursue your investigation?

A. The investigators were First Lieutenant Kadota, Ichi and myself. I took over twenty days to complete the investigation. During this period, five people were called in reference to this. During the investigation, First Lieutenants Ichi and Kadota went two or three times to the actual spot of the crime to investigate. They worked from dawn to nightfall. All other work was left and they concentrated on this investigation.

65. Q. Do you know what facts came to light as a result of this investigation?

A. I do.

66. Q. Please tell the commission about these facts.

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James A. Kenney Lt. USN

A. As a result of the investigation, it was found that a native named Malein planned to escape to an American ship and as it could not be done on his own island, as whenever a LCI came, all natives were placed in air raid shelters and a guard placed upon them. He wanted to take and have the other natives go with him and also before he left he wanted to find out how many men there were on each island. Using a native working girl, Majkane, as a courier, he had her carry a letter and also look out for the number of forces on each island, and after connections were made, kill the guard on the air raid shelter and escape to an LCI, or kill the guards on the boats and rafts and escape to Tahya Arureppa in the northern part of Jaluit, and kill the guards on the boats and rafts and escape.

67. Q. What did you do after the investigation was completed?

A. I made an investigation report and submitted it to Admiral Mesuda.

68. Q. In this written report, was what you just related written in the report and submitted?

A. Yes.

69. Q. What natives did you report as having relation to this case?

A. I reported Malein, Majkane, Obette, Paul as natives having relations to this case.

70. Q. Do you know what happened to the natives that you reported in your report?

A. I do.

71. Q. Please state what you know.

A. To Malein and Majkane, they were given death sentences and the other two, one to twelve months, I do not remember the exact number, at hard labor.

72. Q. How do you know that such sentences had been passed on them?

A. As I was custodian of the Defense Section documents, I saw the judgment papers on Malein and Majkane.

73. Q. What period of time had lapsed between the time you saw the judgment paper and the report was submitted?

A. The time I saw these judgment papers was right after the end of the war, and as I recall it, it was about two weeks after the investigation.

74. Q. When did this investigation start?

A. I recollect it was about the tenth of July.

75. Q. Do you know what form this judgment paper was in?

A. I do.

76. Q. Please state it.

A. At the very top there was written in "judgment paper". Next there were different columns for decision, names of natives, specifications, whether he was a principal or accomplice in the crime, the law applied, and the article, and there was a column for opinion. After this there were two to three lines of writing, but I do not remember them. I remember there was a signature of Admiral Mesuda.

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James P. Kenny Lt. USN

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77. Q. Do you know what decision there was, what laws were applied, and what specifications?

A. In the case of Melain and Majkane, death and hard labor sentences, and in the specifications was listed murder, desertion and treason. There were others listed, but I do not remember them.

78. Q. Do you remember what the decision was in the case of Melain?

A. The decision in the case of Melain was death.

79. Q. What was the decision in the case of Majkane?

A. Majkane was also death.

80. Q. Do you remember if, in this judgment paper, the name Obetto was listed?

A. I remember, it was.

81. Q. What was the decision in the case?

A. I forget the period, but I remember it was hard labor.

82. Q. How about the case of Paul?

A. Paul was the same, hard labor, but I forget the period.

83. Q. You testified before, that on the judgment paper there was a column called "opinion". What do you understand this opinion to be?

A. I understood this column to be an opinion expressed by Major Furuki in judging this case.

84. Q. In the judgment paper you saw, what opinion do you recall as seeing in this column?

A. I remember the opinion was expressed in the case of Melain was death, but I do not remember of the other natives.

85. Q. Please state whether you saw any judgment papers such as this before?

A. Others to this incident, as all judgment papers were in my custody, I have seen them.

86. Q. About how many judgment papers were there?

A. I recalled about six.

87. Q. Do you know if they were the same form or not?

A. I remember they were all the same form.

88. Q. What happened to Melain and Majkane, who were sentenced to death?

A. I have heard they had been executed as was sentenced.

89. Q. Do you know who executed the sentences?

A. I did not see it, but I have heard that Major Furuki did so.

The commission then, at 3:15 p.m. took a recess until 3:40 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the reporter, the interpreters, the three official native observers from the Marshall Islands, the accused and his counsel.

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James P. Kenney C.F. V.S.N.

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No witnesses not otherwise connected with the trial were present.

Horikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

90. Q. Do you know whether the judgment documents you tell us you saw were all written by the same person?

A. The rest of the document, other than the decision column, was written by Major Furuki, but I remember the decision column was written by Admiral Masuda.

91. Q. How can you make this distinction?

A. I have worked a long time under Admiral Masuda and Major Furuki in documents and I know their handwriting.

92. Q. You testified that on top of the document appeared "judgment paper." Do you remember in what characters, if any, this was written in?

A. They were in Chinese characters.

The commission directed that the following interpreters note be entered in the record:

The Kanji, or Chinese, characters are the Japanese ideograph, et cetera, which were adopted from the Chinese in counter-distinction to the Kana, or syllables.

93. Q. Were you the only one to see this judgment paper, or was it also shown to the other people?

A. On it were the signatures of Admiral Masuda, Major Furuki, Lieutenant Commander Shintone and Captain Inoue. Again Major Furuki said to show it to the officers of the Defense Section, and I remember showing it to them.

94. Q. Does this judgment document now exist?

A. No.

95. Q. What happened to it?

A. Toward the end of August, 1945, the judgment papers together with other documents of Admiral Masuda were burned.

96. Q. Did you express any opinion to Admiral Masuda when these documents were to be burned?

A. I did not express any opinion directly to Admiral Masuda, but to Major Furuki I said. . . . (testimony interrupted by motion to strike).

The judge advocate moved to strike the words "but to Major Furuki I said. . . ." out of the record on the ground that they were not responsive and were hearsay.

The accused replied.

The commission directed that the words be stricken out.

97. Q. Have you ever expressed any opinions to anybody concerning the burning of these documents?

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James P. Kenny Jr. USN

This question was objected to by the judge advocate on the ground that it was irrelevant and called for the opinion of the witness.

The accused made no reply.

The commission announced that the objection was not sustained.

A. I expressed the following opinion to the head of the Defense Section, Major Furuki: "These are not secret documents after the end of the war. They are only trial papers and not necessary to burn." I expressed this opinion and Major Furuki said that he would ask Admiral Masuda and told me later that the Admiral had said to burn them.

98. Q. You stated you saw some judgment papers in the case of Helsen and Mejkano. Do you know if there was a trial conducted in this case?

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

The accused withdrew the question.

99. Q. Do you know if a trial was held in the case of Helsen and Mejkano?

A. I am under the understanding that a special trial was held in this case.

100. Q. Do you know what procedure there was, a special procedure in this case?

A. By this special procedure, Admiral Masuda was the head of the court, Shintone and Inoue acted as judges, Furuki as the judge advocate, passed on the investigation of the investigator. Furuki expressed his opinion as a prosecutor and this was the special procedure as I understood it to be.

101. Q. How do you know that a special procedure was taken?

A. By the judgment papers that I took care of and I knew from this. Once when I went to receive the signature of Admiral Masuda on a document, I saw Admiral Masuda, Major Furuki, Shintone and Inoue and the four of them judged on the natives on the basis of the investigation and I am under the understanding that the above procedure was taken.

102. Q. Do you remember where it was that they were assembled as to the above?

A. In Rear Admiral Masuda's office.

103. Q. Do you remember when you went into the room whether the natives you reported as having committed the crime were present in the room?

A. There was no one when I went there other to Admiral Masuda, Major Furuki, Lieutenant Commander Shintone and Captain Inoue.

104. Q. Do you know if such a trial made up as this one was conducted in the case of Helsen and Mejkano?

A. In the case of Helsen and Mejkano, a trial such as this one was not held.

The witness was duly warned.

The commission then, at 4:30 p. m., adjourned until 9:00 a. m., tomorrow, Saturday, March 23, 1947.

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James P. Kenney Lt. USN

THIRTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, March 22, 1947.

The commission met at 9:03 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon M. Guymon, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buorn Heine, official native observer from the Marshall Islands,
Mark Juda, official native observer from the Marshall Islands,
Lajore, official native observer from the Marshall Islands.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Horikawa, Shigeru, the witness under examination when the adjournment was
taken on March 21, 1947, entered. He was warned that the oath previously
taken was still binding, and continued his testimony.

(Examination continued.)

105. Q. Do you know if there were any other natives who were given the
sentence of death other than Kajkane and Malein?

A. I do.

106. Q. Please state what you know.

A. There was the case of Mandala and Laperia of Jaluit Island, who were
sentenced because of attempted murder and desertion and there was also the
case of Imrodj Island and Medjai because of attempted murder and desertion.

107. Q. Do you know if a trial was held for these natives?

A. I do.

108. Q. Do you know what procedure that trial was conducted under?

This question was objected to by the judge advocate on the ground that
the witness has not testified that there was a trial. This question was
further objected to on the ground that it was a leading question. *JK*

The accused withdrew the question.

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109. Q. Please state what you know.

A. The same trial was held as in the case of Malein and Nejkane.

110. Q. How do you know what you have just stated?

A. Because I was in custody of all documents and I know by seeing the judgment papers.

111. Q. Do you know if Admiral Masuda ever went to where the natives were confined?

A. I do. Admiral Masuda went where the natives were confined.

112. Q. How do you know this?

A. At a time when I went to Admiral Masuda's on another errand he was not in his room and I asked the messenger at headquarters where he had gone. I was told he had gone to the second ammunition dump or the base transmitting station. This occurred two or three times. Natives were held at those places at that time. He had no other duties other than this and I understood it as he having gone to see the natives.

The judge advocate moved to strike the answers of the last two questions on the ground that they were hearsay.

The accused made no reply.

The commission announced that the objection was sustained and directed that the answers to the two previous questions be stricken out.

113. Q. On what islands were the trials of these natives held?

A. On Ruidj Island.

The judge advocate moved to strike out this question and answer on the ground that it was leading since there had been no testimony that trials were held for the natives.

The commission announced that the objection was sustained and directed that the question and answer be stricken.

114. Q. Do you know who had the authority to try the criminal cases which occurred on Jaluit in normal times?

A. I do. Cases other to violation of the military criminal code was by court martial, others were handled by courts of the South Seas Government which was directly under the South Seas Governor.

115. Q. Were there courts on Jaluit at that time, any South Seas Government courts on Jaluit?

A. There were none on Jaluit.

116. Q. Was transportation possible from May to August 1945 between Jaluit and the other islands?

A. It was not possible at this time.

117. Q. How was it concerning the wireless communications?

A. The 62nd Naval Guard Unit had one receiving and transmitting station. Due to the long isolation great difficulty was encountered in power and in the use of code books because the code could be broken.

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James P. Kervoy *20.03h*

118. Q. Do you know if Admiral Masuda had the authority to try criminal cases at the time these native incidents occurred?

A. I understood that he did.

119. Q. Do you know if Admiral Masuda made a declaration of martial law on Jaluit?

A. I do not know of martial law being declared, but the system under which the military and civilians were was like that of martial law. We were under the understanding that there was no need to declare martial law.

120. Q. Is Admiral Masuda now living?

A. Admiral Masuda died on, I think it was the fifth of October 1945.

121. Q. Has Admiral Masuda ever talked to you about the native incidents which occurred from May to August 1945?

This question was objected to by the judge advocate on the ground that it called for hearsay.

The accused made no reply.

The commission announced that the objection was not sustained.

A. Admiral Masuda after the end of the war had a conference with the commanding officer of a destroyer, Lieutenant Commander McKinson, "the execution of the natives on Jaluit was done by my authority and by my responsibility under the best possible means and it is nothing to be ashamed of". I heard him relate this to Lieutenant Commander McKinson.

122. Q. Do you know if Lieutenant Commander McKinson ever made inspections of Enidj or other islands?

A. I have seen Lieutenant Commander McKinson inspecting on Enidj. I have heard that he went to other islands, but I did not see him.

123. Q. Do you know if Lieutenant Commander McKinson after he inspected Enidj expressed his opinion?

This question was objected to by the judge advocate on the ground that it called for hearsay, and that the hearsay in turn would be opinion evidence.

The accused replied.

The commission announced that the objection was sustained.

124. Q. State what you know of Major Furuki's attitude toward the natives on Jaluit.

This question was objected to by the judge advocate on the grounds that it called for the opinion of the witness, also that it called for hearsay and that it was irrelevant and immaterial.

The accused withdrew the question.

125. Q. State what you know of the attitude of Major Furuki toward the natives.

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James P. Keamy Lt. USN

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial and that it called for the opinion of the witness.

The accused withdrew the question.

126. Q. State what you know about how Major Furuki handled the natives.

A. In March, 1945, at a conference of the district commanding officers at the Jaluit Defense Garrison, Major Furuki addressed all the commanders saying: "Have compassion and love for the natives. Do not try to subjugate them through fear and force. You district commanding officers who directly command them, treat them with parental love." This meaning I have been told by Major Furuki many times since I was appointed intelligence officer in September, 1944. Once when I went with Major Furuki on an inspection of an outlying island he heard of a gunzoku who had tried to use force and frighten the natives. He immediately had him transferred to another island. Another incident was on Odere Island at which place Major Furuki and myself were to eat at the same place. Food was placed before him. When he found that the food was in excess of the one coconut and some coconut toddy, the food of the men and natives, he would not eat it. He said that he could not eat it and had it taken away and I heard him tell the person in charge of the food to take it away. If he heard that there were any native patients he would go visit them. At times when a doctor was dispatched to other islands, if it was a native patient he would order the doctor to stop by and see the patient. The policy concerning welfare and the well being of the natives was mostly established through the advice of Major Furuki which came from his love and compassion of the natives to Admiral Masuda.

127. Q. Previously you testified that in the case of Melein and Wejkane you heard that Major Furuki had executed them. From whom did you hear this?
A. I heard this from Major Furuki.

128. Q. What did Major Furuki say on this occasion?

A. "I executed the natives, but this was done by the supreme judgment of Admiral Masuda and the decision made and by the order of Masuda I have no reason to be ashamed of what I have done."

129. Q. Major Furuki is charged with maliciously, wilfully and with premeditation murdering the natives. In relation to this, you who were in close contact with him should know. Please state what was established as to Major Furuki's character by everybody's opinion at that time.

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness as to the issues involved in this trial and invaded the province of the commission.

The accused withdrew the question.

The commission then, at 10:30 a. m., took a recess until 10:50 a. m., at which time it reconvened.

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All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken by him was still binding, and continued his testimony.

(Examination continued.)

130. Q. You who were in close contact with Major Furuki, concerning "malice", state what you know concerning his general reputation about this.
A. Major Furuki's character was one of conscientiousness, righteousness and compassion. Ever since July 1944 when the Jaluit Defense Garrison had to support itself Major Furuki strove greatly in helping Admiral Masuda who was sick. All of the two thousand men of Jaluit all know of his great efforts. Again he visited all of his men who were sick. To see him standing before a grave of one of his men and offering prayers was comparable with a picture of a saint on Jaluit. His men who had been wounded in battle and who were to be returned home, he gave them parts of his clothing out of the little that he had to see that they had clothing presentable enough to return home. In expressing his feeling at the times the natives were executed was a feeling of that of an executioner by profession who was about to execute a prisoner with a sentence of death. On all matters on Jaluit he was righteous with compassion and he was generally conscientious.

The judge advocate moved to strike out this answer on the ground that it was not responsive to the question.

The accused replied.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission announced that the objection of the judge advocate was sustained and directed that the answer be stricken.

The witness was warned.

The commission then, at 11:30 a.m., adjourned until Monday, March 24, 1947, at 9 a.m.

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James P. Kenny Lt. USN

FOURTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, March 24, 1947.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Vernon M. Guymon, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, United States Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buorn Heine, official native observer from the Marshall Islands,
Mark Juda, official native observer from the Marshall Islands,
Lajore, official native observer from the Marshall Islands,
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under examination when the adjournment
was taken, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Examination continued.)

131. Q. There are some points in the witness's testimony concerning trial
in the Melein and Mejkane incident and I shall ask you about these. There
are some unclear points in the case of Melein and Mejkane. Was there a
trial in the case of Melein and Mejkane? I would like you to answer this
clearly.

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

The accused replied.

The court was cleared. The court was opened. All parties to the trial
entered, and the commission announced that the objection was not sustained. *PR*

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The question was repeated.

A. There was a trial.

132. Q. Was there the same trial in the cases of Leschr, Kohri, Kozina, Arden, Makui, Tiagrik, Chuta, Chomohle, Mandala, Laperis and the one unknown?

A. There was a trial in these cases.

133. Q. Do you mean the same trial as the one for Melein and Mejkane?

A. Yes.

134. Q. Did Major Furuki ever go to investigate the natives after the investigation report was submitted?

A. Major Furuki conducted an investigation on the natives.

135. Q. You were asked whether martial law was proclaimed or not. You stated that a similar sort of formality was enacted. What were its conditions?

This question was objected to by the judge advocate on the ground that it was not clear.

The accused replied.

The ^ccommission announced that the objection of the judge advocate was sustained, and directed that the question be reframed. OK

136. Q. In answer to the question whether martial law was proclaimed or not, you answered, as I understand it, the witness answered: "Martial law was not proclaimed, but similar system was put in force". By similar system being put in force, this is not clear. I am asking what that system was.

A. By this system, all people and materials in the atoll came under the command of Rear Admiral Masuda. He had all of the authority concerning administrative and judicial authority concerning these.

137. Q. From what source did he acquire these authorities?

A. I understand this authority was acquired by an order from the Commander in Chief of the Fourth Fleet in March, 1944.

138. Q. Do you know what Major Furuki's general reputation was on Jaluit?

A. Major Furuki's general reputation was one that he was compassionate, kind, he was loyal to his duties, he was respected, responsible and reliable.

Cross-examined by the judge advocate:

139. Q. Last week you testified concerning certain things that Rear Admiral Masuda was alleged to have said or done. When you testified last week, did you know that Admiral Masuda was already dead?

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

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

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A. I knew that he was dead.

140. Q. Then you knew that he could not contradict the things you said?
A. This native incident which is being tried occurred on Jaluit, and it was ordered, I understood, at that time from the documents and judgment papers.

The commission stated that the answer was not clear, and directed the witness to answer this question.

141. Q. Since you knew that Admiral Masuda was not alive, you knew that he could not contradict the things you said that he had told you or had done. Is that correct?

A. Even if Admiral Masuda was deceased or even if he was alive, I am absolutely convinced that he would not contradict what I have said.

The commission stated that the witness had been evasive in answering this question, and cautioned him to answer directly, under penalty of being held in contempt of court.

A. (Continued.) Even if Admiral Masuda was alive, I am absolutely.....

At this point the answer was interrupted by the commission and the witness was directed to answer "yes or no" or be held in contempt of court.

A. I don't know.

142. Q. How long have you known the accused, Major Furuki?

A. The first time I met Major Furuki was in January 1944. I have known him up to the present.

143. Q. Are you friendly toward him?

A. As he was my direct superior on Jaluit, we may have been comparably close.

144. Q. You consider him a friend of yours?

A. Previously, he was my superior officer. At present I consider him as the same as a friend.

145. Q. Now the following is a simple question. I want you to think about it and then I want you to answer yes or no. Do you understand?

A. I understand.

146. Q. Would you tell a lie to save your friends life?

This line of questioning was objected to by the accused on the ground that it was improper for the judge advocate to direct the witness to answer.

The judge advocate replied.

The commission announced that the objection of the accused was sustained.

The commission announced that should it be necessary for the witness to be directed to answer a question yes or no, that such permission be requested of the commission.

The commission then, at 10:18 a.m., took a recess until 10:45 a.m., at which time it reconvened.

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Presents: All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under examination when the recess was taken, entered and continued his testimony.

(Cross-examination continued.)

147. Q. Did you attend a conference in October 1945 at which Admiral Masuda, Major Furuki, First Lieutenant Kadota, Lieutenant Sakuda, yourself, Lieutenant Commander Shintome and Captain Inoue were present, and at which the executions on Jaluit were discussed?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. October of 1945 was right after the end of the war, and there were many conferences and I do not definitely know whether I attended this one.

148. Q. Did you attend any conferences with regard to executions, there on the island?

A. I have.

149. Q. At this conference, was it agreed between the officers that they would lie to the American officers concerning the executions held on Jaluit?

This question was objected to by the accused on the ground that it called for the opinion of the witness and a hearsay answer.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know that such a thing was agreed to.

150. Q. You have been asked many questions while you were on the witness stand. Are you sure that you have been telling the truth in all the answers you gave?

A. Yes.

151. Q. Is every answer that you gave this commission just as true as every other answer?

A. There is no difference. They are the truth.

152. Q. Were all the answers that you gave based on the same kind of careful personal knowledge of things you yourself saw and you yourself heard?

A. I am testifying according to what I saw, what I heard, and what I was ordered.

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James R. Kennedy Lt. USN

153. Q. Now, you stated that you knew that Admiral Masuda went to see the natives, then, when you were asked how you knew he had gone to see the natives, you said that you went to his office and someone there told you that he had gone to see them. Is that correct?

A. This is correct. I heard this from an orderly who was nearby Admiral Masuda's office.

154. Q. But you did not actually see Admiral Masuda with the natives, did you?

A. I did not see the Admiral talk with the natives.

155. Q. Now, with regard to other things that you testified to. Have you relied similarly on the statements of other people?

A. In other testimony, I am convinced that I did not.

156. Q. You testified that one part of your testimony is just as reliable as any other part. Have you decided to change your mind with regard to that answer?

A. I did not change it. I testified to what I saw, what I heard, and what I was ordered. This comes under what I had heard.

157. Q. There were many things that you testified that you knew. When you said you knew these things were you relying on the type of evidence that you rely on when you stated that you knew that Admiral Masuda had gone to see the natives?

A. If I remember, there was no other testimony that I answered for this reason.

158. Q. Have you told the full truth in your testimony before this commission?

A. Yes.

159. Q. Did you tell the full truth when you were asked questions concerning these incidents by American officers who were investigating these cases?

A. Yes.

160. Q. Saturday, you testified about something you believed Admiral Masuda had done in connection with the natives and you used the phrase "because he had no other duties". What do you mean by the phrase "because he had no other duties"?

A. I cannot grasp the meaning of this question.

The judge advocate withdrew the question.

161. Q. Saturday, you used the phrase "because he had no other duties" in connection with Admiral Masuda. Do you mean then, that Admiral Masuda had no other duties in connection with the natives?

A. I cannot remember where I used this in connection with Admiral Masuda and I would like this explained so I can answer.

162. Q. You were asked the question concerning the time when you stated: "Admiral Masuda had gone to the Second Ammunition Dump or the Base Transmitting Station. This occurred two or three times. Natives were held at these places at that time. He had no other duties other than this and I understood it as he having gone to see the natives."

A. What I mean by that is at that time the Base Transmitting Station and the Second Ammunition Dump had practically been destroyed. There was nothing in them but a few miscellaneous articles and what I mean is not that he had no other duties, but that he had no other duties in which to go to the bases and ammunition dumps.

The accused stated that the question and answer referred to had been objected to by the judge advocate and sustained by the commission on direct examination and therefore should not be the subject of cross-examination.

The judge advocate withdrew the question and moved that the answer be stricken.

The commission directed that the answer to the above question be stricken.

163. Q. You testified that Admiral Masuda was sick ever since July 1944 and that Major Furuki took over many of his duties. Is that correct?

A. Yes.

164. Q. What duties did Admiral Masuda retain?

A. Admiral Masuda did all the duties of the Defense Garrison Commanding Officer, but as he was sick and could not do them well, Major Furuki helped him in all of them.

165. Q. What was the nature of Admiral Masuda's illness?

A. I do not know the name of the illness, but it was an internal sickness in which he had to lie down many times.

166. Q. When Admiral Masuda ordered Major Furuki to exercise these duties, did he give him the right to exercise his judgment and authority in carrying out these delegated orders?

A. When he is given an independent duty, he is given the authority to execute it.

167. Q. Was Major Furuki in charge of the defense section?

A. Yes.

168. Q. Did Major Furuki have independent duties in connection with this defense section?

A. Major Furuki was under Admiral Masuda as head of the Defense Section, but he was given the authority to execute the duties of the defense section.

169. Q. Do you know if Admiral Masuda was pleased with the way Major Furuki carried out his duties?

A. The way he talked, it looked as if he was pleased.

170. Q. Did he put more and more duties and responsibilities on the shoulders of Major Furuki?

A. The duties of Major Furuki increased more and more.

171. Q. How many navy personnel were there on Jaluit in May, 1945, officers and enlisted men?

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

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James A. Kenny Lt. USN

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The total number of navy personnel was about six hundred, of which as I recollect, about thirty were officers.

172. Q. What was the total army personnel, officers and enlisted men, who were in Jaluit in May, 1945?

A. The total number was about nine hundred, of which, if I recollect, twenty-five were officers.

173. Q. Then there were more army personnel on Jaluit than there were navy personnel?

A. Yes. This six hundred was the total amount of men in the Sixty-second Naval Guard Unit and all the other military and Gunzokus other to the army were navy, so that it makes the total of navy personnel greater than that of the army. The total number of six hundred was of the Sixty-second Naval Guard Unit, and all other military and Gunzokus on the island were navy personnel.

The judge advocate moved to strike out that part of the answer commencing with the words "this six hundred" on the ground that it was irrelevant.

The accused made no reply.

The commission directed that the words be stricken out.

174. Q. As I understand your description of the relationship between the army and navy at Jaluit, Furuki was junior in rank to Rear Admiral Masuda, and therefore, Admiral Masuda set the ultimate authority for the conduct of military matters in Jaluit. Is that correct?

A. Yes.

The commission then, at 11:28 a. m., took a recess until 2:05 p. m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Horikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Cross-examination continued.)

175. Q. Did the Second Battalion cease to exist as an Army unit after you came to Jaluit or was it still part of the South Seas Detachment of the Army?

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James D. Conroy Lt. JST

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A. It continued as the Second Battalion of the First South Seas Detachment.

176. Q. Did Major Furuki continue to have the duties of commanding his officers and men in their regular Army duties?

A. Yes.

177. Q. Now, I understand that on Jaluit for certain purposes there were new units set up consisting of both army and navy personnel. Is that correct?

A. Yes.

178. Q. One of these functional organizations set up was the Jaluit Defense Section. Is that correct?

A. The Defense Section was organized a year after the Jaluit Defense Garrison was established as a functional part of its headquarters.

179. Q. Who were the officers who served under this Defense Section?

A. The head of the section was Major Furuki and its members were Lieutenant Sakuda, First Lieutenant Ieki, First Lieutenant Kadota and myself.

180. Q. What were the duties of this Jaluit Defense Section?

A. The duties of the Defense Section was gathering intelligence concerning the main base of Enidj and the outlying islands and the condition of these islands against the kidnapping tactics.

181. Q. Was the control of the natives an important function of this Defense Section?

A. The most important work of the Defense Section was to control the natives so that they would not be kidnapped, the controlling and the use of their labor was not included in the Defense Section.

182. Q. As head of the Defense Section it was primarily the responsibility of Major Furuki to prevent the kidnapping of these natives. Is that correct?

A. It is the responsibility of the head of the Defense Section.

183. Q. Was Major Furuki the senior ranking Army officer on Jaluit?

A. Yes.

184. Q. With the exception of Admiral Masuda did he not outrank every other officer in the Navy as well?

A. Yes.

185. Q. When were you made an intelligence officer with the Japanese Army?

A. I was not ordered as an intelligence officer by the Japanese Army, but by the officer in charge of intelligence, Admiral Masuda, for the Defense Garrison in the first of September, 1944.

186. Q. Then you served from September of 1944 for the Army and Navy and other purposes under Admiral Masuda. Is that correct?

A. Yes.

187. Q. In connection with your duties as intelligence officer, were you required to know anything about Army and Navy law?

A. It was not necessary.

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James P. Kenny Lt. USN

188. Q. You testified last week that you believed that Admiral Masuda had the authority to order a trial for the natives. Was this belief based on your knowledge of Army and Navy law?

A. This I judged from what I was taught of Court Martial Law in the Army Reserve Officers School.

189. Q. Do you know if Army and the Navy court martial law is the same?

A. I have never compared it, but I understand that it is almost the same.

190. Q. Do you understand that the Army and the Navy Criminal Codes are almost the same too?

A. I have looked through the Navy Criminal Code and the Army Criminal Code and the contents are just about the same.

191. Q. On Jaluit if an Army person violated the law, would he be subject to the Army Criminal Code or the Navy Criminal Code?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I am not in a position to judge this and I do not know.

192. Q. If a member of the Army committed a crime, would it be necessary for him to be tried before a court martial before being punished with life imprisonment?

A. It is necessary.

193. Q. Does the Army court martial law provide for an appeal for the decision of a court martial?

A. As I remember there are some cases which can be and some which can not be.

194. Q. You testified that in March 1944 you saw an order of the commanding officer of the Fourth Fleet and it said: "The senior commander of the island should take charge of all units and government offices on the island". Is that correct?

A. Yes.

195. Q. Do you remember anything else this order contained?

A. I don't remember.

196. Q. Are you sure that this is all this order contained?

A. I remember it as stated.

197. Q. When did you last see that order?

A. Right after the dispatch had arrived in March 1944.

198. Q. Did you see the dispatch from the South Seas Governor to the Civil Officer in Charge of the Jaluit Branch of the South Seas Government?

A. I have seen it.

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James P. Kenny Lt. JG

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199. Q. You stated that this dispatch from the South Seas Governor said: "I have you under my authority and I have come under the command of the Commander-in-Chief of the Pacific Fleet. All government officials therefor shall come under the command of the commanding officer of that place". Do you remember anything else that this dispatch contained?
A. As I recollect there was nothing else.

200. Q. When did you last see this dispatch?
A. I saw this when it arrived in March 1944.

201. Q. Did you see any other dispatches either to Admiral Masuda, or to the Branch Governor from either the Navy or any other government office which concerned this subject of Admiral Masuda's authority - and which changed or modified it in any way?
A. No.

202. Q. Then with regard to the natives are you telling this commission that these dispatches gave Admiral Masuda the same power over the natives that the Branch Governor formerly possessed?
A. As I understood it all the powers of the Branch Office of Jaluit were given to Admiral Masuda.

203. Q. Since you have never seen any other document that changed or modified the power to Admiral Masuda but these dispatches, is it not true that the power given to Admiral Masuda was limited to the same power as given the Branch Government?
OK
OK

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission was cleared. The commission was opened. All parties to the trial entered.

The commission announced that the objection was sustained.

204. Q. After receipt of these dispatches you testified that Admiral Masuda held a meeting at which he stated that he had absolute power over the material and people on the island. Is that correct?
A. I am convinced that this is correct and it was relayed to us by Major Furuki.

205. Q. Then you did not personally attend this meeting, did you?
A. I was not present at this conference.

206. Q. And what you testified that Admiral Masuda said was not something you heard from Admiral Masuda, but something you heard from Major Furuki. Is that correct?
A. I testified on what Admiral Masuda ordered and what was relayed to us by Major Furuki.

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207. Q. Did you hear Admiral Masuda say it or didn't you?
A. I did not hear directly what Admiral Masuda said.

208. Q. This morning you were asked concerning your statement about Admiral Masuda going to the Transmitting Station and when you were confronted with the fact that this was based on hearsay and not on knowledge you stated this was the only incident you remember you testified of knowledge you received from someone else. Is that correct?
A. This is included. What I based my testimony on is what I saw, what I heard and what I was ordered. I said this was ordered by Admiral Masuda and relayed by Major Furuki.

209. Q. And this is the same kind of information on which you based the other statements you have made and which you have said are true. Is that correct?
A. All my other testimony is true from what I saw, what I directly heard and what I was ordered as I have just stated.

210. Q. You have just stated that Major Furuki told you that Admiral Masuda held this meeting at which he said that he, Admiral Masuda, had absolute authority over all people and material on the island as the senior commanding officer of the Navy. Did not Admiral Masuda already have this same power over the members of the Naval Forces?
A. Before this order was put out Admiral Masuda only had the authority merely as an ordinary commanding officer of the 62nd Naval Guard Unit.

211. Q. In what way were Admiral Masuda's powers over the Navy and Navy personnel increased by this order?
A. Before this Admiral Masuda could only command the 62nd Naval Guard Unit, and after this was put out he became in command of the 902nd Air Squadron, the 6th Naval Communication Corps, the 6th Construction Corps, the 118th Naval Construction Battalion, the 6th Meteorological Corps and the Southeast Naval Air Arsenal and others.

212. Q. With regard to the 62nd Naval Guard Unit did this order increase Admiral Masuda's power over them or was his power the same as before?
A. Previous to this order he was just an ordinary unit commanding officer, and after this he came to possess administrative and judicial authority.

213. Q. Prior to the issuance of this order was Admiral Masuda still a Rear Admiral?
A. Before this order was put out he was a Captain.

214. Q. Who promoted him to Rear Admiral?
A. I understood it was the Japanese Government.

215. Q. Did you see any dispatch promoting him?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I saw the dispatch promoting him.

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James P. Kenny Lt. USN

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216. Q. Did this dispatch specifically increase in any way the powers of Captain Masuda over his former powers?

A. No.

217. Q. Approximately what was the date of this dispatch?

A. I do not remember the exact date, but as I remember it was in May of 1944.

218. Q. Who was the Atoll Commander before May 1944?

A. Captain Masuda.

219. Q. Was the Atoll Commander the senior ranking Naval officer on Jaluit?

A. No. On Jaluit if there was an Army officer senior to him it would be that officer.

220. Q. Were there any Navy officers senior to him?

A. No.

221. Q. Then was he the senior naval officer on Jaluit?

A. Admiral Masuda was the senior commanding officer on Jaluit.

222. Q. Was he in charge of the naval activities on Jaluit?

A. In March 1944 when he was given this authority he became not only the commander of the 62nd Naval Garrison, but also over all other naval units on Jaluit.

223. Q. I am asking ^{you} with regard to the naval forces and I will repeat my former question. In what way, if any, were Admiral Masuda's powers increased at that time?

OK
OK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There is no change in his power over the 62nd Naval Guard Unit by that order.

224. Q. When you stated that Major Furuki said that Admiral Masuda had absolute authority over all people did you mean that he had absolute authority over the Army, the Navy and civilians?

A. Yes.

225. Q. As to members of the naval forces, was the power of Admiral Masuda absolute or was it subject to certain legal limitations?

A. I would like to have the words "naval forces" explained. Do you mean the 62nd Naval Garrison or all the other naval units other than the 62nd Naval Garrison or do you mean the 62nd Naval Garrison and the other naval units combined?

226. Q. The witness testified that Admiral Masuda had absolute authority over all people. By the words "all people" does he mean to include the army, navy, civilians and natives?

OK

A. Yes.

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James P. Kenny Lt. OSN

227. Q. As to the members of all the naval forces was the power of Admiral Masuda absolute; was it absolute or was it subject to certain legal limitations?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Admiral Masuda did, but under the restriction of a commanding officer of a besieged area in administrative and judicial affairs because I understood that he was given the authority as a commanding officer of a besieged area by that dispatch.

228. Q. Then with regard to naval personnel the Admiral was required to obey appropriate naval law. Is that correct?

A. All the orders to naval personnel; by personnel do you mean all naval people?

229. Q. All naval people.

A. I understood that the Admiral should apply naval law to them.

230. Q. Are you familiar with naval law?

A. Of the many naval laws the only ones I have seen is the naval criminal code. OK

231. Q. Do you know of any naval law which says that the powers of Admiral Masuda with regard to the natives should not be subject to certain legal limitations?

A. No.

232. Q. Do you know of any provisions of the naval criminal code which would empower Admiral Masuda to order the execution of a member of the armed forces without a trial? OK

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember it, there is not.

The commission then, at 3:30 p. m., took a recess until 3:50 p. m., at which time it reconvened.

Presents: All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present. OK

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Morikawa, Shigeru, the witness under cross-examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

233. Q. On direct examination you testified that the natives were inducted into the Jaluit Defense Unit. By induction do you mean that they became members of the military forces of the Jaluit Defense Garrison?

A. They were not drafted into the service as regular military, but by the order of Admiral Masuda organized into a labor party of the Defense Garrison.

234. Q. Were all of the natives organized?

A. All natives including women and children.

235. Q. Were children of two years of age also organized?

A. People who were sick and children who are about two years old, but they are not included in the working party, but a certain period after they get well they would do that work.

236. Q. You stated that for five months after the natives were inducted they did not have any duties. Is that correct?

A. Yes.

237. Q. During these five months did the natives receive any special training?

A. I do not know of any special training being given.

238. Q. Is it usual to induct people into service and then to give them no duties for five months after they have been inducted?

This question was objected to by the accused on the ground that it was irrelevant and called for the opinion of the witness.

The judge advocate withdrew the question.

239. Q. In your experiences in the armed forces of Japan have you known of any previous inductions where personnel were inducted and did not have any duties for five months?

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

The judge advocate replied.

The commission announced that the objection was sustained.

240. Q. Were these natives permitted to decide whether or not they wanted to become members of the Jaluit Defense Garrison?

A. I think they had no opportunity.

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James P. Kenny Lt. USN

241. Q. Were the natives paid for the work they did in these organized work parties?

A. I do not know what sort of a contract there was between the unit and the natives.

242. Q. You were asked concerning whether the natives became members of the Defense Garrison voluntarily and you stated that so far as you know they did not have any choice. Now, in response to a second question you were given you just used the word "contract." Do you know of any contract between the natives and the armed forces?

A. As I have stated before I do not know whether there was a contract between the natives and the unit or whether there was a contract in which payment was promised or not promised. I do not know.

243. Q. Do you know how much each adult native was required to do?

A. Most of the natives were engaged in gathering coconut toddy and the requirement was that when this could be gathered to gather five sho a day.

(Interpreter's note: one sho is 1.8 liters; therefore, each native was required to gather nine liters of coconut toddy per day.)

244. Q. You testified about a speech in which the natives were told that if they worked hard and cooperated with the Japanese their lives and property would be secured, but if they did not they would be severely punished. Is that true?

A. Yes.

245. Q. On direct examination you stated that the natives were kidnaped by force and plotting. Is it true that you so testified?

A. Yes.

246. Q. During the battle of Oca you stated that eighty natives were kidnaped. Where were you at that time?

A. I was on Oca Island.

247. Q. From what part of the island were the natives kidnaped?

A. The natives of the southeastern part of Oca Island were kidnaped from the island next to Oca Island.

This question and answer were objected to by the accused on the ground that they were irrelevant and immaterial and it was moved that they be stricken. JPK

The judge advocate replied.

The commission announced that the objection was not sustained.

248. Q. Were the Japanese armed personnel between the natives and the American forces or were they behind the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The natives were placed in an air raid shelter and the Japanese were between the natives and the American forces.

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James P. Kenny Lt. USN

249. Q. Were any of the Japanese personnel captured by the Americans in that raid?

A. There were no Japanese personnel kidnapped.

250. Q. Did the Japanese armed forces retreat and leave the natives in this shelter from which they were kidnapped?

A. On the 9th of May before the American forces came some natives sneaked in to Menge Island and there told the missionaries or a priest, a Christian priest, that the American forces were coming and there was among the natives of Menge Island one named Tole who came to Oca Island and told the natives the Americans were coming. The natives knew before hand that the Americans were coming so the eighty who were kidnapped had already moved to a deserted island next door. When the Japanese forces gathered them to place them in the air raid shelter the eighty had already gone to that island.

251. Q. Then these natives were not kidnapped by the Americans, but voluntarily went with the American forces. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They did not go on their own wishes.

252. Q. Did the American forces capture them?

A. They did not capture them and make them prisoners, but the Americans plotted so that they did do so.

253. Q. Did the natives come to this point voluntarily?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Where do you mean by "this point"?

254. Q. The point you just referred to in your previous answer.

A. In my previous answer I did not say that they were brought to this point by plotting.

255. Q. I repeat the question: "Did the natives come to this point voluntarily?"

A. By propaganda their will to go to the place where they were kidnapped was influenced.

The commission cautioned the witness to be more responsive to questions.

A. (Continued.) At a time when they were not allowed to leave their own island that they should go to another island with intent to escape was not all on their own, but moved by American propaganda to do this and therefore as I understand it, it was not completely of their own will that they went there.

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James R. Kenny *U.S.N.*

256. Q. The word "kidnaped" in English means "to take by force." Do you still wish to leave your testimony that these natives were kidnaped by the American forces?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I am not using the word "kidnaped," I am using the Japanese word "Ratchi" and whether it can be used this way or not, I do not know.

257. Q. Do you wish to continue unchanged your previous testimony that the natives were kidnaped and by the word "kidnaped" I mean "taken by force"?

A. I do not care whether the word "kidnaped" is used or not, but I am using the word "Ratchi." In Japanese the word "Ratchi" includes "carried away by force and by plotting." In Japanese the word "Ratchi" means "taking by force or by plotting." If there is an English word that includes both of these meanings I would like to use it.

(Interpreter's note: "Ratchi" means "kidnap, take captive (prisoner), take hold, capture.)

The commission announced that it felt the witness was being evasive and directed that he be more responsive in his answers.

258. Q. Do you wish to continue unchanged your previous testimony that the natives were kidnaped and by the word "kidnaped" I mean "taken by force"?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I would like to leave my previous testimony unchanged.

The witness was duly warned.

The commission then, at 4:45 p.m., adjourned until tomorrow, Tuesday, March 25, 1947, at 9 a.m.

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James A. Kennedy U.S.N.

FIFTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, March 25, 1947.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Charles E. Ingalls, junior, U. S. Navy,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates,
Bueno Heine, official native observer from the Marshall Islands,
Mark Jude, official native observer from the Marshall Islands,
Lajore, official native observer from the Marshall Islands,
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

The record of proceedings of the fourteenth day of the trial was read,
and objected to by the commission since the record on page 167 now reads:
"135. Q. You were asked whether martial law was proclaimed or not. You
stated that a similar sort of formality was enacted. What were its
conditions?", whereas it should read: "135. Q. You were asked whether
martial law was proclaimed or not. You stated that a similar sort of system
was enacted. What were its conditions?"

The judge advocate was directed to correct the record so that page 167,
question 135 will read "You were asked whether martial law was proclaimed
or not. You stated that a similar sort of system was enacted. What were
its conditions?" instead of "You were asked whether martial law was pro-
claimed or not. You stated that a similar sort of formality was enacted.
What were its conditions?"

The judge advocate was directed to insert an interpreter's note on page
182 following question 297, as follows: (Interpreter's note: *hatchi*
means to kidnap, take captive (prisoner), take hold, capture), and on page
180 following question 243, as follows: (Interpreter's note: *shu* is
equivalent to 3.18 pints).

With these corrections the record was read and approved.

No witnesses not otherwise connected with the trial were present.

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James P. Kenny Lt. USN

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Marikawa, Shigeru, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

259. Q. You testified concerning certain documents which you called judgment papers concerning the natives, and you testified that they were signed by Rear Admiral Masuda, Major Furuki, Lieutenant Commander Shintone and Captain Inoue. Now, with regard to Rear Admiral Masuda's name, did this judgment sheet have his title "Commanding Officer of the Sixth-Second Garrison" written in or was just his name placed on the document?

A. As I remember it, his official title was not written.

260. Q. Was there any title of any kind next to the name of Major Furuki?

A. As I remember it, no.

261. Q. Do you know if there was a title next to the names of Lieutenant Commander Shintone or Captain Inoue?

A. I remember it was not written.

262. Q. You testified that you considered this document as evidence that a trial had been held. Is that correct?

A. I understand it is correct.

263. Q. Was it from this same document that you got your understanding that Major Furuki was a judge advocate in connection with this special procedure?

A. Yes.

264. Q. Did the words "judge advocate" appear anywhere in this document?

A. There was no word "judge advocate" on the document.

265. Q. Was there any word "judge" on the document?

A. No.

266. Q. Was there any word "court" on the document?

A. I do not remember if there was the word "court" on it.

267. Q. Do you know if the word "trial" appeared on this judgment document?

A. I do not remember if the word "trial" was there or not.

268. Q. In addition to the so called judgment document, on what other basis do you understand there was a special procedure in connection with the natives?

A. When I went to the room of Admiral Masuda, the four people who had signed the document, Admiral Masuda, Major Furuki, Lieutenant Commander Shintone, and Captain Inoue, were judging the case with this investigation report before them, and I understood that this judgment paper was a result of the judgment.

269. Q. Were any of the natives present at the time that you saw Admiral Masuda, Major Furuki, Shintone and Inoue in Admiral Masuda's room?

A. I did not see any natives.

270. Q. Did you hear Admiral Masuda and the other officers arguing while you were there?

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James P. Kavanagh Lt. USN

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This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not hear them arguing because I was there a very short time. During that time I remember that Major Furuki was reading a part of the report. JK

271. Q. Did you hear anything else that went on in that room?

A. I did not hear anything other to this.

272. Q. And when you stated that they were judging the case, all you really know is that Major Furuki was reading a part of your investigation report at that meeting. Is that correct?

A. I saw them when Major Furuki was reading the record.

273. Q. And all you know concerning that meeting is that Major Furuki was reading your investigation report. Is that correct?

A. Yes.

274. Q. You testified that you saw the judgment papers with regard to Melvin, Majkane, Obetto and Paul. You stated that the decisions with regard to all of them were on the same judgment paper. Is that correct? JK

A. It is correct.

275. Q. And you stated that with regard to Melvin and Majkane, it was the death sentence and with regard to Obetto and Paul, they were to be punished with a period of imprisonment at hard labor. Is that correct? JK

A. Yes.

276. Q. Did this paper give a full statement of the participation of the natives in the crime for which they were judged?

A. I do not know if a full account of their crime was written or not, but the specification, whether they were main or accomplices, or the law applied was written in.

277. Q. With regard to Melvin and Majkane, and Obetto and Paul, did the statement of the judgment paper concerning the facts of the crime agree with your report?

A. No.

278. Q. In what way, if any, did the statement of the participation of Obetto and Paul differ from your investigation report?

A. The contents of the report and the judgment paper are altogether different. I remember what there was in the judgment paper, it did not contain anything about the crime.

The accused stated that there was an error in the translation of the previous question.

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James P. Kennedy Jr. USN

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The witness requested that the previous question be reread.

The question was reread.

279. Q. What was the difference?

A. Previously when I answered, I misunderstood the question. I thought it was, "Was there any difference between the report and the judgment papers." I do not remember what was in the specification, but judging from my common sense, I believe what we had investigated was used.

280. Q. So far as you remember, did the facts as reported in the judgment paper, agree with the facts as you reported them in your own investigation report?

A. As I remember it, they agreed.

281. Q. With regard to Obetto and Paul, who were sentenced to a period of hard labor, did the judgment paper indicate that they should be punished because they helped Halcin and Hajkane with their plot? OK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This point I do not remember clearly.

282. Q. In your investigation report, did you report that Obetto and Paul were accomplices of Halcin and Hajkane?

A. In the investigation report was placed just what the natives had related and nothing whether they were main accomplices or just accomplices, or what crimes they had committed was not written. I did not report that they were accomplices. OK

283. Q. What did you report concerning Obetto and Paul?

A. Concerning Obetto I reported, I forget the name, but a native on Hajilris (Elizabeth) Island was told the contents of Halcin's letter. That he wrote a letter addressed to Halcin, the contents of the letter which are as follows: "We will not run away to American ships." I reported this fact. Concerning Paul, he received the letter from Halcin and through Hajkane on Henge Island. He read half way through the letter and threw it away. He then warned Hajkane that on the islands further down from Henge there were many Japanese soldiers and told her to return to Pingelap quickly.

284. Q. Did you report anything else in connection with Obetto or in connection with Bela (Paul)?

A. As I recall it, I do not think I reported anything else.

285. Q. Did you question Obetto or Paul?

A. As I recollect, I did not directly interrogate Paul and Obetto.

286. Q. Do you know whether Kadota or Ichi questioned Obetto or Paul?

A. I remember they did.

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James P. Kerry Jr. *JK*

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287. Q. Did you write the only report on this incident?

A. I did not write this report. Kadota, who was the main investigator, wrote up the report. We checked it and signed and we submitted it with our three names.

288. Q. Was there any other report submitted that you know of concerning Helain and Majhane? JK

A. I do not know of any other report being submitted.

289. Q. Do you know of anything else that was on this report concerning Obetto and Paul in addition to what you have told us?

A. Other to what I have said, as I recall, their personal history was written in.

290. Q. With regard to the incident, the alleged crime, was anything else written in?

A. As I remember, there was nothing else.

291. Q. Then the entire content of your report with reference to Obetto was a statement from a native woman in which you learned that Obetto had refused to join a pat. Is that correct? JK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No. Not only from the woman, but also by a statement from Obetto.

292. Q. Were you present when this statement was obtained from Obetto?

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

The commission announced that the objection was not sustained.

A. I do not remember exactly if I heard Obetto make the statement, but by the report of First Lieutenant Kadota, it was stated expressly that he had stated this.

The commission then, at 10:22 a.m. took a recess until 10:44 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Norikawa, Shigara, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

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(Cross-examination continued.)

293. Q. You stated that with regard to Obetto, the facts in your investigation report were based not only on the statement of the native woman, but also on statements by Obetto. In what way if any did Obetto's statements differ from the woman's statements?

A. As I recall it, there were no points that were different.

294. Q. Then, is it not true that both Paul and Obetto were punished even though they themselves were unwilling to participate in the escape plot by Melain and Majkane?

This question was objected to by the accused on the ground that it went beyond the scope of the direct examination and that it called for hearsay.

The judge advocate substituted the words "sentenced to be punished" in place of "punished".

This question was still objected to by the accused on the same grounds.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It is a fact that they, Paul and Obetto, were not directly participating in the plot of Melain and Majkane, but they violated the rules that were set down.....governing the detailed guarding of the outlying islands. This detail regulations were called the Manual of Guarding, which was used as such to teach the men in performing their duties. In this was written, if you saw or met any new or talked to any unknown natives and also natives from other islands, you should report this immediately to the head of the detachment there. Paul and Obetto, having met Majkane and another native, did not report this.

The judge advocate moved to strike out that part of the answer beginning with and following the words "but they violated".

The accused made no reply.

The commission announced that the motion to strike was not sustained.

295. Q. You testified concerning the special procedure that was held with reference to Melain and Majkane. Was the same special procedure held in Admiral Masuda's office in the case of Obetto and Paul?

A. It was.

296. Q. In direct examination you were asked with regard to Melain and Majkane and with regard to Mandala and Laperia, "Do you know if a trial was held for these natives", and you said, "I do", and you also stated that there was a trial. What did you mean when you stated that there was a trial of these natives?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

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The commission announced that the objection was not sustained.

A. When I said there was a trial I meant what I saw in Admiral Masuda's room in which four people, including Admiral Masuda were conferring on the report and what I perceived of their actions there and the judgment papers put out.

297. Q. Have you always considered this to be a trial?
A. I do not get what you mean by "always".

298. Q. Have you since the event occurred considered that this was a trial?
A. Yes.

299. Q. Are you sure that you have not recently decided that this constituted a trial?
A. It is not what I thought up recently.

300. Q. Then you have always considered that Melain and Majkane, Leschr, Kohri, Kosima, Arden, Makui, Tiagrik, Chomohle, Chuts, Mandala and Laperis, Obette and Paul received a trial before they were judged. Is that correct?
A. Yes. JK

301. Q. In October 1945, did you at Kwajalein Atoll, Marshall Islands, testify before a United States Naval Officer and an interpreter who were investigating war crimes and atrocities?

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

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered, and the commission announced that the objection was not sustained.

The question was repeated.

A. Up to the twenty-fifth of October 1945 I was on Majuro Island. On the twenty-sixth I was moved to Kwajalein, and for about, as I recollect, for about one month I was not interrogated. It may be a mistake for Jaluit Island. JK

302. Q. Were you questioned by a United States Naval Officer and an interpreter investigating war crimes and atrocities during the year 1945?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was interrogated on Jaluit concerning this native case.

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303. Q. Did you tell the truth when you testified before that officer?
A. Yes.

304. Q. Were you subsequently interrogated on Kwajalein Atoll, or to the best of your recollection, was your interrogation only on Jaluit?
A. Yes.

305. Q. Yes, what? Were you subsequently questioned on Kwajalein also?
A. And also on Kwajalein, which ~~my~~ have been the early part of 1946 or the later part of 1945, I was interrogated there. *JK*

306. Q. When you were interrogated, you were asked concerning the execution of the natives. Question: "Were they given a trial." Your answer: "No." Now do you explain the fact that when you testified before the officer you stated there was no trial and that now when testifying before this commission you state that there was a trial. *JK*

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. At that time when I replied I meant there was no regular trial. At present I am still thinking there was not a regular trial, but a trial by special procedure.

307. Q. You were asked whether or not you always understood the word "trial" to mean the special procedure in connection with these natives and you testified you have always understood the word "trial" to mean this special procedure in connection with these natives. Did you not so testify?
A. The statements that are being used in this question, was this a statement that I made before this commission?

308. Q. That is correct.
A. I understand. What I testified to when I said I always thought this was a trial was that it was not a regular trial, but a sort of a trial in that the only trial was a trial by special procedure.

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

The commission stated that it had warned this witness before on his evasive answers and directed him to answer the question or be held in contempt.

A. My testimony was not to that meaning.

309. Q. You were asked a question concerning whether there was a trial for these natives and you answered that you considered that what occurred in Admiral Masuda's room was a trial. You were then asked, "Have you always considered this to be a trial?" Answer: "I do not get what you mean by 'always'." Question: "Have you since the event occurred considered that this was a trial?" Answer: "Yes." Did you so testify before this commission?

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James A. Keady Jr. USN

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. That is how I answered. I mean that I understood this as a trial. What was held in Admiral Masuda's room came into the category of trial.

310. Q. Then, did you understand it to be a trial?

A. I do not understand the word "it".

311. Q. Then, did you understand these events to constitute a trial, to be a trial?

A. Yes. Not a regular trial, but I understood it as a trial by special procedure.

The witness was duly warned.

The commission then, at 11:50 a.m. took a recess until 2:07 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the accused, his counsel and the interpreters.

Robert R. Miller, yeoman first class, U. S. Navy, and Joseph Kase, junior, yeoman second class, U. S. Navy, reporters.

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under cross-examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

312. Q. In October 1945 did you believe that the natives had been judged by the special procedure in Admiral Masuda's office?

A. Yes. But not by a court as complete as this one. JRK

313. Q. In October 1945 did you believe that the natives had been judged by the special procedure in Admiral Masuda's office?

A. Yes.

314. Q. In October 1945 did you understand that this procedure was a special trial?

A. Yes.

315. Q. Does the word "trial" as you understand it in its broader meaning include special trials as well as regular trials?

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This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. At that time I understood that a trial by special procedure was included in this broad sense of the word "trial".

316. Q. When you were asked by the investigator, "Were the natives given a trial", you answered, "No.". Is that correct?

A. I replied that there was no regular trial.

317. Q. You replied "No" when you were asked if there was a trial. Are you now trying to change your statement made to that investigator?

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

The judge advocate replied.

The commission announced that the objection was sustained.

318. Q. At the original investigation before the investigating officer were you asked in connection with these natives "Were they given a trial?"

A. As I recollect I was asked this question.

319. Q. Did you answer this question with the word "No.".

A. I replied that there was not a regular trial.

320. Q. Then did you answer this question using the word "No" in your answer?

A. I do not remember if I answered in Japanese "yes" or "no", but after the word I stated that it was not a regular trial.

321. Q. Do you remember distinctly that when you testified that you told this investigator that there was not a regular trial. Is that correct?

A. I do not know.

322. Q. Did you tell this investigator that there was a special trial?

A. No.

323. Q. Why did you not tell him there was a special trial if he asked you if there was any trial?

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

The question was withdrawn.

324. Q. You stated that the investigations of Kelsin, Majkane, Obette and Paul were carried out by Lieutenant Kadota, Ieki and yourself. Is that correct?

A. Yes.

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James P. Kenney *cc. V.S. 2*

325. Q. Was Paul also known by the names of Bolu and Boru? Are they the same persons?

A. At the time of the incident we called him Boru.

326. Q. When you have answered my questions regarding Paul you mean it was the same person as Bolu and Boru. Is that correct?

A. I meant the same person.

327. Q. Prior to the preparation of this investigation report in this case did you and the other investigators question any witnesses?

A. Yes.

328. Q. When the witnesses spoke to you and told you their stories did you write down their stories at that time?

A. The witnesses that I interrogated, we always wrote it down on the spot.

329. Q. And did you later collect this information and put it all in your report? *OK*

A. As I remember all the information was gathered together and placed in the report. *JK*

330. Q. Were your original notes that you took when you questioned the witnesses given to Admiral Masuda or was he only given the final report that the three of you signed?

This question was objected to by the accused on the ground that it was beyond the scope of direct examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. As I remember it we did not show Admiral Masuda our notes.

331. Q. In questioning the witnesses did you swear the witness to tell the truth?

A. No oaths were given and as I recollect no special warning was given them.

332. Q. Did you ever threaten to punish the witnesses if they did not answer your questions?

A. As I remember it we did not tell them this.

333. Q. Did you ever threaten to punish the witnesses if they did not tell the truth to your questions?

A. No.

334. Q. In addition to Maloin and Hefkane incident, you have testified concerning the investigation of other natives. Did you know about these investigations of other natives because of your duties as intelligence officer?

A. At that time I was no longer an intelligence officer, but was a member of the Defense Section and I saw all the documents. I know of them by seeing these documents.

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James P. Kenney Lt. USN

335. Q. Did you also see the investigators reports as well as the judgment documents about these natives?

A. I did.

336. Q. Now, you have testified concerning certain of these other native incidents. Have you told the truth about these native incidents?

A. I am telling the truth.

337. Q. Have you in your testimony before this commission told the truth?

A. Yes.

338. Q. On Friday, March 21, 1947, before this commission you testified in connection with Mandala and Laperia as follows: "There was also the case of Mandala and Laperia who killed a guard and tried to escape". Were you telling the truth when you made this statement about Mandala and Laperia?

A. I am telling the truth of what I saw in the report.

The witness made the following statement:

The original translation of that is a misinterpretation of what I said, when I said it originally in Japanese I said "who tried to kill a guard and escape."

The interpreter stated that he remembered the incident on Friday, March 21, 1947, and he believed that he had misinterpreted the word "Koroshite", which is very easy to mistake in translation.

339. Q. What was the method of investigation used in the Melain and Mafkane case?

A. The method of investigation used was that all the rest of the natives were called from Pingelap, Menge, Oea and Jaluit to headquarters, all the natives were divided between the investigators and investigated. As sufficient witnesses were lacking Kadota and Ieki, the investigators, went to Pingelap and Menge and the other islands and looked for witnesses and investigated the conditions on the spot.

340. Q. Was the same method of investigation used in the investigation of all the other native cases?

A. As I did not investigate the other cases personally I do not know exactly, but I recollect that they were along the same methods.

341. Q. You stated that a confession was obtained in the case of Obetto and Paul. Is that correct?

A. I did not state confession documents, just a confession.

342. Q. Was a confession also obtained from Melain?

A. In the case of Melain as I did not investigate him I do not know, but in the report it was stated that a confession had been obtained.

343. Q. Do you know if a confession was obtained from Mafkane?

A. I do.

344. Q. Was a confession obtained?

A. It was.

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345. Q. Do you know with regard to the other natives whether confessions were obtained in all the other cases, in the cases of Mandala and Laperis, Tiagrik, Arden, Makui, Chuta, Chemohe, Leschr, Kohri and Kosina?

A. I do not know personally because I did not investigate them, but on the report it was stated that confessions had been obtained.

346. Q. When the natives were taken from their home islands to be brought to Emdj for questioning do you know if their hands were bound? JK

A. I do not know because I did not see them.

347. Q. When the natives were questioned by you were their hands bound?

A. I recollect they were bound.

348. Q. Were their feet also bound?

A. I do not remember whether their feet were bound or not.

349. Q. Were they blindfolded?

A. No. They were not blindfolded.

350. Q. In connection with the case of Melain and Mejkane, did you question or were you present when Obette was questioned?

A. I did not investigate Obette so I recollect I was not there, but I may have been there once in the long period in which he was investigated.

351. Q. Did you question Lemack or were you present when Lemack was questioned? JK

A. As I recall I was not present during his interrogation, but just before he was to leave Emdj and return to Pingalap I met Mark and I talked to him on matters not connected with the investigation.

352. Q. Did you question or were you present when the following natives were investigated: Ichiro, Saburo, Juda, Levitikas, Jordan?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I have interrogated Saburo and when Ichiro, Saburo and Mark were returning to their island I met them and talked to them on matters other to the investigation.

353. Q. Did you question any of the other natives or were you present when any of the other natives were questioned?

A. As I recall I do not think I was present while these other natives were being interrogated.

354. Q. Did you use force or violence in questioning the natives?

This question was objected to by the accused on the ground that it went beyond the scope of direct examination and that it was not specific.

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James P. Kenney L. V. S. N.

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

355. Q. Were you present at any time when physical violence was used against any of the natives questioned?

A. No.

The commission then, at 3:19 p.m. took a recess until 3:35 p.m., at which time it reconvened.

Presents:

All the members, the judge advocates, the three official native observers from the Marshall Islands, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under cross-examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony. *JK*

(Cross-examination continued.)

356. Q. You stated that you questioned Majkane and Saburo. Did you question any other natives whose names I read to you?

A. As I recollect I do not think that I did.

357. Q. Then you do not remember questioning Lemsek, Ichiro, Bora, Levitkas, Juda or Jordan. Is that correct?

A. Yes.

358. Q. By that answer do you mean that you did not question any of these other natives?

A. I mean that I did not question these other people.

359. Q. I want you to look around this court room and see if there is anyone present whom you questioned with regard to this incident?

A. There is Mark.

This question and answer were objected to and a motion made to strike them from the record on the ground that they had no bearing on the issue.

The judge advocate replied.

The commission announced that the objection and motion to strike were not sustained.

360. Q. Is this the man whom you questioned?

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(Judge advocate pointed to Mark Jude, official native observer from the Marshall Islands.)

A. As I remember I did not question Mark.

361. Q. Were you present when Mark was questioned?

A. I may have been, I do not remember distinctly.

362. Q. Were you present when Obetto was questioned?

A. I do not remember exactly if I was there or not.

363. Q. I will try to refresh your memory. Do you remember being present when Obetto was questioned by Lieutenant Ieki and Major Furuki?

A. I do not remember.

364. Q. Do you remember striking Obetto in the face with your hands at the time Ieki and Furuki were present?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There was no such incident.

365. Q. Was there an incident in which enlisted men held Bora to the ground while you, Morikawa, poured water from a cup into his nose and mouth?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There was absolutely no such incident.

366. Q. You have testified that you questioned Saburo. Did you put a pronged wire up his nose to get him to testify for you when you questioned him?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

367. Q. Were there any bruises or marks of violence on Mojane's body when you questioned her?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not recognize these.

368. Q. Was her dress or her clothing torn in any way?

A. I do not know, but as she was confined a long time it was very soiled and as she had to sit on a concrete floor it was worn.

369. Q. When you first questioned Majkane did she confess as to her participation in this alleged crime?

A. The investigation previous to the time she confessed was conducted by First Lieutenant Kadota and about this I do not know.

370. Q. Do you know if she confessed to First Lieutenant Kadota?

A. I know this directly by the document.

371. Q. Then she did confess to First Lieutenant Kadota?

A. Yes.

372. Q. Were you present when this confession was made?

A. As I recollect I was not there.

373. Q. Do you know when she first confessed?

A. I do not remember exactly, but I remember it being around the middle of July, 1945.

374. Q. Is it not true that when Majkane was questioned she stated that she was trying to get to her husband, she was trying to find her husband and that this was the reason she was moving from one island to another?

A. In the first statement she made to First Lieutenant Kadota I recollect that was what it was.

375. Q. Do you know what Majkane told First Lieutenant Miyashita?

This question was objected to by the accused on the ground that it called for hearsay. *JK*

The judge advocate withdrew the question.

376. Q. Do you know if Majkane confessed to First Lieutenant Miyashita?

A. She did not confess to First Lieutenant Miyashita. *JK*

377. Q. When First Lieutenant Kadota went to Pingelap did Majkane confess to him there?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

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James P. Kearney Lt. USN

The commission announced that the objection was not sustained.

A. It was not when Kadeta went to Pingalap, but when Mejkane to Ruidj.

378. Q. Then are you able to state from your knowledge that Mejkane did not originally confess to her participation in the crime, but she confessed after she came to Ruidj and was questioned there?

A. I can say it.

379. Q. Did Melain ever confess to his participation in the crime?

A. When Melain confessed I was not there, but on the report it stated that he had confessed.

380. Q. Do you know if any of the other natives involved Melain in their statements concerning this incident? OK

A. I do not know if Melain was involved in the statements of the other natives because I did not investigate him.

381. Q. Did you see the report and sign the report of the investigation concerning Melain as well as Mejkane, Obetto and Paul?

A. I signed it.

382. Q. Do you remember if that contained anything that indicated that the other natives had stated anything that involved Melain in this crime?

A. The other natives know nothing about Melain's plot.

383. Q. How did you determine that Melain was a principal in this alleged crime?

A. This is not what we determined, so we do not know.

384. Q. What did you determine with reference to Melain?

A. We investigators did not determine anything, all we stated was what the natives said.

385. Q. The natives you testified said nothing about Melain because they did not know about his participation. What did you say about Melain?

A. In the written report we submitted was written what Melain had stated.

386. Q. Then the only thing about Melain was his own statement to the Japanese officers who had investigated him. Is that correct?

A. Yes.

387. Q. Did your report state that Melain continued for a long time to deny any participation in this crime?

A. As I remember that was stated in the report.

388. Q. When natives were bound by the hands were they also bound at their feet with a chain running over the front to their hands, which were tied behind them? OK

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

The judge advocate replied,

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James P. Kennedy Lt. VSK

The commission announced that the objection was not sustained.

A. As I remember it was not a chain, it was a rope and this was because Major Furuki had ordered it and I remember Major Furuki ordered the person who escorted them that they should be brought in from the outlying islands to the main island tied that way.

389. Q. Then you know that these natives were tied with their hands behind them with a chain running over their front to their feet?

A. As I did not see them I do not know how they were tied, but I heard that the person who was escorting them should have them tied well when brought over. Major Furuki told the escorts that brought them over to have them well tied.

This question and answer were objected to by the accused on the ground that they were hearsay and the accused moved that they be stricken from the record.

The judge advocate replied.

The commission announced that the objection was not sustained and that the motion to strike was not sustained.

390. Q. You stated that you were present when Juda was questioned. Was Juda tied in that way when you saw him?

A. When I talked with Mark he was not tied as such, because as I remember it he ate his meals before us.

391. Q. You have testified how Major Furuki directed the officers of his command to treat the natives with parental love. Was the compassion and love, which Major Furuki directed you to exercise, exercised by you and your fellow investigators when you questioned these natives concerning these crimes?

This question was objected to by the accused on the ground that it called for an opinion.

The judge advocate replied.

The commission announced that the objection was not sustained. JMK

A. The attitude we took was not contrary to Major Furuki's instructions. I would have to state why they had to be tied so well. This was because in April 1945 two natives escaped from the Second Ammunition Dump and another case was when a native was being brought from an outlying island, he jumped overboard from a motor boat and escaped and this was why Major Furuki ordered that they had to be well tied and that is why it was done. The above occurrence in which I refer to two natives is erroneous, one happened in April and one happened in May. JMK

392. Q. In regard to all the treatment of the natives while they were in this Second Ammunition Dump. Did you carry out the instructions of Major Furuki with regard to the love and compassion for the native people?

A. The handling of these prisoners was not my duty, Lieutenant Sakuda was in charge of the confinement.

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393. Q. What you observed and what you did when you were present in connection with these natives, was that in accordance with Major Furuki's instructions with regard to love and compassion in the treatment of natives?

A. Yes. But for investigation when they were tied we could not untie them even if we wanted to because there was orders against it to prevent escaping by Major Furuki.

The witness was duly warned.

The commission then, at 4:33 p.m., adjourned until 9 a.m., tomorrow, Wednesday, March 26, 1947.

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James P. Kavanagh D. U.S.A.

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