

SIXTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Wednesday, March 26, 1947.

The commission met at 9:20 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 E. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Suorn Heine, official native observer from the Marshall Islands,
Mark Jua, 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 fifteenth 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 on March 25, 1947, entered. He was warned that the oath
previously taken was still binding, and continued his testimony.

Reexamined by the accused:

394. Q. I show you a book. Can you identify it?
A. I can

395. Q. What is it?
A. This is a naval rules and regulations in which are set forth the laws
and regulations.

396. Q. Is it in Japanese?
A. Yes.

397. Q. Does it appear to be official and in good order? OK

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

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The accused made no reply.

The commission announced that the objection was not sustained.

A. It is a regular volume and in good order.

A copy of the Japanese Naval Court Martial Law was submitted to the judge advocate and to the commission, and by the accused, articles ninety-five and ninety-six, section three, thereof were offered in evidence.

The judge advocate objected to the introduction into evidence of this document or its content in this manner, on the ground that it was not an authenticated copy, and the contents were being introduced by an unqualified witness.

The accused replied.

The commission was cleared. The commission was opened, and all parties to the trial entered. The commission announced that the objection of the judge advocate was not sustained.

The document was received into evidence.

398. Q. We ask the witness to read articles ninety-five and ninety-six, section three, Trials, from this Naval Court Martial Law. OK

The witness read from the Japanese Naval Court Martial Law Article 95 and Article 96, section three, an extract copy appended marked "Exhibit 5."

The interpreter read an English translation from the Japanese Naval Court Martial Law Article 95 and Article 96, section three, an extract copy appended marked "Exhibit 6."

This question and answer were objected to by the judge advocate on the ground that there was no preliminary foundation laid to show the applicability of the Naval Court Martial trial to the natives who were accused of these offenses. There has been nothing established before this commission which vitiates the rights of the natives to be tried by common judicial civil procedure. OK

The accused made no reply.

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

399. Q. In testimony you used the expression "absolute authority." Will you tell the commission just what you meant?

A. What I meant by "absolute authority" was that Admiral Masuda had absolute authority over the people and the materials on Jaluit Atoll; that he had administrative and judicial authority. OK

400. Q. Will you explain what you meant when you testified that there were six hundred naval personnel on Jaluit in 1945?

A. By the six hundred naval personnel, I meant the ones in the Sixty-second Naval Guard Unit.

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401. Q. Were there other personnel that were also naval personnel?

A. Yes.

402. Q. Will you tell the commission as to the number of these?

A. About five hundred.

403. Q. On cross-examination, you testified that the same procedure was held on Obette and Paul as for Melain and Mojane. Do you know whether Obette and Paul were acquitted?

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.

The question was repeated.

A. They were not acquitted, but as I remember, they were given sentences of hard labor.

404. Q. You were questioned at some length regarding the statement that you made and signed when you were investigated regarding conditions on Jaluit. At that time were you told that you did not have to sign this statement?

A. I was not told that I had to sign the statement and I did not make a statement.

405. Q. Were you ever informed that you were a defendant?

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

The accused made no reply.

The commission announced that the objection was sustained.

406. Q. Explain where you have been since you were questioned at that time.

A. At Kwajalein we were confined in a Japanese camp. After we were moved to Guam we lived in back of the POW stockade on Guam. From there we were moved to a corner of the war crimes stockade, in which all of us were to go. Later, myself and another person came out of the stockade and moved to a tent in front of it where I am still at present.

407. Q. Will you explain why you were being held on Guam?

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

The accused made no reply.

The commission announced that the objection was sustained.

408. Q. Do you know why you were being held on Guam?

A. I understand that I am being held here as a person connected with the Jaluit natives incident.

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409. Q. Are you being held as a witness?

A. At present, yes.

410. Q. As a witness for whom?

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.

The question was repeated.

A. Recently, I was designated a witness for Major Furuki by the defense, but up to that time, I, myself, understood that I was to be a witness for the prosecution.

Recross-examined by the judge advocate:

411. Q. You were asked certain questions during the course of your direct and your cross-examination which you stated that you could not remember. In October, 1945, was your memory better than it is now?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

The question was repeated.

A. Concerning that period and this time, I think it may have been better before, but I cannot state definitely myself.

412. Q. You testified that when you were asked questions by the investigator you told him the truth. Do you still testify that the statements you made to the investigator were the truth?

This question was objected to by the accused on the ground that the investigation referred to had not been offered nor received in evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I testified that it is the truth.

413. Q. A moment ago on redirect examination, you were asked concerning the statement you made to the investigators and you said, "I did not make any," or "I made no statement." By that did you mean that you did not make any statement?

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A. At Kwajalein, I did not write any signed statement or unsigned statements.

414. Q. You did, however, make oral statements to the investigator. Is that correct?

A. Yes, this I did.

415. Q. You testified on redirect examination that there were five hundred navy personnel in addition to those of the Sixty-second Naval Garrison. Who were these five hundred naval personnel and what units did they belong to?

A. They were personnel belonging to the 952nd Air Squadron, the Sixth Naval Communication Corps, the Fourth Construction Corps, the 111th Construction Battalion, and other units, and these people or personnel belong to those units.

416. Q. Did you include in that number the Gunsokus that were attached to those units?

A. Yes. All naval Gunsokus are included. JK

417. Q. How many were the total number of these Gunsokus?

A. As I remember, the total number of Gunsokus was about three hundred.

418. Q. What is a Gunsoku?

A. It is a people who take an oath or without, given a rate of Gunsoku to work in the armed forces. JK

419. Q. Are the Gunsokus in the army, too?

A. There is also Gunsokus in the army, but on Jaluit there is no army Gunsokus there.

420. Q. Have you ever been a defendant in any war crimes cases?

A. No.

421. Q. Have you ever been served with charges and specifications as a defendant in any war crimes incident?

A. No.

422. Q. When you made these statements at Kwajalein, were you in a Japanese prison camp?

A. It was separate from the prisoners' stockade.

423. Q. Then, you were in a prisoner stockade at Kwajalein when you made these statements. Is that correct?

A. Yes, that is correct.

424. Q. You have testified concerning the Naval Court Martial Law. Do you know if there is a provision in the Naval Court Martial Law for appeals from decisions?

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

The judge advocate replied.

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

The question was repeated.

A. I do not know.

425. Q. Will you read Article 59, which relates to the selection of judges who try a case on appeal? It is only necessary to read the first sentence.

A. "Article 59. Selection of judges who are to try a case of appeal, extraordinary appeal or revision follows the basis on the personal standing of the accused at the time of original trial unless the accused received a promotion in rank, order or grade."

426. Q. Will you read Article 61, which relates to the rejection of judges; specifically after the introduction, read the seventh clause.

A. "Article 61. When a judge falls under any one of the following items he shall be rejected from conducting his functions..... (7) When a judge has participated on searching, preliminary investigation or first trial of the case."

427. Q. Do you know of any provisions in Naval Court Martial Law which requires the accused to have defense counsel?

A. I cannot say.

428. Q. Will you read Articles 87 and 89?

A. "Article 87. The accused is free to select, at any time a counsel for his defense after the indictment against him is lodged, a legal representative, an adviser, or husband of the accused can select a counsel independently." "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." OK

429. Q. Do you know of any provisions in the Court Martial Law which state that a witness should be examined under oath and that a witness should be informed that there is a punishment for not telling the truth?

A. I do not know.

430. Q. Will you read Articles 248, 249, and 250?

A. "Article 248. An oath should be made by witness before questioning begins. However when there is a doubt as to whether he is a right person to make an oath or not then let him make an oath after the inquisition is over. Article 249. An oath should be made on 'the book of oath.' In this book of oath a statement 'I hereby swear that I shall tell the truth. I shall neither hide anything nor add anything.' In a case to make an oath after the inquisition is over a statement should be written thus: 'I swear that I did tell the truth and I did neither hide anything nor add anything.' The chief judge shall read loudly the letter of oath and let the witness write his name and put his seal on."

431. Q. Do you know of any provisions of the Court Martial Law which makes the Court Martial Law applicable in the case of the trials of natives who are not Gunakans?

A. I do not know.

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432. Q. Were the natives on Jaluit who were executed Gunzokus?
A. No.

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 11:22 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.

A witness for the defense entered and was duly sworn.

The judge advocate made the following statement:

If it please the commission, prior to asking the preliminary questions of this witness the judge advocate would like to request the commission to inform the witness concerning his privilege not to answer any questions that would tend to incriminate or degrade him. This witness has been served with charges and specifications. While there is nothing which prevents him making self-serving statements, it is the desire of the judge advocate that this witness be advised of the fact that anything he might say in this trial may be used against him in any trial from now on. It is the belief of the judge advocate that this should be made known to this witness before he is made subject to examination. JRK

The judge advocate further requested the commission to direct the witness that if he answers a question or makes a statement on direct examination by the accused he is subject to cross-examination on those points.

The commission directed that the remarks of the judge advocate be read to the witness and that they be explained to the witness as instructions from the commission. JRK

The interpreter read all of the above to the witness in Japanese.

The witness signified that he understood his rights.

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Examined by the judge advocate:

1. State your name and rank.

A. Former captain, Imperial Japanese Army, Inoue, Fumio.

Examined by the accused:

2. Q. What unit were you attached to?

A. I was attached to the headquarters of the First Army, First South Seas Detachment.

3. Q. Have you ever had duty on Jaluit?

A. I have.

4. Q. When did you arrive on Jaluit?

A. On the 30th of November, 1943.

5. Q. Up to what time were you on Jaluit?

A. I was there until the 11th of October, 1945.

6. Q. Where are you presently?

A. I am at the war crimes prisoner and suspect stockade on Guam.

7. Q. If you know the accused state as whom.

A. Former Major Furuki, Hidesaku.

8. Q. What duties did you have on Jaluit in 1945?

A. I was attached to the Jaluit Defense Garrison under Admiral Masuda as head of the special police section and the farms.

9. Q. What is the special police force?

A. The special police section was under the command of Admiral Masuda and did the work of a military police. It was organized by members selected from the Army, the Navy, and the Gunseikus. I was head of the section. The main duties were in watching the rationing of food on Jaluit, the investigation of crimes and their punishment. JX

10. Q. Who was your highest commanding officer on Jaluit?

A. Admiral Masuda, Hisaka.

11. Q. How was it that you as an Army person should be under the command of a Navy Admiral?

A. In the end of November, 1943, right after the fall of the Gilbert Islands, I came to Jaluit from Kwajalein on orders from the First South Seas Detachment. On my arrival on Jaluit I came under the command of the commanding officer of the Sixty-second Naval Guard Unit.

12. Q. At that time that the Army and Navy should come under one commander, was this true at all the other bases?

A. Not only Jaluit, but all the bases in the Marshalls, by order from general headquarters, we all came under the command of the Fourth Fleet and all units came under the command of the supreme commander of that island. On Jaluit the supreme commander was Rear Admiral Masuda. JX

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13. Q. What was your relation to the accused?

A. I was a subordinate of Major Furuki on Jaluit.

14. Q. Did you arrive on Jaluit together with Major Furuki?

A. No.

15. Q. When did Major Furuki arrive on Jaluit?

A. Around the eighteenth of January, 1944, Major Furuki came, bringing with him a part of the forces from Wotje Island in the Marshalls.

16. Q. Do you know what work Major Furuki was doing on Jaluit in 1945?

A. I do.

17. Q. Tell us what work he was doing.

A. He was head of the defense section and of the war battle preparation committee in the Jaluit Defense Garrison under Admiral Masuda.

18. Q. Then, Major Furuki came under the command of Admiral Masuda, was it the same as you?

A. Yes.

19. Q. Do you know what high ranking officers there were under Admiral Masuda?

A. I do.

20. Q. Tell us the names of persons with the rank of lieutenant or captain and above.

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. From the Navy: Lieutenant Commander Shintome, Lieutenant Commander Suzuki and Lieutenant Commander Nakamura; and from the Army there was Major Furuki, Captain Kanematsu and Captain Inoue.

21. Q. Do you know the conditions of the Japanese forces on Jaluit from February to August of 1945?

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

The accused replied.

The commission announced that the objection was not sustained.

21. Q. (continued) Please state the conditions as briefly and simply as possible.

A. The conditions on Jaluit were the most miserable in the history of war. From the 18th of January 1944 until the end of the war when it was supplied with food, for nineteen months we were isolated in the middle of the Pacific on a coral island. From 1944 to 1945, concerning the battle conditions on

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Jaluit, Jaluit was used for bombing practice; everything was in ruins. At the end of the war a person who came to Jaluit on a destroyer spoke of the war conditions on Jaluit as follows: "In this war among all the islands that the allied forces had attacked, the amount of bombs dropped on Jaluit, in comparison to its size, made Jaluit the most bombed place in the world." The number of bombing planes was 8,100. The amount of bombs dropped on Enidj alone was 5,000 tons. The above I remember from the records that were kept on Jaluit. In 1945, not only the bombing of the main island, but also the bombing of the outlying islands were intensified. There was no means of opposing the attacking planes. No one could afford to be caught unprepared. The ammunition was very low; the effective ammunition for anti-aircraft was very short. In case planes appeared four or five shots were allowed to keep up the morale. Submarine chasers came close to the outlying islands except Enidj. Jaluit could be invaded at any time. Under these circumstances, the men continued to exist, all determined to fight to the end. Next, I shall tell concerning the food on Jaluit. The four thousand men on Jaluit existed due to the labor of the natives and the coconut trees, and if the natives deserted the men had no alternative but to desert or die or starvation. Our staple food was one to two coconuts and 3.18 pints of coconut toddy. Seventy-five percent of our calories we were able to get was acquired from these. All sorts of food was short. All grasses that were not poisonous were eaten, but still no supplies arrived. The conditions at Jaluit at that time were so, that if a mistake was made all people would die of starvation.

The commission then, at 3:13 p. m., took a recess until 3:40 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.

Inoue, Fusio, 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)

22. Q. Do you know of any incidents concerning the natives which occurred from May to July or August of 1945?

A. I do.

23. Q. Please explain briefly what incidents these were.

A. In May, 1945, on Enidj when the main plotters, Echibaru, Leschr and others attempted to escape by killing petty officer Okamoto and a Gunzoku named Kuraoka, stole the boat as the beginning. There were the cases of Medya, Jaluit and Pingelap Islands, which were of the same sort.

24. Q. Do you know the names of the natives who were related to these incidents?

A. There are some I know and some that I have forgotten and do not remember.

25. Q. Tell us the names of the persons connected with the Enidj incident as far as you can remember.

A. I remember the following three: Echibaru, Leschr and Kohri.

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26. Q. What people do you remember in the Medya incident?

A. I do not remember the names of the Medya incident.

27. Q. In the Jaluit incident?

A. I cannot recall the ones in the Jaluit case.

28. Q. How about the Pingelap case?

A. I remember Malein and Nejkano.

29. Q. Other to these incidents you testified that you were on the special police section. Were there any other cases?

A. I do.

30. Q. What incident is this?

A. The following are the main cases of the natives in addition to the previous ones. There was the case of a boat belonging to the armed forces being stolen and the escaping of the natives outside of the atoll. Next, there was the incident in which a guard was killed while transporting food and the natives escaping out of the atoll. Next, there was the case where a guard was attacked at night and his rifle stolen and also there was the stealing of a boat and the escaping to another island in the atoll. JX

31. Q. When you said "killed the guard and escaped out of the atoll," did you mean attempt to kill the guard and escape or did you mean kill the guard and escape? JX

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

The accused withdrew the two previous questions, and the commission directed that the answers thereto be stricken.

32. Q. Do you know what counter-measures were taken by the armed forces in the Imrodj, Medya, Jaluit and Pingelap incidents?

A. I do.

33. Q. State what procedures were taken in disposing of these cases. JX

A. Right after the Imrodj incident occurred, Admiral Masuda assembled the ranking officers and spoke as follows: "This native incident, the effect on the regular military, gunboats and the other natives being very great, should be handled with the utmost care; but in Jaluit there are not enough people; there is no specialist on law and the regular procedure cannot be taken. By the authority that is invested in me we shall hold an examination and consultation by special procedure. There is no other way to handle this case." He took the following steps: Admiral Masuda ordered Lieutenant Sakuda and First Lieutenant Kadota to act as investigators in the incident, and the head of the section, Major Furuki, was ordered to act in order to watch the investigators. The contents of the investigation were to be reported to Admiral Masuda by the investigators with Major Furuki present, and concerning the investigation, each investigator was told to impartially investigate as if you were in the place of a judge and instructed in detail. He passed this to Major Furuki and told him to relay it explicitly to all investigators. Shintone and Inoue were ordered by Admiral Masuda to be present at the time of the next examination and consultation.

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James P. Henry Lt. USN

34. Q. Was there any change made in the personnel thereafter?
A. There were some changes made.

35. Q. What changes were made?

A. I do not remember when it was, First Lieutenant Morikawa and Ieki were added to this.

36. Q. Were the instructions concerning the investigations the same to Morikawa and Ieki as to the others in their investigations?

A. Yes.

37. Q. Please explain concretely what examinations and consultations were made on these native cases.

A. The investigators had the native suspects and a part of the witnesses brought to Ruidj Island. In investigating the specifications many efforts were made. The investigators went to gather evidence under dangerous circumstances to the outlying islands. Reports of the investigations were made every day or after an investigator had come back from the outlying island. The report was made to Admiral Masuda with Major Furuki present. After the investigation, a written investigation report was submitted to Admiral Masuda. Admiral Masuda and Major Furuki went to where the natives were confined and interrogated on their own. After this was done, Admiral Masuda called Major Furuki, Shintone and myself to his room. With Shintone and myself present, Admiral stated that by his order each person's specifications, the law applied to the crime and the opinion as to punishment by Major Furuki.

The witness was duly warned.

The commission then, at 4:32 p.m., adjourned until tomorrow, Thursday, March 27, 1947, at 9 a.m.

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James P. Kerry Jr. USN

SEVENTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, March 27, 1947.

The commission met at 9:07 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Vernon W. Guyson, 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,
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buorn 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 sixteenth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Inoue, Fusio, 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.)

The last question asked yesterday was repeated. The answer was read.

A. (continued) I said Major Furuki had expressed his opinion. Admiral
Masuda said to myself and Shintome: If you have any opinions in addition
to Major Furuki's opinions, state it. So I expressed my opinion on the
things that I could understand. My opinion was that even though they had
committed great crimes, it was better to return them to their islands and
have them work. The attitude of Admiral Masuda and Major Furuki at this
conference was one of very deep thinking. After this Admiral Masuda said:
I shall deliberate further on this, and took up the opinion paper of Major
Furuki and the investigation report. This meeting was then over. Before
this examination and consultation, we were solemnly told to take heed and
deliberate most solemnly and fair and to think well on it. One or two days
later, Admiral Masuda made the judgment and had the papers drawn up. He
called the three of us in and said: I judge as follows. Several days later

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the judgment paper and the investigation report were circulated to Major Furuki, Shintome and myself and the investigators.

38. Q. You testified that Major Furuki expressed his opinion concerning the specifications of the crime in the examination and consultation before Admiral Masuda, Shintome and yourself. Before that you stated that Major Furuki watched over the investigators. What was Major Furuki's position in the examination and consultation?

A. What Admiral Masuda said to Major Furuki was to watch over the investigators, but what he actually did was the work of a judge advocate.

39. Q. You stated that Admiral Masuda told Major Furuki to watch over the investigators and that what he actually did was the work of judge advocate. By the work of the judge advocate, do you mean that the work of the judge advocate was to watch over the investigators?

A. It is the same thing.

40. Q. You stated that Admiral Masuda wrote a judgment paper. What was stated in the judgment paper?

A. The very beginning there was written "judgment paper." The judgment paper, I remember, was in the form with columns for, first, judgment, then, name, specifications, the law applied, and the opinion of Major Furuki.

41. Q. Yesterday you testified to the names of the native suspects and you stated some you remembered, some you did not. If you were shown the names of these natives, could you remember them?

A. I may be able to remember.

42. Q. I shall read off the names and I would like to know if you remember them all: Leschr, Kehri, Kozina, Arden, Makui, Tiagrik, Chuta, Chomohle, Mandala, Laperia, Melain, Mojkan. Did you see any of these names on a judgment paper?

A. There are some natives that I knew previous to the incident. I remember a part of them, but two years has passed since this occurred and since I did not directly investigate them or come in contact with them, and as for the last period of about six months I have been in confinement and not in a condition to remember well. At Jaluit I have gone around the outlying islands many times and have met many natives. There are many natives with the same names and I cannot say the name of this person is the person of the same name, and I cannot remember well, but as to the following, since I had known them previously, I remember them. I remember ~~Mojkan~~, Leschr and Kehri. 9x

43. Q. Even though you do not remember the names, was the same procedure taken for all the incidents: the Inrodj incident, the Jaluit incident, the Medya incident, and the Pingalap incident?

A. That procedure was definitely taken.

44. Q. Were there any persons who were found not guilty and released by this examination and consultation? 9x

A. Yes.

45. Q. What sentences were passed?

A. As I remember it, there was a death sentence, a sentence of hard labor, and probation in which he was watched at his original island.

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James P. Kenney Lt. USN

46. Q. You testified when you expressed your opinion that even though they did commit great crimes they should be returned to their islands and have them work. By this do you mean this probation in which they are watched at their original island?

A. Yes. This probation was hard labor at the original island.

47. Q. Was there any difference between Major Furuki's opinion of punishment and Admiral Masuda's decision?

A. I remember there were some the same, some that were different.

48. Q. In what points did they differ?

A. I remember that for native women and also persons even though they had committed great crimes, if not the principle in the case, his opinion of punishment was very light. OK

49. Q. And by light sentence, you mean that it was not death?

A. It was not death.

50. Q. Do you remember how many persons there were that the light sentence was asked for?

A. By this question, do you mean how many persons were there that the light sentence was asked for or how many actually received the light sentences and went back to their original island on probation?

51. Q. How many persons there were who received the decisions of death in the judgment paper in which Major Furuki had asked lighter punishment.

A. I cannot remember the number now, but I recall that over half who received the death sentence, the sentence asked for was the lighter sentence.

52. Q. In the judgment document where it stated the law applied. What laws were applied?

A. The Japanese Criminal Code, the Naval Penal Code, and also, I think, there was some other.

53. Q. On this judgment paper, was Admiral Masuda's signature on it?

A. Yes.

54. Q. Was this decision made known to the accused?

A. As I was not with them, I do not know, but I heard Major Furuki say that he was going with Admiral Masuda.

55. Q. When you said "going," where was he going and what was he going to do?

A. There was a time when I heard from Major Furuki that he was going to the natives to let them know the decision.

56. Q. Was there anything on the judgment document about the execution?

A. At first when we were handed this judgment, we three were shown this judgment paper. It was written, and later when this was circulated and came to me after Admiral Masuda, Major Furuki and Shintone, it stated when Major Furuki was to execute the persons with death sentences.

57. Q. Was Admiral Masuda's signature on the place telling Major Furuki to execute the persons with death sentences?

A. When Major Furuki was to execute the prisoners with death sentences was written in in his own handwriting, but his name and seal, and I do not remember if there was a separate seal on it or not. OK

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58. Q. Is this all of the steps taken by Admiral Masuda?

A. It is all of what I remember today.

59. Q. Did Admiral Masuda have the authority to try this?

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.

60. Q. Do you know of any facts by which Admiral Masuda came to have administrative and judicial authority and if you know for what reason, please explain this.

A. Admiral Masuda was always saying to us that he had the military, administrative, and judicial authority in the Jaluit area. In April or May of 1944, when the transportation in the southwest Pacific was cut off and the Marshalls fell, the authority of the South Seas Governor was invested in the commanding officer of the defense garrison, but he exercised judicial and administrative authority. The South Seas Government came under the command of the commanding officer of the Fourth Fleet and Admiral Masuda was ordered to command the South Seas Government Branch at Jaluit, and he exercised authority in the Jaluit area.

The judge advocate moved to strike this answer on the ground that it was hearsay.

The accused replied.

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

61. Q. You testified to an order that came from the commanding officer of the Fourth Fleet. In what form did this come to Admiral Masuda?

A. By dispatch.

62. Q. Did you see this dispatch?

A. I did not see this dispatch.

63. Q. How do you know of this dispatch?

A. I was passed its contents by Major Furuki. Again, when the high ranking officers assembled, I heard this directly from Admiral Masuda and later through my work I was shown a dispatch addressed to the head of the Jaluit Branch of the South Seas Government; I was shown a copy from the head of the Jaluit Branch office of the South Seas Government of the dispatch to Admiral Masuda. 8K

64. Q. What were the contents of the dispatch that came to the head of the Jaluit Branch of the South Seas Government?

A. I cannot remember the exact words, but the meaning was as follows: The South Seas Government has come under the command of the commanding officer of the Fourth Fleet. The head of the Jaluit Branch of the South Seas Government and all its work should come under the command of Admiral Masuda.

The commission then, at 10:30 a. m. took a recess until 10:55 a. m., at which time it reconvened.

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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.

Inoue, Fumio, the witness under examination when the recess was taken, entered and continued his testimony.

(Examination continued.)

65. Q. Do you know the reason why Admiral Masuda stated that a special examination and consultation had to be held and not the formal procedure taken?

A. I do.

66. Q. Please state this.

A. At this time, Jaluit was a battlefield. At the time the incidents occurred not only were there attacks by planes, but in the outlying islands, battles were going on continuously to prevent the escape of the natives. The main island of Enidj, all the military personnel were at battle stations; every one had his duties. Each one was at his duties and positions. One person had many duties. Even patients had their duties, and to release their duties and to have many people assembled for examination and consultation under these conditions was absolutely impossible. The reason for that concretely is as follows: First, concerning the people. The ranking officers were all very busy commanding battle stations and could not leave their positions. That Admiral Masuda, Major Furuki and Shintone worked together was very unusual. One or two was always at the command position. When one or two went to the natives it was always in the evening or late afternoon. As a preventative measure against all ranking officers being killed at once, the places where the duties were conducted were scattered. Myself and the head of the Jaluit Branch of the South Seas Government during the day were ordered by Admiral Masuda to stay several kilometers away from the main island. Concerning the air raid facilities, the shelters that were in ruin by bombing were unusable. There was no place in which to assemble. If any natives were brought in from the outlying islands some had to be held in the Second Ammunition Dump and some in the communication station several kilometers away to keep them in safety. There was no way of detecting approaching planes. All detection devices were destroyed in the beginning of 1944. We were just about blind against the air raids. All look-out detections had been destroyed by the many bombings. Look-outs were kept from high buildings that remained on the island. At the time of the incidents there were many people who were killed in the entrances of the air raid shelters. It was because they did not have time to take shelter. Many were killed while walking on the roads and while they were taking showers. Even while walking we had to be very careful. The only thing that sounded the air raid warning was one bugle call. You had to watch for this bugle call and know the location of the air raid shelter when going any place. Many times during the day the sound of an engine of an automobile would be mistaken for an air raid and we would take shelter. At night it was not unusual that the sound of an engine of a boat returning from the outlying islands with food could be mistaken for an airplane and everyone would take shelter. We were all blind to these air raids. The only air raid warning was the bugle call and what they told each other. We could not stay quietly even for a short time, the fear was very unsettled. More men were sent to the outlying islands. The high ranking

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officers were very busy on measures on how to exist after the natives had deserted. All day when you have to fight against any enemy it seems that the character of the men became changed. The commanding officer then was very worried on measures concerning this. Also there was no law specialist. It is very difficult to express the troublesome circumstances which existed at that time. Everyone was at their battle duties. The people could not even conduct battles even under these conditions. Admiral Masuda and the persons connected did the best they could and handled these cases.

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

The accused replied.

The witness was duly warned.

The commission then at 11:41 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 R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.

The commission was cleared.

The commission was opened.

All parties to the trial entered.

The commission announced that the objection was not sustained.

(Examination continued.)

67. Q. Did Admiral Masuda ever have anyone else carry out this procedure for him?

This question was objected to by the judge advocate on the ground that it was not clear.

The accused withdrew the question.

68. Q. Did Admiral Masuda ever leave anything he was supposed to do up to someone else to do for him?

This question was objected to by the judge advocate on the ground that its latitude was unparalleled and was not in any way connected with the subject matter of this trial.

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The accused replied.

The commission announced that the objection was sustained.

69. Q. What was the attitude of Admiral Masuda in disposing of this native incident?

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.

70. Q. After the decision was given of this trial, do you know any facts that Major Furuki executed the natives.

A. I do.

71. Q. Did he execute them?

A. Yes.

72. Q. By what procedure did he execute them?

A. By the decision of Admiral Masuda and also he was given an execution order by Admiral Masuda as the person in charge of the execution.

73. Q. From the time the incident occurred and until the executions, were the actions of Major Furuki right?

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.

74. Q. You attended this procedure. What were your convictions all through this case.

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

The accused replied.

The commission announced that the objection was sustained.

75. Q. Did you go through this procedure thinking it was right?

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

The accused made no reply.

The commission announced that the objection was sustained.

76. Q. Was martial law ever declared on Jaluit before or at the time of the incident?

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A. The words "martial law" were not used, but military government was enforced on Jaluit.

77. Q. What is "military government?"

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

The accused made no reply.

The commission announced that the objection was sustained.

78. Q. You stated that military government was enforced on Jaluit. Describe what you mean by "military government."

A. The supreme commander of the Jaluit area, Admiral Masuda, had the supreme authority in the judicial and administrative affairs. He had command of all the military personnel, civilians, Gunakus and natives on the island. He enforced this judicial and administrative authority. OK

The judge advocate made a motion to strike the answer on the ground that it was the mere opinion of the witness.

The accused replied.

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

79. Q. This military government that you testified to, by whom was it enforced?

A. About April, 1944, by a dispatch addressed to Admiral Masuda from the commanding officer of the Fourth Fleet quote as follows: "Hereafter you shall command the South Seas Government Branch at Jaluit and enforce judicial and administrative authority." This was how military government came to be enforced.

80. Q. To what conditions were these orders issued?

A. I would like to have the question repeated.

81. Q. Through what conditions was this order to enforce military government put out?

A. In February of 1944, after Kwajalein fell and transportation to the Marshall area was cut off, the South Seas Government could not carry on its duties. The South Seas Government and all its authority came under the command of the commanding officer of the Fourth Fleet. By order of the commanding officer of the Fourth Fleet Military Government was enforced in the Jaluit area.

82. Q. How did Admiral Masuda handle the Imrodj incident, the Medya incident, the Jaluit incident and the Pingelap incident? OK

This question was objected to by the judge advocate on the ground that it was too broad and vague; therefore, it would be difficult for the witness to answer.

The accused made no reply.

The commission announced that the objection was sustained.

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83. Q. What was Admiral Masuda's general reputation when he handled and disposed of the Iroodj incident?

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.

84. Q. Do you know the general reputation of the accused, Major Furuki, upon disposition of the Iroodj incident?

This question was objected to by the judge advocate on the ground that it was improper to inquire on general reputation as to a specific incident.

The accused replied.

The commission announced that the objection was sustained.

85. Q. If you know the general reputation of Major Furuki describe it.
A. Is it the general reputation of Major Furuki?

86. Q. Yes.

A. Major Furuki was a religious and humane person. Major Furuki looked up to Admiral Masuda as if he were a God. Major Furuki was looked upon as a God on Jaluit. He was an especially kind person. In everything he did he was righteous and did not do things by himself. He always listened to the opinions of his men in whatever he did, and before he did a thing he saw to it that it was something that could not be criticized from any view. He always asked his superiors for directions. He had a love of humans. The natives looked up to Admiral Masuda and Major Furuki. Major Furuki's general reputation was one of a very righteous person and a very kind person. 80x

The commission then, at 3:28 p. m. took a recess until 3:42 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.

Inoue, Fumio, 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 judge advocate:

87. Q. Have you told the truth in your testimony before this commission?
A. Yes.

88. Q. In September and October, 1945, were you questioned by the war crimes investigator at Jaluit?
A. Yes.

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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.

89. Q. Did you tell the truth when you were questioned by the war crimes investigator?

A. I did.

90. Q. Do you know if any other officers from Jaluit were questioned by the war crimes investigator at that time?

This question was objected to by the accused on the ground that it was irrelevant and immaterial and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was sustained.

91. Q. When you were questioned by the war crimes investigator at Jaluit, did you at first lie to him and then later tell the truth?

A. I was only interrogated at Jaluit once and I have not made a false statement.

92. Q. Were you asked the following question during that investigation: "I understand that the admiral wished to disclose all the truth at the time of the surrender, but that a group of you officers persuaded him not to, what do you know about that?"

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. I remember hearing this question asked of myself and a group of officers.

93. Q. Did you and the other officers tell the investigating officer that you had all agreed not to tell the truth concerning the incident involved?

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. No.

94. Q. The record indicates you were asked the following question: "Why did the subordinate officers make this suggestion?" You answered: "The officers did not want the AtCom to be punished and likewise we were afraid for the three executioners, so we decided to try and hide the truth." Did you make this answer to the investigator?

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This question was objected to by the accused on the ground that it was not the proper way to introduce evidence from a former record. He argued that the original document was the best evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, I answered this. This testimony is in another case altogether different from the native incident. Concerning this case, I was asked by Lieutenant Commander McKinson, an investigator, and Okiyumiyo, an interpreter, was there such a native case and I answered truthfully. I was asked who was in charge of this and I replied, "Major Furuki." This was all that was asked of me and the questions and answers that were read to me was on a case altogether different from this and if it is wished, I will clarify this testimony.

95. Q. Is it true that you officers agreed not to tell the truth because you desired to protect your fellow officers and the enlisted men?

This question was objected to by the accused on the ground that it was immaterial, irrelevant, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

96. Q. On that occasion when you were questioned you said: "The officers did not want the AtCom to be punished and likewise we were afraid for the three executioners, so we decided to try and hide the truth." Is it true that the reason you tried to hide the truth was because you were trying to protect Admiral Masuda and the three executioners?

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

The judge advocate replied.

The commission announced that the objection was sustained.

97. Q. On the previous occasion you testified that you were afraid for the three executioners so you decided to try and hide the truth. Are you similarly afraid of what will happen to Major Furuki in this case and are you similarly trying to hide the truth? JK

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 sustained.

The commission then, at 4:30 p. m., adjourned until 9:00 a. m., tomorrow, Friday, March 28, 1947. JK

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EIGHTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, March 28, 1947.

The commission met at 9:06 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Reese, 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.
Bacon Haine, 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 seventeenth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under cross-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.)

Q. Yesterday you acknowledged that you previously testified at Jaluit
that, "We officers did not want the LtCom punished and likewise, we were
afraid for the three executioners, so we decided to try and hide the truth."
Were you trying to protect Admiral Masuda from being punished?

This question was objected to by the accused on the ground that it was
beyond the scope of the direct examination and irrelevant.

The judge advocates replied.

The testimony referred to was read from the record.

The question was repeated.

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James P. Kenny Lt. USN

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. This was decided by all members of the unit at the end of the war. This was a case concerning a prisoner of war and had nothing to do with this native incident. I was asked this at the assembly by a captain of a destroyer and a judge advocate. *JK*

99. Q. In your testimony before this commission, are you trying to protect Major Furuki from being punished?

A. No.

100. Q. Have you decided to try and hide the truth in your testimony before this commission?

A. No.

101. Q. Were you present when Admiral Masuda ordered Morikawa and Ieki to investigate the natives?

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. Yes, I was present.

102. Q. Were you present when Admiral Masuda ordered Kadota and Sakuda to investigate the natives? *JK*

A. He ordered Major Furuki to order Sakuda and Kadota to become investigators and I was present. *JK*

103. Q. Were you present when Admiral Masuda spoke to Kadota and Sakuda with regard to investigating the natives?

A. I was not present.

104. Q. You testified yesterday that Admiral Masuda said to Kadota and Sakuda "Investigate impartially as if you were a judge." Since you were not present, how do you know what Admiral Masuda said?

A. In yesterday's testimony, I testified that Admiral Masuda ordered Major Furuki to relate this to the investigators.

105. Q. Were you present when this was related to the investigators?

A. No.

106. Q. Then, how do you know whether Furuki had related this to the investigators?

A. I was not present when this was related. I cannot state that it was related for a fact.

107. Q. Did you ever investigate the natives concerned in the cases discussed before this commission?

A. No.

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108. Q. Did you ever question any of the natives?

A. No.

109. Q. Were you ever present when any of them were questioned?

A. No.

110. Q. Then, you never saw Admiral Masuda or Furuki questioning these natives, did you?

A. I did not see Major Furuki and Admiral Masuda interrogating the natives on this spot.

111. Q. Were any of the natives ever brought to Admiral Masuda's office when you were present?

A. No.

112. Q. You testified concerning certain procedures in Admiral Masuda's room. Do you recall if such a procedure was held for Wandala, Laperial, Obette and Paul? JK

A. This procedure was held.

113. Q. Was the same type of procedure held for Nelson and Majkane?

A. Yes.

114. Q. You testified that in some instances the opinion of Major Furuki on the judgment document was different from the decision of Admiral Masuda. Is it true that they were sometimes different? JK

A. Yes.

115. Q. Were there occasions when your opinion expressed in the course of these special proceedings in Admiral Masuda's room was different from Admiral Masuda's sentence decision?

A. There were differences.

116. Q. Were there ever any differences in the opinion of Lieutenant Commander Shintone and the sentence decision of Admiral Masuda?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There were differences.

117. Q. Yesterday you testified that Admiral Masuda stated that there was no specialist in law and the regular procedure cannot be taken. What do you mean by specialist in law?

A. By that I meant a judge advocate. He is a law specialist and in the army or the navy as I understand it, he does the sort of work of a prosecutor in criminal cases.

118. Q. Do army officers receive training in court martial work?

A. I do not know of any special training I received.

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James P. Kanny Lt. USN

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119. Q. Do you know if regular army officers receive training in court martial law?

A. As I am not a regular army officer, I do not know if they are trained in school or not.

120. Q. Do you know if navy officers received training in Naval Court martial law?

A. I do not know.

121. Q. Do you know of navy officers receiving training in naval criminal law?

A. I think they receive training in this.

122. Q. Do army officers receive training in army criminal law?

A. They do.

123. Q. Were you in charge of the police at Jaluit?

A. Yes.

124. Q. Were you required to know some criminal law in your duties?

A. Yes, it was necessary.

125. Q. Do you know if Lieutenant Ieki before he entered the army, received training in law?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

126. Q. Was he training in law before he entered the army?

A. I have heard from First Lieutenant Ieki that he had received training in law.

127. Q. In the cases of Kohri, Lechr and Kosima, who were the investigators?

A. As I recall, Lieutenant Sakuda was the investigator.

128. Q. Do you know how long he investigated this case?

A. I do not remember how many days it was.

129. Q. In the case of Chuta and Chomachle, do you know how long the investigation took?

A. I do not remember how many days it took.

130. Q. In the cases of Tiagrik, Arden, and Makui, do you know how long the investigation took?

A. This I do not know either.

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James P. Leary Jr. JSH

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131. Q. Do you know, in the case of Mandala, Laperia, Obetto, and Paul, how many days the investigation took?

A. I do not remember the exact period, but it took over ten days.

132. Q. Who were the investigators in that case?

A. As I recall, it was First Lieutenant Ieki and First Lieutenant Kadota.

133. Q. Do you know if they had any other duties during the time they were investigating the case?

A. Do you mean as investigators?

134. Q. Any duties other than investigators?

A. They did.

135. Q. Do you know how long the investigation of Malein and Majkane took?

A. As I remember, I think this incident took about two weeks.

136. Q. Do you know who the investigators were in this case?

A. As I remember, First Lieutenants Kadota, Ieki, and Morikawa investigated.

137. Q. You stated yesterday that reports were made to Admiral Masuda and Major Furuki every day. Were you present when these reports were made?

A. There were times when I was present.

138. Q. Were you present every time they reported to Admiral Masuda and Major Furuki?

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 was present at the scene when the reports were made twice.

139. Q. Do you remember in connection with what cases these reports were made in these two instances?

A. I remember.

140. Q. Which cases did these reports refer to?

A. The persons reporting were First Lieutenants Kadota and Morikawa.

141. Q. On what native incident were they reporting?

A. In the case of Kadota, it was Majkane. The case of Morikawa, I do not remember on whose case it was.

142. Q. Do you remember what Kadota said in his report on Majkane?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember.

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James P. Kavanagh Lt. USA

143. Q. What was Kadota's report that day?

A. He was making a report on Majkane's case during the investigation. Admiral Masuda was saying: "This evidence was not sufficient. Go to the scene and look up evidence."

144. Q. Who was present besides you at the time of this report by Kadota?

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. Present were Admiral Masuda, Major Furuki and Kadota. I went there on another matter and I was waiting when I heard this.

145. Q. At the time of that report did Admiral Masuda or did Kadota say that Majkane was spying on the Japanese armed forces in order to obtain information for the Americans?

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 sustained.

146. Q. At the time of this meeting did Kadota say that Majkane was spying on the Japanese armed forces in order to obtain information for the Americans? EX

A. As it was just a short time, I did not hear this.

147. Q. At the meeting in Admiral Masuda's office, when the Majkane case was considered, did you see the investigation report prepared by Morikawa and Ichi?

A. I did.

148. Q. Did this report accuse Majkane of spying on the Japanese armed forces in order to obtain information for the Americans? EX

A. I do not remember distinctly.

149. Q. What do you remember concerning that?

A. I remember the fact that Majkane carried papers to natives of the atoll, went carrying papers to the natives to desert -- to the natives on the islands from Pingelap Island down to Jaluit Island.

150. Q. Do you remember whether she was accused of seeking to obtain information concerning the strength and disposition of the Japanese forces?

A. I do not recall.

The commission then, at 10:38 a.m. took a recess until 10:59 a.m., at which time it reconvened.

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James P. Kenny Lt. USN

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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.

Inoue, Fumio, the witness under cross-examination when the recess was taken entered, and continued his testimony.

(Cross-examination continued.)

151. Q. At the meeting in Admiral Masuda's office concerning the case of the woman Kajikane, did Shintome give his opinion as to the sentence?

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. As I remember, it was to return her to her former island and have her watched there.

152. Q. What opinion did you express at this meeting?

A. I expressed the opinion to return her to the original island and to have her watched.

153. Q. You testified on direct examination that at this proceeding you considered that Major Furuki was the judge advocate and you considered that the officers who were present were the judges. Is that so?

A. I considered them as such.

154. Q. Are you familiar with article 98 of the Japanese Naval Court Martial Law which reads, "A decision of the court is determined by the majority."?

A. I do not know this.

155. Q. Do you know if in Japanese law the decision is based upon the conclusions of the majority of the judges?

A. I do not know.

156. Q. Do you remember Major Furuki's opinion as to what he believed the sentence for Kajikane should be?

A. I did.

157. Q. What was his opinion as there expressed?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

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A. The law applied to the crime was written in and also that especially since she was a woman she should be returned to her original island and punished. I do not know what degree of punishment.

158. Q. By degree of punishment do you mean period of imprisonment or hard labor? JRK

A. It is a period of hard labor.

159. Q. Then in the case of Kajikawa, the so-called judge advocate, Major Furuki, and the so-called judges, Inoue and Shintone, did not want the death sentence. Is that correct?

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. They did not want the death sentence.

160. Q. You have stated that at this special procedure Major Furuki was the judge advocate. Was there a defense counsel?

A. No.

161. Q. You stated that on the so-called judgment document, Major Furuki wrote his opinion as to what the sentence should be. Was that done in all of the cases? JRK

A. Yes.

162. Q. Do you know if it is customary in Japanese procedure for the judge advocate to recommend the sentence?

A. I do.

163. Q. Is it customary for him to recommend the sentence?

A. It is usual.

164. Q. Is it customary for him to ask for the maximum punishment?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This I do not know.

165. Q. Do you know if it is customary in the Japanese system for the judge advocate to ask for the minimum punishment?

A. I do not know.

166. Q. How long were you on Jaluit?

A. From 30 November 1943 till 11 October 1945.

167. Q. During the two years that you were on Jaluit, were there any trials held of Japanese personnel for violating Japanese Army law or Japanese Naval law?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

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The judge advocate replied.

The commission announced that the objection was not sustained. *JK*

The question was repeated.

A. I do.

168. Q. Were there any trials held?

A. Disciplinary crimes were punished by the same procedure as the natives were.

169. Q. You were asked whether or not any trials were held. Did you believe that this disciplinary procedure constituted a trial?

A. Yes.

170. Q. Have you always, since November, 1943, believed that such procedure constituted a trial? *JK*

A. No.

171. Q. When did you decide that this procedure constituted a trial? *JK*

A. From the time I was confined at Jaluit as a suspect.

172. Q. Was this after the war?

A. Yes.

173. Q. Was this after the special procedures that were taken on the native cases?

A. Yes.

174. Q. Then, when you were at the meeting you did not believe it was a trial. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not think whether it was a trial or not. At that time there was no other way at Jaluit. I was convinced that this was the best possible way and at that time I did not think whether it was a trial or not.

175. Q. In Jaluit in October, 1945, were you asked "What kind of trial did they have or was your investigation the only thing used?"

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was not asked that in connection with this case.

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The witness was duly warned.

The commission then, at 11:33 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.

Inoue, Punico, 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.

Reexamined by the accused:

176. Q. Did you have the assistance of counsel when you were questioned at Jaluit?

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

The accused replied.

The commission announced that the objection was sustained.

177. Q. Were you allowed to verify the testimony you gave at Jaluit?

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

The accused replied.

The commission was cleared.

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

The commission announced that the objection was sustained.

178. Q. Were you told that you did not have to testify at Jaluit?

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

The accused made no reply.

The commission announced that the objection was sustained.

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179. Q. On cross-examination you testified from Naval Court Martial Law, if I remember correctly. You read Articles 87 through 92 inclusive, dealing with the right of the accused to have counsel. I show you a book, can you identify it?

A. I know what it is.

180. Q. What is it?

A. It is Rules and Regulations of the Navy.

181. Q. Now, this book was previously submitted to the judge advocate and to the commission and parts of it offered into evidence and the judge advocate has the translation of Naval Court Martial Law which this book contains. I ask the witness to read from the same naval Court Martial Law, Article 93.

This question was objected to by the judge advocate on the ground that this book had not been admitted into evidence.

The accused replied.

The accused withdrew the question.

182. Q. Does this book contain the Japanese Naval Court Martial Law?

A. Yes.

This book was submitted to the judge advocate and to the commission, and by the accused Article 93 thereof was offered in evidence.

The judge advocate objected to this portion of the book being offered into evidence on the ground that the proper foundation had not been laid and the matter was beyond the scope of the cross-examination.

The accused replied.

The commission announced that the objection was sustained.

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

The commission did not desire to examine this witness.

The witness made the following statement:

When I performed my duties in examination and consultation of the native incidents on Jaluit there was no other way but through this procedure. It was judging humans and it had to be impartial and fair in performing my duties. I was absolutely convinced that this was the right action. We had no malice, no intent and nothing on my conscience. This was the best examination and consultation that could be given at that time. The executions by Major Furuki were performed by the orders of Admiral Masuda. I felt that there was no wrong in it. Admiral Masuda when questioned on Jaluit by Lieutenant Commander McKinson concerning the native incident reported the facts voluntarily and he stated, "The native incidents were done by Japanese laws" JK

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to Japanese citizens and by my authority and not a thing to be ashamed of." JK
Admiral Masuda committed suicide feeling the responsibility for the execution of the prisoners of war. Admiral Masuda in his will when he died stated that he was taking the responsibility for the executions of the prisoners of war and could die in peace, and he took the responsibility and had nothing on his conscience and died in peace. Concerning the native incident on Jaluit, no one on Jaluit at that time would do what is a wrong deed. All steps that were taken were the same as in the punishment of Japanese. In a battle field such as Jaluit there could be no wrong, it could not be considered wrong.

The judge advocate objected to the statement of the witness and requested that it be stricken on the ground that it was the opinion of this witness, that it was hearsay and that it was a self-serving statement due to the fact that this witness is to be a defendant in a future war crimes trial.

The commission announced that the objection was sustained and directed that the entire statement of Inoue, Fumio be stricken.

The witness was duly warned and withdrew.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Arima, Kacru, rear admiral, IJN.
2. Q. If you recognize the accused, please state as whom.
A. Major Furuki, Imperial Japanese Army, I forget his first name.

Examined by the accused:

3. Q. What duties have you had from 1944 until the end of the war?
A. In the end of February 1944 I arrived on Truk to take up the duties as the Commanding Officer of the Fourth Base Force on Truk, Eastern Caroline Islands. In March of 1944 I also took up the duties of Chief of Staff of the Fourth Fleet. On May first, 1944, I was relieved of my duties as commanding officer of the Fourth Base Force and I took up the duties as Chief of Staff of the Fourth Fleet. In the middle of August 1944 I left Truk to take up duties in Headquarters, Southwest Fleet. In the beginning of September 1944 I became commanding officer of the 31st Special Naval Guard Force on Ison Island. On the eleventh of November 1944 I became Chief of Staff, Southwest Fleet, also the duties of commanding officer of the Third South Seas Fleet Detachment, Thirtieth Air Fleet. In the middle of November I was relieved of my duties of Commanding Officer, Thirty-first Special Base Force, and continued with my duties as Chief of Staff of the Southwest Fleet until the end of the war. JK

4. Q. Please state to the commission if you know of a Naval Guard Unit being detached to Jaluit while you were Chief of Staff of the Fourth Fleet from May to August of 1944?
A. I know of their being detached there.

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5. Q. Do you know who was the commanding officer of that detachment?

A. It was Captain Masuda, Hishiko, later rear admiral.

6. Q. Do you know if Captain Masuda continued as commanding officer of that garrison until the end of the war?

A. I do not know after August 1944.

7. Q. Do you know of an Army unit called the First South Seas Detachment being dispatched to the Marshalls?

A. I know.

8. Q. What was the relation between this unit and the naval units? OK

A. This unit came under the command of the naval units before it was dispatched there, after its arrival it came under the command of the commanding officer of the Sixth Base Force and I also know that it came under the command of the commanding officer of the Naval Guard Unit as the commanding officer of the Naval Guard Unit was the senior officer.

9. Q. Do you know when Kwajalein fell in this war?

A. As I recall it was in the beginning of February, 1944.

10. Q. After the fall of Kwajalein do you know if any special orders concerning authority were sent by the Fourth Fleet commanding officer?

A. I do.

11. Q. Please state what you know.

A. When I became chief of staff of the Fourth Fleet I wanted to know what authority and what responsibility the various commanding officers in the Marshall Islands had and were under and I asked this of a staff member, in what I was told there was the following: "In the Marshalls the senior commanding officer of that base should be in command." OK

12. Q. When you were chief of staff of the Fourth Fleet what was the situation on transportation and communication with the Marshall area, including Jaluit?

A. By your question do you mean what were the communication and transportation situations among the Marshalls or between the Marshalls and where the commanding officer of the Fourth Fleet was in Truk?

13. Q. I am asking the communication and transportation conditions between the various Marshall bases and the Fourth Fleet Headquarters, and also the communication and transportation among the Marshall bases.

A. I understood that by the time I came to take up duties as Chief-of-Staff the transportation in the Marshalls was cut off, concerning the transportation between Jaluit and Truk, after February there was no transportation by planes or by surface craft, the only transportation was by submarine, as for radio communication, from the beginning it was not too good, but in March and April it became worse. By June it was very difficult.

14. Q. While you were taking up duties at Truk, was submarine transportation between Truk and Jaluit frequent?

A. There was no transportation by submarine to Jaluit.

15. Q. After the fall of Kwajalein you stated that the Fourth Fleet commanding officer sent in a dispatch order to the commanding officers of the Marshalls area. For what reason was this sent?

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This question was objected to by the judge advocate on the ground that it was leading and that no testimony had been given that there was such a dispatch.

The accused withdrew the question.

The commission then, at 3:27 p.m. took a recess until 3:48 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.

Arima, Faoru, 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.)

16. Q. You stated that you knew of a special order concerning authority that was sent to the commanding officers of the Marshall bases by the Commanding Officer of the Fourth Fleet. Do you know the contents of that order?

A. I do. JOK

17. Q. What were the contents of that order?

A. The gist of it was that the senior commanding officer of each Marshall base shall command it.

18. Q. Do you know the reason for such an order being sent out?

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 thought it was very natural, but if I were asked, I would reply as follows: The commanding officer of the Sixth Base Force had been killed in action and it was thought that the commanding officers of the bases in the Marshalls would continue operation independently. They came under the direct command of the commanding officer of the Fourth Fleet, and through the contents I related before, such as communication not being sufficient, besiegement by American forces and concerning operations and the many matters relating to the existence of the armed forces so that they could operate independently without instructions from the commanding officer of the Fourth Fleet. That is what I understood it to be.

19. Q. Where was the Sixth Base Force which you testified to?

A. It was at Kwajalein.

20. Q. You testified concerning operations and on many matters relating to the existence of the armed forces. Concretely, what do you mean by this?

This question was objected to by the judge advocate on the ground that it was vague and could not call for any responsive answer.

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James P. Kanny Jr. JSN

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. It may differ in places, but the matters such as providing for rationing of food, drafting of people to enforce defense installations, providing for the security of military secrets and matters relating to that other than military.

21. Q. Do you know that there is such a thing as a Fleet Regulations?

A. I do.

22. Q. What are those regulations concerned about?

A. In it are the regulations concerning the organization of the fleet and the duties and authority for naval personnel from the commander-in-chief down.

23. Q. Was this Fleet Regulations applied to the Marshall area including Jaluit during this war?

A. Yes.

The witness was warned.

The commission then, at 4:27 p.m., adjourned until tomorrow, Saturday, March 29, 1947 at 9 a.m.

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THIRTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, March 29, 1947.

The commission met at 9:07 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Reese, 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 Haine, 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 eighteenth day of the trial was read and
approved.

No witnesses not otherwise connected with the trial were present.

Arima, Kacru, 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.)

24. Q. Do you know martial law?
A. I do.

25. Q. Please state to the commission what martial law is?

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.

26. Q. Do you know Rear Admiral Nagata?
A. I do.

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James P. Kenny Lt. JG

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27. Q. Tell us what you know about Rear Admiral Masuda's reputation.

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.

28. Q. Do you know whether Jaluit was in 1945 a battlefield?

A. As I was in the Philippines and there was no communications between that area and the Philippines, I can imagine how it was, but I cannot state specifically.

29. Q. What is the purpose of declaring an area under martial law?

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.

30. Q. Do you know whether it was necessary to declare martial law on Jaluit in 1945?

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

The accused made no reply.

The commission announced that the objection was sustained.

The commission then, at 9:34 a.m. took a recess until 9:55 a.m., at which time it reconvened. *JK*

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.

Arima, Kacru, the witness under examination when the recess was taken, entered, and continued his testimony. *JK*

(Examination continued.)

31. Q. In your capacity as chief of staff, Fourth Fleet, do you know whether martial law was in effect on Jaluit in 1945? *JK*

A. In 1945, I was not in Truk, therefore, I do not know.

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32. Q. In your capacity of Chief of Staff, Fourth Fleet, do you know whether the commanding officer of Jaluit, Admiral Masuda, exercised his power similarly as the commanding officer of a place where martial law is enforced?

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

The accused made no reply.

The commission announced that the objection was sustained.

Cross-examined by the judge advocate:

33. Q. You testified concerning a certain order to the commanding officer of the Marshalls to the effect that the senior commanding officer of each Marshall base shall command that base. Did you write this order?

A. I did not write this order.

34. Q. Did you see this order in writing?

A. I did not see the written order.

35. Q. Do you know if this order contained anything in addition to that which you have testified to?

A. I do not know.

36. Q. How do you know about this alleged order?

A. Around the end of March or the beginning of April, 1944, when I became chief of staff, I heard this from the members of the staff when I asked about the conditions in the various areas in studying my duties.

37. Q. When you were informed as to the conditions of this order were you informed that it's authority was broad enough to authorize the violation of International Law?

A. I was not informed of such a thing.

38. Q. Were you informed that this authority was broad enough to authorize the overthrow of the rights of individuals to trial for offenses alleged to have been committed?

A. I cannot grasp the meaning of this question.

The question was reframed.

39. Q. Did this authority permit the commanding officer to punish with death without a trial?

A. I cannot get the meaning of this question.

The question was repeated.

A. (continued) In what I testified to yesterday, no such thing like this was included.

Reexamined by the accused:

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40. Q. In your capacity as a Japanese naval officer and particularly as Chief of Staff, Fourth Fleet, do you know whether Jiduit was a besieged area in 1945? JK

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. As a Japanese naval officer this was common knowledge.

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:

Yesterday in testifying to an order put out by the commander in charge of the Fourth Fleet concerning the conditions, I stated the operation and nature related to them. In stating the specific content I stated three points other than those. Other to those I also stated that he had authority over matter other than military. The meaning of this is at that time the commander in chief of the Fourth Fleet had this authority. The other three points were partially concerned with military administration and on the last point what I mean is concerning the declaration of martial law. This, I would like to add to my testimony.

The witness was duly warned and withdrew.

Akimoto, Inichiro, a witness for the defense, was recalled and warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. I show you a document with annexed papers. Can you identify it?

A. I can..

2. Q. How did you acquire it?

A. This is a reply to an inquiry made to the Japanese government by the counsel for this case through the legal section. It is from the head of the liaison section of the Second Demobilization Department addressed to the Chief of the General Affairs Center Liaison Office and is an official document. JK

3. Q. Is it in Japanese?

A. Yes.

4. Q. Has it been translated?

A. It has been translated.

5. Q. Is this document certified and authenticated by signatures?

A. It is not signed, but it is signed with the official seal of that department in an official document.

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6. Q. Do you desire to offer these documents into evidence?
A. Yes.

The original document in Japanese and an English translation thereof were submitted to the judge advocate and to the commission, and by the accused were offered in evidence.

The judge advocate made the following objections:

The judge advocate objects to the receiving of this document into evidence. The document is clearly a self-serving document. The document was prepared on March 21, 1947, approximately two years subsequent to the incidents which are the object of the commission's inquiry. It was prepared at the request of the defense counsel for use in this specific case. It was prepared by the Japanese Second Demobilization Bureau, which is composed of Japanese ex-navy officers. Secondly, a document by a Japanese Military Organization, the Second Demobilization Section, is again being utilized in an effort to express opinions on the subject matter properly within the province of this commission to determine. The opinions are not based upon any credible source, but even if they were the effort by this Japanese ex-navy organization to infringe upon the legitimate province of this commission is seriously objected to. Thirdly, there is no evidence of any reliability or credibility of the contents of this document. The document is not admissible under any of the official document exceptions to hearsay rules. The first place - it has been stated by the witness that this document purports to bear an official seal, but does not even carry the signatures of the official of the organization. Second, the document itself within itself states as an introductory paragraph, "Summing up the memories of many men who had connection with it at that time." The document is therefore entirely based upon the memories of officers who are not named, whose memories have been dimmed by more than two years from the alleged events, and it is not shown by any evidence whatsoever that at any time these officers, unnamed and unidentified, had any actual knowledge of the alleged contents of the document or from any source before this commission. In a prior document, prepared by the same source, the Demobilization Section stated that the officers of the Fourth Fleet had not been repatriated so that it would appear that any officers who would have knowledge of the contents or who would be called upon for ascertainment of the facts of these alleged contents were not available for examination by the section which prepared the document. Fourthly, the document purports to include from these memories, regulations for the enforcement of military discipline. It is stated that this was a secret ordinance of the combined fleet, Number 69. There is nothing on it to show that the secret ordinance or any copy of it was available at the time this document herein offered as evidence was prepared. No portion of the extensive documents and books in the judge advocate's office divulge any such regulation or series of regulations. Surely, if such regulations existed, and the contents were pertinent to the trial, the defense should be required to bring forth those regulations in one authentic form, and not attempt to derive them from the memories of unidentified and unknown naval officers. There are certain grounds on which a document which has been destroyed can have its contents brought before this commission. There is no testimony or other evidence to indicate that the document establishing or containing these regulations was destroyed or is otherwise unavailable.

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It is clear that under these conditions this document cannot be accepted in evidence under any best evidence rules. Underhill, Criminal Evidence, in section 106 states:

So, where in a criminal prosecution based on a violation of a statute, *or* city ordinance, it is necessary to prove the existence, or contents, of the statute or by-law, it cannot be done in oral evidence. It has been found, as matter of observation, that the memory is extremely unreliable. Aside from any temptation to commit perjury, to avoid which this rule has been adopted, but which would always be present if the language of disputed instruments were allowed to be shown by oral evidence, the court has a right to see the document in its entirety.....

Finally, the admission of this document is objected to on the ground that there has been no foundation based upon which portions of the content of this document can be deemed applicable or pertinent to anything before this commission. The document has attached to it a portion which is titled "Regulations of Counsel for the Enforcement of Military Discipline." Article II of the alleged regulations state that the counsel for the enforcement of military discipline is, judge concerning those offenses of those who violated the regulations for the military punishment of the combined fleet. What purports to be certain of these latter regulations is attached marked Secret Penal Regulations, etc. These alleged Secret Penal Regulations of the combined fleet provide in article I, this regulation should be applied to the people other than Japanese subjects in the occupied territory of the Imperial Japanese Navy. Defense counsel has attempted to establish in a prior argument that these Marshallese were subjects of Japan originally. If that is so, and if the contents of these alleged regulations can be believed, then by virtue of Article I of these very regulations they cannot possibly be applicable to these natives for they were subjects of Japan. Furthermore, these regulations, by their terms are to be applied to the "occupied territory" of the Imperial Japanese Navy. "Occupied territory" is a well known legal concept which involves the occupation and holding of a neutral or belligerent territory. There have been dicta in some decisions to the effect that where martial law is declared the situation is similar to that of an occupied territory; but there has been no evidence produced before this commission by the defense that martial law was brought into effect. It is clear on these territorial grounds that these regulations are not applicable in this case. Appended to the document are several loose pages which purport to be a printed copy of martial law. Whether this was originally appended to the document or not the judge advocate does not know, but in any case, there has been no evidence before this commission that martial law and its contents were applicable to the proceedings at Jaluit. The judge advocate believes that in the face of these numerous objections to this document that it should not be admitted into evidence by this commission. It is totally incredible, unreliable, and inapplicable to the proceedings of this commission.

The accused replied.

The commission was cleared. The commission was opened. All parties to the trial entered. The commission announced that the objection was sustained.

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James A. Kenny Jr. USN

The accused did not desire further to examine this witness.

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

The witness said that he had nothing further to state.

The witness resumed his status as counsel for the accused.

The commission then, at 11:23 a.m., adjourned until 9 a.m., Monday, March 31, 1947.

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James P. Henry Lt. USA

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THE NINETEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, March 31, 1947.

The commission met at 9:10 a. m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guyann, U. S. Marine Corps,
Lieutenant Colonel Henry K. Rescoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garberine, 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.
Buern 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.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused was, at his own request, duly sworn as a witness in his own
behalf.

Examined by the judge advocates:

1. Q. State your name and rank.
A. Major, Imperial Japanese Army, Furuki, Hiddaka.
2. Q. Are you the accused in this trial?
A. Yes.

Examined by the accused:

3. Q. Have you ever had duties on Jaluit?
A. I have.
4. Q. When did you arrive on Jaluit?
A. The eighteenth of January, 1944.
5. Q. Where did you come from?
A. I came from Wotje through Enjalein.

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6. Q. When did you leave Jaluit?

A. As I remember it was on the eleventh of October, 1945.

7. Q. Where have you been since the time you left Jaluit until the present?

A. I have been in Majuro, Kwajalein and Guam.

8. Q. To what unit were you attached on Jaluit?

A. Sixty-second Naval Guard Unit.

9. Q. What was the name of your organization?

A. Second Battalion, First South Seas Detachment.

10. Q. What was your position in this detachment?

A. I was battalion commander.

11. Q. What were your duties at Jaluit during 1945?

A. I was head of the Defense Section and also head of the Commission on Defense Preparation.

12. Q. Who was your commanding officer?

A. Rear Admiral Masuda, Nisuke.

13. Q. You, being a person in the Army, how did you come under the command of the Navy on Jaluit?

A. I did not first come under the command of the Navy on Jaluit.

14. Q. What was the relationship between the Army and the Navy at that period?

A. I would ask about the scope.

15. Q. By what circumstances and when did the Army come under the command of the Navy?

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

The accused withdrew the question.

16. Q. In the answer to the question, "Did you first come under the command of the Navy on Jaluit?" you answered, "No, I did not first come under the command of the Navy." Then when did you come under the command of the Navy?

A. In September, 1943, upon my arrival at Wotje, I came under the command of the Commanding Officer of the Sixty-fourth Naval Guard Unit.

17. Q. When you moved to Jaluit from Wotje, did you come by yourself?

A. No.

18. Q. You stated that you did not come by yourself. Then what were the circumstances of your going to Jaluit?

A. In January, 1944, there was a change in disposition of the Army units in the Marshall area by the order of the Sixth Base Force. I was ordered with the main forces of the Second Battalion, First South Seas Detachment, of which I was commanding officer on Wotje, to move all personnel to Jaluit. Commanding two hundred men I moved my men through Kwajalein and came to Jaluit. The remaining men on Wotje were moved in small numbers to Kwajalein.

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19. Q. You stated that all of your men were ordered to Jaluit. Were all of your men moved there?

A. No. I was not able to move all of them to Jaluit.

20. Q. Please state what were the circumstances of this.

A. At that time, due to the supremacy of the air by the American Air Force, only small numbers could be moved at a time. Commanding a purely battle unit I came to Kwajalein and then to Jaluit. Right after leaving Kwajalein, Kwajalein fell and the men I had left behind on Kwajalein, about one hundred fifty, died there. On Wotje, about three hundred still remained. After the fall of Kwajalein, the American forces had control of the air and the sea and to move troops became impossible. The ones remaining on Wotje stayed there.

21. Q. It is clear that transportation between Wotje and Jaluit was difficult. How about the other islands?

A. I know.

22. Q. What were the transportation conditions?

A. Transportation by plane and warship was impossible. Radio communications as time lapsed due to power difficulties and failure of equipment, by 1945, communications were very difficult.

23. Q. Then, was Jaluit absolutely isolated by the enemy forces?

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

The accused replied.

The commission announced that the objection was not sustained.

A. I would like the question repeated.

24. Q. Then, was Jaluit absolutely isolated by the enemy forces at that time?

A. Yes. It was absolutely and completely isolated.

25. Q. In 1945, do you know what the strength and armament of the Japanese forces on Jaluit were?

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.

26. Q. Please describe them.

A. The strength of the Japanese forces on Jaluit of military and Gunseikus was a little over two thousand, the breakdown of which is: Army, 650; Navy, 700, and Gunseikus, 600. The armament there were twelve 12.7 centimeter guns, all of which had been destroyed and were not usable. All

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major caliber guns which could be used against ships were destroyed. The only guns available against planes were three 25 millimeter guns which remained and had been repaired many times. They were not very effective. The ammunition for the 25 millimeter guns at the end of the war was ten thousand rounds. Admiral Masuda restricted the firing of this ammunition to two hundred rounds a day, no matter how many planes or how many times they came.

27. Q. Did you have any stores of provisions?

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

The accused replied.

The commission announced that the objection was not sustained.

A. There was a storage of rice, enough for one day, this was supposed to be used when the island was invaded, the use of which was prohibited at that time.

28. Q. Could you replenish these supplies of ammunition and provisions at that time?

A. There was absolutely no means of replenishing them.

29. Q. Then how did the Japanese forces subsist?

A. We subsisted by what food could be produced on the island by native, military and Gunseku labor. The main food was coconut toddy and coconuts. This was not sufficient. All edible items were eaten. Wild grass on Raddj was all eaten and grass gathered on the outlying islands and sent to the main island, even all of this was eaten up and could not be acquired at many times. At that time the greatest problem which faced Admiral Masuda and everybody down to the soldiers and Gunsekus was the producing of food. Persons other than those directly engaged in battle were used to gather food. Even patients worked at this. The main labor to produce food was native. Six hundred young and middle aged men as the main force, even women and children worked at production of food. In transporting food from one island to another boats to be used were destroyed by enemy planes. Natives built canoes to overcome this; they also acted as crews. Concerning farms, as the ground was sandy, the vegetables did not grow well. Over this just about the time they started to grow, they were bombed and did not succeed.

30. Q. Did the natives work with the Japanese forces by order of the Japanese forces?

A. Yes.

31. Q. How did you and Admiral Masuda handle these natives?

A. Admiral Masuda made all efforts to provide as much as possible for the welfare of the natives which could be permitted from a standpoint of operations. The food problem on Jaluit was the greatest problem. The food was rationed to the regular military and Gunsekus, but as far as the natives, it was handled as the food rations were, the same to the natives as regular military and Gunsekus. Patients were allotted sufficient food rations. At times when the amount of food decreased, the amount of food supplied the headquarters was decreased by order. At that time as the fear of the natives deserting was very great, Admiral Masuda authorized a special request

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by the natives to go outside the reef to fish. Whereas several dozen regular military and Gunsekus died of starvation, there were none among the natives. There were some lepers confined on an island by themselves where they had eaten most of the food that could be produced and as they were asking for food they were moved to an island where they could easily get enough food to subsist on. War conditions being very acute, means in which to comfort the natives were few. For this reason, schools were reopened for the native children. The natives sent a letter to Admiral Masuda expressing their gratitude. Admiral Masuda made no distinction between persons or rank; he was very frank with everyone. The natives respected Admiral Masuda very much. This could be well seen by the letters sent to Admiral Masuda and by the gifts which were sent to him. I know the natives underwent many hardships due to the battle conditions. Due to the fact that they cooperated with the Japanese he was very thankful. Admiral Masuda was always saying that, "due to the natives, all the people on Jaluit were able to subsist; never forget this." Because everyone on Jaluit knew this, there was no one who was not grateful to the natives. I watched well to see that no one on the outlying islands made impossible demands or abused the natives.

The commission then, at 10:30 a. m., took a recess until 10:45 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.

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

(Examination continued.)

32. Q. You testified that Admiral Masuda was afraid the natives would desert. By allowing a request by the natives to fish outside the reef, were there any actual cases of natives deserting? g-k

A. There were. g-k

33. Q. Please state this case.

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

The accused replied.

The commission announced that the objection was not sustained.

A. On the sixth of May, 1945, six hundred natives deserted. Thereafter, desertions continued in groups or individually. By the end of the war, a little more than one thousand, about one-half of the natives, had deserted. There were not many weeks that I did not receive a report or hear of a desertion. g-k

34. Q. Do you know for what reasons these desertions occurred?

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This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, that counsel was pursuing collateral matter, and that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

35. Q. Do you know what effects these desertions of the natives had on the military forces?

A. I do.

36. Q. Tell us what you know.

A. Mainly it affected the labor services in three points. First, the food production of the military and gunsokus decreased. Second, because many of the laborers deserted, the dispatching of regular military and gunsokus from Enidj to the outlying islands to produce food became necessary. At a time when cripples and patients had duties, to send a great number of men to the outlying islands affected the morale and disrupted the duties. After the natives had deserted there was bombing of important self-supporting points and important areas of patrolling. The most important coconut groves were bombed. Farms were also bombed and the hiding places of boats were bombed. This endangered our existence and increased our hardships.

37. Q. You stated as a result of the natives deserting, important coconut groves, boats and farms were bombed. What connection was there between the desertion and the bombings?

A. It was judged that the natives who had deserted had supplied information to the enemy and concerning this, reports were received from other bases that after military, gunsokus or natives had deserted, important points from the standpoint of military and self-supporting, enemy bombings were made.

38. Q. Were any measures taken by the Japanese forces against these desertions?

A. Yes.

39. Q. What measures were taken?

A. The measures taken were the dispatching to prevent desertion and to prevent the American forces from carrying off the natives. Officers and men were placed where the natives were to watch them. On small islands where there were natives and not enough men to watch them, they were moved to larger islands where they could be watched. As preventative measures against natives deserting, a handbook on patrolling was made and distributed. In this was registered means of detecting spies, means of taking spies and instructions. Especially at the end of March, 1945, when spies from Hille sneaked into Jaluit it became known that in the near future the Jaluit natives were to be carried away. Admiral Masuda said, "Do not let even one native out." He set up an important policy and in this were the following measures: Patrolling in the outlying islands was reinforced. Up to now the intelligence officer handled this. A new defense section was organized, and I was appointed head of this section. Reinforcements were sent to the islands as defense against American tactics. Many instructions and training was given the guards. Measures to prevent desertion were not

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only for the natives, but for regular military and gunseks. Those who were thought may try to desert, the disposition was changed. On the sixth of May, right after the first desertion a declaration to prevent the desertion of natives was proclaimed. Admiral Masuda and all people concerned and officers and men on the outlying islands resolved to prevent the desertion of the natives and strove in its prevention.

The commission then, at 11:27 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. JPK

Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

40. Q. In the last answer of your testimony of this morning, you testified that among the counter-measures and operations of Admiral Masuda a proclamation was made. Do you know the contents of this proclamation?
A. I do.

41. Q. Please tell us its contents.
A. "The natives are good citizens of Japan. Do not be moved by the propaganda of the Americans. Cooperate so that we shall win the war. As long as you remain on the island and cooperate the lives and property of the natives shall be secure. If rules are violated and you try to desert, you shall be severely punished."

42. Q. Did this proclamation to the natives have any effect?
A. I think it brought about results.

43. Q. After this proclamation was put out, were there any natives who committed actions in violation of the proclamation?
A. There was.

44. Q. If you know what actions they were, tell us about them. JPK
A. I remember the cases of the thirteenth of May, when Leecher, Arden, and the others attempted to kill military personnel and steal military property; in the beginning of June, the Medjai Island, in which Chata and Chonmohle attempted to kill a guard and steal military property; the beginning of July, the case of Mandala and Laperia on Jaluit Island, attempted killing of a guard and stealing of military property; the middle of July, the Pingelap incident in which Melain and Mojkan attempted spying, attacks of guards, and seizing of military property. There was also cases of attempted murder of military personnel, attacks, or stealing of arms from the guards by overpowering of gunseks, and to make a boat and escape in which one gunsek was hurt, one drifted ashore, stealing of military boats and deserting, stealing hand grenades, and several cases of spying. JPK

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45. Q. In each case, was examination, consultation and punishment dealt out?

This question was objected to by the judge advocate on the ground that it was vague, indefinite, too broad in its scope, and leading.

The accused replied.

The commission announced that the objection was sustained.

46. Q. Do you know what steps were taken in disposing of these incidents?

A. I do.

47. Q. Tell us how they were disposed of.

A. For the ones that were captured, Admiral Masuda held examination and consultation. When the Imrodj incident occurred, Admiral Masuda called myself, Shintome and Inoue to his room and told us as follows: "This native crime on Jaluit, this is an important crime. As they could not be sent back to where they can be disposed of due to the war conditions, they shall have to be disposed of on Jaluit by my authority. Under these war conditions, a formal trial cannot be conducted. They shall be examined and consultation held by special procedure done by my authority and under the battle conditions the best possible procedure; and in following this procedure, each shall be given duties. You who receive these duties shall perform them. You shall perform your duties impartially and carefully, as your duties require you to judge on people. Lieutenant (jg) Sakuda shall act as investigator, Furuki, you shall act as a judge advocate, Lieutenant Shintome and Captain Inoue and myself shall act as judges. The investigators shall assemble the required witnesses and investigate thoroughly, and reports shall be made to me at least once a day. If I am busy, they shall be reported to Major Furuki. Furuki shall later report them to me. After the investigation is over, evidence should be made clear in a detailed report submitted to me. Major Furuki shall be present when reports are made to me. And Major Furuki, in the last examination and consultation, you shall express your opinion as to punishment. I shall show you the form to use later. Inoue and Shintome shall express your opinions as judges." Last it was ordered the investigations be made. After the report was submitted to Admiral Masuda, Admiral Masuda, taking me with him, went to where the natives were confined and interrogated them. In the last examination and consultation, Admiral Masuda assembled Shintome, Inoue and myself and stated as follows: "We shall conduct the last examination and consultation. As judges, you shall express your impartial opinions." He then read the investigation report. Next Admiral Masuda stated: "I have investigated, myself, and the specifications are as stated." I expressed my opinions by my opinion paper which I had prepared. Masuda and Shintome expressed their opinions. After hearing this, Admiral Masuda stated that he would deliberate further on this and held the report and opinion paper and this examination and consultation was over. About a day or a day and a half later, Admiral Masuda called the three of us and made up a judgment paper in which he pronounced sentence; taking me with him, we went to where the natives were confined and pronounced sentence on them.

48. Q. Do you remember the names of the persons who were examined and consulted, and who were investigated?

A. There are some that I remember; some that I forget.

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49. Q. Please state the names that you remember.

A. I remember Loechr, Kohri, Kosina, Arden, Makui, Tiagrik, Namura.

50. Q. You stated that under the war conditions they could not be sent back to where there were the proper facilities for trial. Where do you mean when you say sent back to where a proper trial could be held?

A. Truk.

51. Q. On Truk, what courts were there?

A. There was a court martial court of the Fourth Fleet.

52. Q. Was transportation between Truk and Jaluit possible?

A. Transportation was impossible.

53. Q. If this had occurred in peace time, do you know where this would have been tried?

A. At Ponape.

54. Q. What were the conditions of transportation between Ponape and Jaluit?

A. It was absolutely impossible.

55. Q. Was there a court in Jaluit?

A. There were none.

56. Q. You stated that Admiral Masuda said, "Under the war conditions, formal trial could not be held; thereby, by my authority, they shall be disposed of." Where was his source of authority?

This question was objected to by the judge advocate on the ground that it called for a legal conclusion which the witness was not qualified to give.

The accused withdrew the question.

57. Q. You testified concerning the authority of Admiral Masuda. Do you know about the authority of Masuda to dispose of these natives?

A. I do.

58. Q. Please state it.

A. He had the authority. Around April, 1944, there was a dispatch order to the commanding officer of the Sixty-second Naval Guard Unit from the commanding officer of the Fourth Fleet stating that "from now on the base supreme commander shall command all military forces, government offices, and civilians, and administer to judicial and administrative affairs." Again, there was a dispatch from the South Seas Governor to the Head of the Jaluit Branch of the South Seas Government as follows: "The South Seas Governor and all his authority, judicial and administrative, has come under the command of the commanding officer of the Fourth Fleet. Each government officer or civilian in matters concerning the above authority shall come under the command of the commanding officer of each base." Admiral Masuda derived his authority by these two dispatches.

59. Q. Concerning the examination and consultation of the native cases, you stated that a judgment paper was drawn up and the sentence pronounced. Do you remember the contents of this paper?

A. I do.

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60. Q. Tell us how it was stated.

A. On it was stated "judgment paper." There was a place "decision" under each persons name and his sentence was written in. Concerning the Imrodj incident, Leschr, Kehri, Kosina, and one unknown, Arden, Makui, Tiagrik, had death sentences. I forget their names, but four had hard labor of one month and some were on probation at their home island.

61. Q. You stated that a person named Namura was investigated. What was his sentence?

A. Namura, as I remember, and four others were all released. What came to light as a result of the investigation of Namura in the Imrodj incident is as follows: Namura was a resident of Ren village, formerly had lived on Ren Island and had gone to Imrodj. He went back to Ren Island to get his belongings. Leschr, Arden, Makui, and Echibaru told him of the plan to desert and tried to get him to do so. Namura knew that Leschr planned to kill Petty Officer Okamoto. After this, the natives of Ren Island continued to desert, and the activities of the American ships around Ren Island was continuous. Namura decided to desert. Then, he decided against it. This was what Namura related to First Lieutenant Joke when he was interrogated. As judge advocate, I did not know if Namura's actions constituted a crime, so I asked Admiral Masuda. Admiral Masuda stated this is not a crime and ordered him released. *gmx*

The commission then, at 3:20 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.

Furuki, Hidesaku, the witness under examination when the recess was taken resumed his seat as a witness in his own behalf and continued his testimony. *gmx*

(Examination continued.)

62. Q. You stated that Namura and four others were released. Were they released upon investigation and finding that the result did not constitute a crime, or were they released by judgment?

A. They were not released through judgment, but as a result of an investigation and before they were given an examination and consultation.

63. Q. Then, in judgment, there was a death sentence and a sentence of hard labor. Is that correct?

A. Yes.

64. Q. Then, the ones who were sentenced to death, Leschr, Kehri, Kosina, Arden, Makui, Tiagrik, and one unknown. Do you know for what specifications they were sentenced to death?

A. I do. By violation of the Naval Criminal Code in desertion to the enemy, stealing military supplies, attacking guards in a group, in violation of the Japanese Criminal Code, worked together with an enemy and act against Japan, and murder.

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65. Q. You stated that these crimes were attempts. Were they just plans or were they actually carried out?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. They tried to carry it out, but they did not succeed.

66. Q. Describe this specifically.

A. In the beginning of May, 1945, on Iredj Island and in the sea near Iredj and Nagan Islands they tried to carry it out.

67. Q. How did they try to carry this out?

A. First a detail which went to Ren Island, upon its return to Iredj, relayed to the natives on Iredj Island the activities of the American ships in the Ren area. The principals in this plot set up the following plans: Behibaru, Leschr, Arden, Makui, and the others on their way back were to kill the Japanese on the boat and go to Ribon Island by Iredj Channel and later to escape to Ngain and Bakk. On Iredj Island, Kohri and Jisan, commanding as many natives as possible on the night of the thirteenth of May, were to kill the guard, take the boat and escape to Ribon Island. Tiagrik, who was on Medyai Island, was to command as many natives as possible, kill the guard, take the boat and that night go through Ribon to Ngain and Bakk. After this plan was made, Leschr, Arden, Behibaru, and others went to Ren Island and tried to get Kama to desert and on the return trip when passing by Iredj Channel, they tried to strangle Petty Officer Okamoto and throw him into the sea. Several natives attempted to overpower and kill Muracka, but Okamoto threw Behibaru into the sea and this plot went wrong. And the ones remaining in the boat were taken prisoner. Kohri and Jisan were commanding the natives and making preparations to escape that night, but seeing Okamoto bringing in Leschr and the others, Kohri did not execute the plan that night. The next day he was taken prisoner. Jisan, on Medyai Island, made contact with Tiagrik and tried to get him to escape. Tiagrik immediately joined this plot and commanding the Medyai natives, endeavored to escape and before he could execute the plan, the specifications came to light and he was taken prisoner.

68. Q. What happened to Behibaru?

A. Behibaru, after he had been thrown into the sea, became missing and there were points to indicate that he had come upon Iredj Island.

69. Q. Concerning these specifications on the judgment document, were the laws applied written in?

A. This was written in the judgment paper.

70. Q. You, as the judge advocate, what opinion did you express concerning these crimes?

A. The laws applied to the specifications was as I stated before. Also special notes such as whether they were the main plotters or not, and also whether their intent was strong or not, was written. The sentences I asked for were as follows: In the case of Leschr, the one unknown, Arden, Makui, was death; for Kama, Tiagrik, fifteen years hard labor; for the four natives brought from Iredj Island, twenty days hard labor.

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71. Q. The decision and the sentence asked for seems to differ. Who made the decision?

A. The decision was decided by Admiral Masuda.

72. Q. Do you know the case of Chuta and Chomohle, specification three of the charges?

A. I do.

73. Q. What incident was this?

A. This was an incident in which two of them of Medyai Island returned the natives of the village, planned and started to kill the guard and take the boat and desert.

74. Q. Do you know how this case came to light?

A. I do.

75. Q. Please state all you know.

A. A person in the military service while inspecting Medyai discovered a raft in a coconut grove, and upon interrogation of investigation of the Medyai natives this came to light. OK

76. Q. How did you come to investigate this case?

A. As the different cases came to light, the commanding officer of Medyai Island, First Lieutenant Kato, and the specification as I stated before, came to light and a report written by Kato. Chuta, Chomohle, and four natives were building a raft. The natives were sent to headquarters. Kato was ordered to investigate, and as a result of the investigation of the Medyai Island incident, it was no different to what Kato had investigated. Points that came to light were that they had made a raft stored with coconuts for food in a coconut grove in preparation for their desertion. Many natives tried to kill the guard watching the boat and escape, and made preparations for this. The procedure in disposing of this incident was the same as the Inrodj incident.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, April 1, 1947.

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James P. Krazy D. USN

THIRTY-FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, April 1, 1947.

The commission met at 9:05 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 Haine, official native observer from the Marshall Islands,
Mark Jude, 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 twentieth day of the trial was read and
approved.

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, the witness under examination when the
adjournment was taken on March 31, 1947, resumed his seat as a witness in
his own behalf. He was warned that the oath previously taken was still bind-
ing, and continued his testimony.

(Examination continued.)

77. Q. You testified in the answer to your last question yesterday that the
same procedure was taken in the Medyai as in the Imrodj incident. What
sentence did you express on Chuta and Chonmohle?

A. Fifteen years hard labor, and the law applied was the same as in the
Imrodj incident.

78. Q. Your opinion and the laws applied, were they not a written part of
the judgment document?

A. Yes.

79. Q. Yesterday, in testifying about the Imrodj incident you stated that
the laws applied were not written in the judgment document. Isn't there a
discrepancy?

A. No.

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80. Q. What is the reason for this?

A. Because the judgment paper and the paper in which I expressed my opinion is the same paper and the top part is the judgment paper and the bottom part my opinion.

81. Q. Then in the case of the Imrodj incident the judgment was written on the top of the paper and on the bottom was the law applied and your opinion. Is that correct?

A. Yes.

82. Q. In the case of Ghuta and Ghonmohle is this the same?

A. Yes.

83. Q. What was the decision in the case of Ghuta and Ghonmohle in which you expressed your opinion of fifteen years hard labor?

A. It was death.

84. Q. Who made the decision?

A. Rear Admiral Masuda.

85. Q. On the judgment paper was the signature of Admiral Masuda on it?

A. Yes.

86. Q. Was this the same in the other cases of Leschr, Kohri, Kozima, Arden, Makui and Tiagrik?

A. Yes.

87. Q. Do you know concerning the incident of Mandala and Laperia?

A. I do.

88. Q. What kind of an incident was this?

A. Mandala and Laperia were the main plotters on the island of Jaluit in which they planned to lead many natives, kill the guard, take the military boat and try to desert. Preparations were being made for the execution of the plan. How it came to light was through a young woman who had known a gunsoku named Kawaoka from the time she was a child, and she told him about it. As evidence oars and poles and so forth were being prepared for desertion, they were confiscated. At that time to prevent desertion all oars and poles were stored in the house of the district commanding officer and a soldier placed on guard. This incident of Jaluit Island was investigated by the commanding officer of that district, warrant officer Omura. The above contents came to light. The investigation report on Mandala and Laperia were sent to headquarters. First Lieutenant Kadota investigated this incident about ten days during this period. First Lieutenant Kadota went to Jaluit, he also sent a non-commissioned officer to Kinadyeig Island where First Lieutenant Kadota was and had him investigate. As a result of Kadota's interrogation he found the facts the same as the investigation of Warrant Officer Omura.

89. Q. Other to the evidence and witnesses, was there a confession of Mandala or Laperia?

A. There was.

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90. Q. Were there confessions in the cases of all the other natives that you have testified to?

A. In each case there was a confession. Each person made a confession.

91. Q. What procedure was taken in examination and consultation in the Mandala and Laperia cases?

A. The same as the Medyai and the Imrodj incidents.

92. Q. What was your opinion that you expressed concerning their disposal?

A. Fifteen years hard labor and placed under watch at their original island. The laws applied were the same as the Medyai incident.

93. Q. What was the decision in this case?

A. It was death.

94. Q. Was this decision the same as the other decisions made by Admiral Masuda?

A. Yes.

95. Q. Was the signature of Admiral Masuda on the judgment paper?

A. Yes.

96. Q. Were the laws applied and your opinion written the same as the other judgment paper in which the judgment was at the top and the laws applied and your opinion at the bottom?

A. Yes.

97. Q. Do you know the case of Malein and Mejkane?

A. I do.

98. Q. Do you know the case of Malein and Mejkane and the one unknown?

This question was objected to by the judge advocate on the ground that there has been no testimony from this witness that there was one unknown.

The accused replied.

The commission announced that the objection was not sustained.

A. I know of Malein and Mejkane, but I do not know if there is one unknown listed in specification five.

99. Q. Then please state what you know concerning the case of Malein and Mejkane.

A. The specifications that came to light upon investigation of the Malein and Mejkane case were that Malein had ordered Mejkane to get the natives to desert from all the islands from Pingelap to Jaluit Islands and also to spy upon the defense garrison military secrets and to give the information to the Americans. They planned and executed this. Mejkane was only able to go up to Henge Island and to all the islands up to this point she handed the letter of Malein, trying to get the natives to desert, to the leader of each island.

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How this incident came to light was because Hajkane was missing from Pingalap and about ten days later returned. The District Commanding Officer of Pingalap investigated Hajkane. She acted crazy and the investigation was of no avail. Then she was sent to headquarters. First Lieutenant Kadota was ordered as investigator and investigated the case. She continued to act crazy and information could not be obtained. A short time later a report came from the District Commanding Officer of Majilrie Island which stated that a woman named Hajkane had been hiding there. This Kadota told Hajkane, and Hajkane stopped acting crazy and confessed that she had come to Menge Island acting on Malein's orders. Hajkane also related that the head of the village of Pingalap, Ichiro, Mark, Saburo and Malein who were prominent men of that village had held council and planned to desert. Malein, Ichiro, Mark and Saburo were called to Ruidj Island. As the case became larger Morikawa and Ieki were added as investigators. The investigation was held on Ruidj Island, the investigators were at the spot of the crime and investigated. Ieki went to Oca, Medyai and Menge Islands twice. Kadota went to Jaluit and Oca twice and also went to Pingalap once to investigate. Each person who was believed to have been involved in this case from Medyai, Menge, Oca and Jaluit were called to Ruidj and investigated. From Jaluit Island the head of the village, Levitikos was called. As a result of the investigation Malein confessed and the persons who were involved from Medyai and Menge Islands confessed that they had seen the letter brought by Hajkane. Also as a result of the investigation there came out that Mark, Ichiro and Saburo and another had no part in this plan. This is the case of Malein and Hajkane. OK

100. Q. As a result of the investigation how did you dispose of Malein, Hajkane, Ichiro, Mark, Saburo and the others?

A. In the Malein and Hajkane case the same procedure of examination and consultation was held as in the case of Mandala and Laperia. As for Mark, Ichiro and Saburo they were cleared of suspicion as a result of the investigation and were released. The two leaders from Medyai Island and Menge Island, I forget if they were punished or not. Witnesses of other islands were returned to their islands after the investigations were over.

101. Q. What was your opinion in punishment of Malein and Hajkane and what were the laws that were applied?

A. My opinion expressed in the case of Malein was death, in the case of Hajkane, fifteen years hard labor. The laws applied to Malein, the same as Mandala and Laperia and in addition to this spying and the articles in the Japanese Criminal Code concerning spying and the articles in the military secrets protection law concerning intentional relaying of information to the enemy. In the case of Hajkane, the Naval Criminal Code, desertion to the enemy and spying, to the Japanese Criminal Code and the article concerning the intentional relaying of information as to the enemy of the Military Secrets Protection Law. Also as a special notice it was written that Malein was the main plotter and intent was very strong and in the case of Hajkane, she was not the main plotter, but was involved, and intent was strong. This was expressed and also in the other cases whether intent was weak or strong and whether the person was the main plotter or not was written in.

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James P. Kenny Lt. USN

102. Q. What was the decision as a result of the investigation?

A. Halsein and Majkane were sentenced to death.

103. Q. The form of the judgment document, the name, the signature, and the opinion and the laws applied, were these all the same as the other cases?

A. Yes.

104. Q. Concerning the above investigation, you as judge advocate, did you notice any defects in the investigations that were not sufficient?

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

The accused replied,

The commission announced that the objection was sustained.

The commission then, at 10:25 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.

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

105. Q. You testified that Admiral Masuda stated that under the war conditions now existing the formal procedure could not be taken and that by my authority a special procedure will be held. Was the procedure held on all the above persons this special procedure?

A. Yes.

106. Q. When you were present in this special procedure did you engage in this special procedure thinking that it was illegal or did you think it was legal?

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

The accused withdrew the question.

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James P. Keamy Lt. USN 263

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107. Q. When you engaged in this examination and consultation according to this special procedure did you engage in it and recognize it as being legal or illegal?

This question was objected to by the judge advocate on the ground that it was leading, irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

108. Q. With what thought did you participate in this procedure?

This question was objected to by the judge advocate on the ground that it was leading, irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

109. Q. Then I shall ask you point blank, did you engage in this trial with the intent to murder these people mentioned in specifications one through five by expressing your opinion?

This question was objected to by the judge advocate on the ground that it was leading, irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The Commission was cleared.

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

The commission announced that the objection was sustained.

110. Q. With what intent did you participate in this examination and consultation concerning the facts? Please explain to the commission.

This question was objected to by the judge advocate on the ground that it was leading, irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

The commission then, at 11:30 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 accused, his counsel and the interpreters.

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James P. Lenny Jr. USN 264

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Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, 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.)

111. Q. You stated that the commanding officer, Admiral Masuda, said that: "Under the war conditions now existing, the formal procedure could not be taken and that by my authority a special procedure will be held." Do you know why this special procedure had to be conducted?

A. I do.

112. Q. Please tell the commission why you know. OK

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

The accused replied.

The commission announced that the objection was sustained.

113. Q. When this special procedure was held, was Jaluit a battlefield at that time?

A. Yes.

114. Q. In this battlefield, was it possible for a great number of persons to assemble and conduct an examination and consultation?

A. This was impossible.

115. Q. Was there an air raid shelter in which they could assemble?

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

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. No.

116. Q. While these special procedures were being held, were air raids and bombardments frequent?

A. Jaluit was under air raids continuously. Around Jaluit there was much activity by American ships in the outlying islands, fighting continued between ships and the guards. Therefore, all personnel on Enidj had to be at their battle stations.

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James P. Harvey Jr. WSH

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117. Q. You stated concerning the sentences of the natives such as death and hard labor. Do you know what was the result of that decision?
A. I do.

118. Q. Tell us what that was.

A. Persons with death sentences, I executed the sentences as stated in the statement I gave to the investigator. From Admiral Masuda, I was given the duties of the executioner. Concerning hard labor, persons with sentences of hard labor, they were returned to their islands and worked out their sentences. Persons cleared of suspicion were returned to their islands.

119. Q. Admiral Masuda ordered you to carry out the sentence. Was this order given on the basis of this decision?
A. Yes.

120. Q. Could you refuse this order?

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 irrelevant.

The accused withdrew the question.

121. Q. Why did you execute the sentence?

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

The accused replied.

The commission announced that the objection was sustained.

122. Q. In executing these death sentences, did you execute them with the intention to murder?

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

The accused replied.

The commission announced that the objection was sustained.

123. Q. Did you execute their sentences with intent to kill?

This question was objected to by the judge advocate on the ground that it was clearly inconsistent in that the witness could not intend to execute without the intent to kill. *JK*

The accused replied.

The commission announced that the objection was sustained.

124. Q. As a matter of fact, why did you treat the natives with kindness?

A. To treat them kindly was because of my feeling I could not help but do so. This comes naturally and was because of the war the natives were going through so many hardships I could not help but sympathize with them, and also the natives cooperated so sincerely with the Japanese that I could not but feel thankful.

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James H. Leary U.S.A.

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125. Q. How long have you been in the Army?

A. Up to the end of the war, I had been in the army fourteen years.

126. Q. When did you first hear the term "martial law"?

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 think it was when I became an officer.

127. Q. Do you know, as a matter of fact, if in Japanese there are any laws relating to martial law?

This question was objected to by the judge advocate on the ground that it called for the opinion of a legal expert on the laws of Japan.

The accused replied.

The commission announced that the objection was not sustained.

A. I do.

128. Q. Is there a law in Japan pertaining to martial law?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and called for the opinion of a legal expert.

The accused replied.

The commission was cleared.

The commission was opened. All parties to the trial entered. The commission announced that the objection was not sustained.

The question was repeated.

A. There is.

129. Q. When did you arrive on Jaluit?

A. Eighteenth of January, 1944.

130. Q. Do you know, as a matter of fact, if there had been a declaration of martial law prior to the time you arrived on 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.

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131. Q. Do you know from your own personal knowledge, as a matter of fact, if there had been a declaration of martial law prior to the time you arrived on Jaluit?

A. I do.

132. Q. Was there such a declaration of martial law prior to the time you arrived on Jaluit?

A. No.

133. Q. Do you know from your own personal knowledge whether there was a formal declaration of martial law on Jaluit during the time you were on Jaluit?

A. It was a problem whether to declare martial law or not.

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

The accused made no reply.

The commission directed that the answer be stricken out.

134. Q. Do you know from your own personal knowledge if Admiral Masuda declared martial law in effect on Jaluit during the time when you were on Jaluit?

A. I do.

135. Q. Did he?

A. It was not proclaimed, but he stated that actually there was martial law.

The judge advocate moved to strike the words "but he stated that actually there was martial law" out of the answer on the ground that it was not responsive.

The accused made no reply.

The commission directed that the words be stricken out.

136. Q. Do you know from your own personal knowledge and as a matter of fact, why Admiral Masuda did not proclaim martial law on Jaluit?

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.

137. Q. Do you know whether or not Admiral Masuda put any of the articles of Japanese martial law into effect on Jaluit, particularly as those articles were applicable to the trial of persons accused of crimes on Jaluit?

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

The accused replied.

The commission announced that the objection was sustained.

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James P. Kanny *12.05.52*

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138. Q. Do you know if there were any provisions of martial law put into effect by Admiral Masuda relating to the trials of persons accused of crimes on Jaluit?

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

The accused replied.

The commission was cleared.

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

The commission announced that the objection was sustained.

139. Q. Did Admiral Masuda ever speak to you in an official capacity regarding martial law on Jaluit?

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

The accused replied.

The commission announced that the objection was not sustained.

A. He has.

140. Q. When?

A. After Kwajalein fell.

141. Q. Explain to the commission what he said regarding this.

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

The accused withdrew the question.

142. Q. Will you tell the commission exactly what Admiral Masuda said to you at this time?

A. "Jaluit is besieged by the enemy. I have thought on whether to declare martial law or not, but by order of the Fourth Fleet, it is actually martial law, but I will not proclaim it because Jaluit is a battlefield, which has gone beyond the necessity of declaring martial law." gpk

The judge advocate moved to strike out this answer on the ground that it was hearsay and irrelevant.

The accused replied.

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

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James P. Kenny Lt. USN

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143. Q. Do you know, as a matter of fact, whether Japanese martial law has any bearing on the special trials held for Lesohr, Kohri, and Kosina?

This question was objected to by the judge advocate on the ground that it called for the legal opinion of the witness, and was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

144. Q. Do you know from your own personal knowledge, and as a matter of fact, whether the special trials which you have testified to were given to Lesohr, Kohri, and Kosina, are permitted by Japanese Naval Court Martial Law?

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

The accused made no reply.

The commission announced that the objection was sustained.

145. Q. As an army officer, will you explain the Japanese Army Regulations regarding discipline in the carrying out of orders, particularly as they applied to battle conditions on Jaluit?

This question was objected to by the judge advocate on the ground that it was irrelevant, and is proper matter in mitigation only.

The accused replied.

The commission announced that the objection was sustained.

146. Q. Can you explain to the commission why you were, as a matter of fact, selected to carry out the judgment sentence in the case of Lesohr, Kohri, and Kosina?

This question was objected to by the judge advocate on the ground that it was irrelevant, and is proper matter in mitigation only.

The accused replied.

The commission announced that the objection was sustained.

147. Q. Among the questions I previously asked you, there are some points that were not clear, so I shall ask you the following questions to clarify this. You stated that you had received an order from Admiral Masuda to execute the persons sentenced to death, and I asked you the questions: "Did you do this with the intent to kill" and you answered "No". I did not ask you if you had the intent to murder, but that if you had the intent to kill. If you had misunderstood the question, will you correct your answer?

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A. I executed them without intent to kill, because this was after a legal judgment and I was ordered to do so by Admiral Masuda. As the judge advocate, I had no malice and nothing to hide, and I executed in my official duties.

The commission then, at 4:30 p.m., adjourned until tomorrow, Wednesday, April 2, 1947, at 9 a.m.

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James P. Kamy Lt. JG

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TWENTY-SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, April 2, 1947.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon H. 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, JX
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant David Bolton, U. S. Navy and
Lieutenant James F. 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.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, the witness under examination when the
adjournment was taken on April 1, 1947, resumed his seat as a witness in his
own behalf. He was warned that the oath previously taken was still binding,
and continued his testimony.

(Examination continued.)

148. Q. You testified yesterday that from May to August 1945 concerning the
native incidents that Admiral Haseuda had stated "Under the circumstances a
formal procedure could not be taken under the existing circumstances and by
my authority a special procedure will be held." When Admiral Haseuda stated
that he would dispose of this incident by special procedure were you conscious
that it was an unlawful procedure?

This question was objected to by the judge advocates on the grounds that
it called for the opinion of the witness, was irrelevant, and only proper as
a matter in mitigation.

The accused replied.

The commission was cleared.

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

The commission announced that the objection was sustained.

149. Q. Yesterday you testified regarding martial law, but you were not clear on all points. In accordance with section 280 of Naval Courts and Boards I would like to have you look at this book and refresh your recollection on this. Can you identify this book? 9x

This question was objected to by the judge advocate on the ground that it was argumentative and improper.

The accused replied.

The commission announced that the objection was not sustained.

A. It is the Rules and Regulations of the Japanese Navy.

150. Q. I ask you to refer to pages 327 to 329 and page 354.

The commission wished to know what the subject matter of the referenced pages was.

The accused replied that this document was not being offered into evidence. It was simply being shown to the witness in order that he might refresh his recollection. The book will be taken away from him after he has refreshed his memory. The subject matter is martial law.

This procedure was objected to by the judge advocate on the ground that the witness has not indicated that his memory required refreshing and also on the ground that the subject of martial law has not been shown to be relevant in view of the testimony by this witness that martial law was not in effect.

The accused replied.

The commission announced that the objection was sustained.

151. Q. Do you know as a matter of fact whether or not there is a Japanese Martial Law Statute?

A. I do.

152. Q. Do you know as a matter of fact whether in a designated area civil cases relating to military affairs and persons who commit such crimes as manslaughter, murder, intimidation, arson and fire by negligence, crimes of destroying building property are tried in military courts?

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

The accused replied.

The commission announced that the objection was sustained. 9x

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153. Q. Yesterday you testified regarding the lack of transportation between Jaluit and the rear areas. Do you know as a matter of fact that when there is no transportation between the competent court and when there is no court in the besieged area, where transportation is suspended that all cases, civil or criminal, shall belong to the jurisdiction of the military court?

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

The accused replied.

The commission announced that the objection was sustained.

Cross-examined by the judge advocate:

154. Q. Did you go to the Army academy?

A. Yes.

155. Q. When you were at the Army academy were you instructed concerning obedience to International Law?

A. I remember having received training in this.

156. Q. Did you ever read the following Japanese Naval Regulations "In regard to a matter of international implication, the captain must especially strive to be prudent and absolutely must act within the limits of orders, regulations, and treaties. If the matter goes beyond those limits, he /the captain/ must request directions from his superior officers or else directly from the naval minister."?

This question was objected to by the accused as follows: The accused objects to this line of questioning by the judge advocate and objects to the judge advocate being allowed to read from a document which has not been introduced into evidence. The judge advocate has made no showing that it will be taken into evidence and the judge advocate is not taking the stand. We further object that the judge advocate in being allowed to read from these documents is being permitted to appear as a witness before this commission without being sworn. In continuing to introduce into this trial documentary evidence in an improper manner the judge advocate thereby is materially prejudicing the rights of the accused in this case.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

157. Q. You testified concerning certain things which you call Admiral Masuda said or did. Did you testify truthfully in these matters?

This question was objected to by the accused on the ground that it was improper in that the accused had already taken an oath to tell the truth.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

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158. Q. Do you know if Admiral Masuda is alive?

A. I do.

159. Q. Is Admiral Masuda alive?

A. He is not alive.

160. Q. Do you know when Admiral Masuda died?

A. I do.

161. Q. When did he die?

A. As I recall it was the fifth of October 1945.

The accused moved that this answer be stricken on the ground that the witness was merely giving his opinion.

The judge advocate replied.

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

162. Q. When you were first investigated did you give one statement to the investigator and then after Admiral Masuda died did you change your statement?

This question was objected to by the accused as follows: We object to this question on the same grounds as we have objected before. The judge advocate is attempting to introduce into evidence a document without doing it in the proper way. He has made no showing that he will introduce the document. The document should be submitted in its entirety to the commission. We further objected that the judge advocate should not be allowed to read excerpts from it. Such questions are highly prejudicial to the rights of the accused who is now on the stand.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember having submitted a statement before Admiral Masuda died, but I do not remember having changed my statement and submitting it after the death of Admiral Masuda.

163. Q. The record of the Board of Investigation indicates that in response to the sixth question you said, "The main reason why I personally made a false statement was because....." and the seventh question reads as follows: "As far as I'm concerned all the stories sound nice, however; when you sent the lying statement I assumed you were equally guilty when the truth came out. I want the whole story." and you answered "The false statement I made was concerned with this statement and the reason is the same." Did you admit to the investigator that the first statements were false?

This question was objected to by the accused as follows: We object to the judge advocate being permitted to read parts of a Board of Investigation into the proceedings of this commission and being allowed thereby to testify without taking the stand and qualifying as a witness. He is reading from a document and he has not shown that the document will be entered into evidence. He thereby is prejudicing the rights of this witness who is the accused in this case.

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James P. Kanny Lt. USN

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. Where was this question and in what relation to what case was this made? At the present I cannot recall these questions and answers.

164. Q. To refresh your recollection I refer you now to the trial of Kawachi and Yoshimura and others in which you testified. You were asked "Q. 99. Was that a true statement?" and you answered "No, it was not." This statement was in connection with the American flyers at Raddj. Do you recall making that statement? The trial was held at Eniwetok U. S. Naval Air Base on December 7, 1945. JK

This question was objected to by the accused as follows: We object to the judge advocate being allowed to pursue the same line of questioning, reading from documents which have not been as yet introduced into evidence and there has been no showing that they will be introduced into evidence. He is reading only parts of the document, he is thereby being allowed to testify without qualifying as a witness. This is most prejudicial to the substantive rights of this witness on the stand who is the accused. It is requested that the record show that the judge advocate is reading from a document and we also request that the objection of the accused appear in full in the proceedings and the reply of the judge advocate also appear in full.

The judge advocate replied as follows: With the permission of the commission the judge advocate consents that his reply appear in the record. The judge advocate wishes to go on record officially as being willing and offering defense counsel at this moment an opportunity to stipulate that the record of this former trial become a part of the record of this commission. The defense counsel has argued that the defense is prejudiced by the fact that the judge advocate does not offer this document in evidence. The judge advocate has indicated and reaffirms that his reason for not desiring to introduce this document is because he does not in any way wish to prejudice the rights of this accused. The document referred to is a record of a trial held before a U. S. Military Commission at the U. S. Naval Air Base at Eniwetok Atoll, Marshall Islands, on the charges and specifications against Rear Admiral Masuda, Lieutenant Yoshimura, Ensign Kawachi, Ensign Tanaka and Warrent Officer Tanaka. The Military Commission Order No. 2, attached to this record indicates that on 8 December 1945 the convening authority directed that a *Habeas Corpus* be directed to the accused, Admiral Masuda. Admiral Masuda "Committed suicide before date of trial." The testimony of the accused before that military commission was given under oath. The witness has been asked by the judge advocate concerning whether or not he made certain statements prior to the death of Admiral Masuda which he subsequently changed after Admiral Masuda's death. The witness has testified before this commission that he knew of Admiral Masuda's death. It is pertinent therefore in regard to his credibility to explore this matter to determine whether he has not fabricated his testimony before this commission in an effort to prove the responsibility was Admiral Masuda's, and whether or not the motive for such fabrication was caused by his knowledge of Admiral Masuda's death. The credibility of this witness is subject to attack by the judge advocate, just as the credibility of any witness is subject to attack by establishing motive for fabrication of evidence. The judge advocate has confined himself to questions to this witness regarding prior false statements in such a manner as to limit its scope to JK

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non-prejudicial matter. The judge advocate knows that it is possible but not necessary to introduce the record of the prior trial, but the judge advocate has not desired in any way to connect the issues before that prior military commission with the issues before this commission. However, if the counsel for the defense desires to, the judge advocate is willing to stipulate that this prior record become a part of this trial.

The accused replied as follows: Counsel for the defense does not agree to stipulate that this record from which the judge advocate has been reading be admitted as part of this trial for very obvious reasons. We agree that the judge advocate be allowed to test the credibility of this witness, or any witness, but we maintain the way the judge advocate is doing it now, and on previous occasions, is most improper and we maintain that to allow him to continue will be most prejudicial to the rights of the accused in this case, and that having allowed him to do it has prejudiced the rights of the accused. The damage has been already done.

The judge advocate replied as follows: The judge advocate is willing to consent that the record be not made a part of the record of proceedings of this commission. At length the judge advocate has read to the commission and to defense counsel those portions of Underhill's Criminal Evidence which relate to the use of prior contradictory testimony. Section 425 specifically relates to the impeachment of a witness by proof of contradictory testimony given at a previous trial, before a grand jury, at the coroners inquest, or at the preliminary hearing.

The commission announced that the objection was not sustained.

The commission then, at 11:30 a.m. took a recess until 2:07 p.m., at which time it reconvened.

Present:

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

Joseph Vase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

The question was repeated.

A. Do you mean was the question asked me in the trial of Yoshimura when I was a witness?

165. Q. This question I have asked reads "Do you recall this question and this answer at the trial?"

A. I do not remember.

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166. Q. I will show you this portion of the trial and ask whether or not after you read it, it refreshes your recollection of your testimony. Will you read this portion here through here.

The interpreter read in Japanese questions 158 through 163 of this testimony.

This question was objected to by the accused on the ground that the judge advocate is asking a question concerning a document that has not been offered or received in evidence, and that it is immaterial. *OK*

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall.

167. Q. From the reading of your prior testimony, do you now recall that you previously gave one statement and then after Admiral Masuda died you changed your statement?

This question was objected to by the accused on the ground that the judge advocate was asking a question concerning a document that had not been offered or received in evidence, and that it was immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember changing my statement from before Admiral Masuda died and after he had died. In the morning session I heard this point stated by the interpreter as a written statement; and when I heard it as it was, I remembered.

168. Q. Which of the two statements was true? The one you made before Admiral Masuda died or the one which accused Masuda of giving the orders and which you made after Admiral Masuda died?

This question was objected to by the accused on the ground that it was an improper question and called for a conclusion on the part of the witness and that the judge advocate was asking a question concerning a document that has not been offered or received in evidence. *OK*

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Is this question concerning the case of Yoshimura and the others?

169. Q. It is with reference to the statements that you say you recall. One of these statements said that the other one was false and the question was directed to those statements. Which of the two statements was true? The one you made before Admiral Masuda died or the one which accused Masuda of giving the orders and which you made after Admiral Masuda died?

A. The statement I made after Rear Admiral Masuda died was the true statement.

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170. Q. You have testified that you executed the natives under Admiral Masuda's orders. Is that a true statement?
A. It is true.

171. Q. You told the commission many things in minute detail. Did you remember all these details yourself or have other people refreshed your memory concerning these details?
A. They were all what I remembered by myself.

172. Q. Did you remember all of these things when you were questioned in Kwanjalein in October 1945; or have you remembered some things since that time?

This question was objected to by the accused on the ground that it was double and that it was the same line of questioning based on documents not offered or received in evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. What is the meaning of "all of these things?"

173. Q. All of the things you have testified to on direct examination.
A. From the time of the incident and the time the native crimes were disposed of, I have remembered these.

174. Q. Are all the things you have testified to on direct examination things within your personal knowledge, which you have seen or heard?
A. Yes. JN

175. Q. You testified that after the investigation report was submitted to Admiral Masuda, he took you with him to where the natives were confined and you interrogated them. Is that the truth of what happened?
A. Yes.

176. Q. At those times, did you only speak to the natives you were going to execute?
A. There were also times when I talked to natives that were not executed.

177. Q. Did you hear Admiral Masuda speak to these other natives?
A. Yes.

178. Q. Did you do this in all the cases?
A. No, not in all of them.

179. Q. Did you and Admiral Masuda speak with Leschr, Kohri and Kozima?
A. Yes.

180. Q. Did you and Admiral Masuda speak to Tiagrik, Arden, Makui and the witnesses in that case?

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

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. We talked with Tiagrik, Arden, Makui; and the others are not witnesses but criminals. We also talked with them.

181. Q. Did you and Admiral Masuda speak with Chute and Chonschle?

A. Yes.

182. Q. Did you also speak with Euten, Ems, Ain and Moses who were the witnesses and criminals with Chute and Chonschle?

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.

183. Q. Did you and Admiral Masuda see and speak with Mandala and Laperia?

A. I met and spoke to them.

184. Q. Did you and Admiral Masuda speak with Malein and Mojane, Obetto and Paul? *JK*

This question was objected to by the accused on the ground that it was partially irrelevant, as Obetto and Paul are not concerned with this trial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. We talked with only Malein and Mojane.

185. Q. You have heard Morikawa testify that Obetto and Paul were sentenced to hard labor. Is that true?

This question was objected to by the accused on the ground that this witness should not be required to give his opinion as to the truth or untruth of the testimony of a previous witness. *JK*

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember if punishment was carried out on Obetto and Paul.

186. Q. Do you remember the judgment that related to Malein and Mojane, Obetto and Paul?

A. I remember the judgment document in the case of Malein and Mojane.

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187. Q. Did this document also concern Obetto and Paul?

A. When I wrote it, Obetto and Paul were not in my opinion paper.

188. Q. Did you see that paper after Admiral Masuda had placed the sentences on it?

A. Yes, I did.

189. Q. Did it contain the names of Obetto and Paul?

A. It was not on the paper.

190. Q. Were these judgment documents only written when the natives were to be executed?

A. No.

191. Q. Did you see all the judgment documents that were signed by Admiral Masuda?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination, irrelevant and immaterial.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I did.

192. Q. Do you remember seeing a judgment paper regarding Obetto or Paul?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember seeing it.

193. Q. Do you know whether Obetto and Paul were sentenced to imprisonment and hard labor?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember.

194. Q. In connection with the Malain and Nakene incident, did you and Admiral Masuda speak with Saburo, Ichiro, Mark, Levitikon, Jude, Lemack or Jordan?

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 replied.

The commission announced that the objection was not sustained.

A. Admiral Masuda and myself went to talk to Malein and Hajkane and during the interrogation of Malein, myself and Admiral Masuda went separately. When I went there to interrogate Malein, I met and talked with Saburo, Ichiro, Mark and Levitikos.

195. Q. Do you know if Admiral Masuda was with Saburo, Ichiro, Mark or Levitikos?

A. I do not know.

196. Q. Then, you cannot say in regard to the Malein and Hajkane case that, "After the report was submitted to Admiral Masuda, Admiral Masuda, taking me with him, went to where the natives were confined and interrogated them"?

This question was objected to by the accused on the ground that the judge advocate was reading from a document which had not been introduced into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I cannot say this.

197. Q. You made that statement that I have quoted in response to a question with regard to the Leschr, Kohri, and Kogina incident; similarly, with regard to Mandala and Laperia. Can you truthfully say that you and Admiral Masuda together went to speak with the natives concerning that incident?

A. Yes, I can.

198. Q. Did you and Admiral Masuda speak to all the natives in the Mandala and Laperia case?

A. We did not speak to any persons other to Mandala and Laperia.

199. Q. In the case of Chuta and Chomohle, did you and Admiral Masuda speak to anyone besides Chuta and Chomohle?

A. No.

200. Q. In the case of Tiagrik, Arden and Nakui, did you and Admiral Masuda speak to anyone beside Tiagrik, Arden and Nakui?

A. We did.

201. Q. Whom did you speak with?

A. With the accomplices who were brought from Inrodj Island.

202. Q. Did you speak with anyone other than Kohri, Kogina and Leschr in connection with that Tiagrik case?

A. I talked with the criminals I stated before that were brought from Inrodj Island.

203. Q. Which ones did you and Admiral Masuda talk with?

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This question was objected to by the accused on the ground that the judge advocate was attempting to confuse the witness by first asking a question "Did you and Admiral Masuda" and then asking a question "Did you."

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember the names.

204. Q. Do you remember the names of any native other than those whom you executed to whom you and Admiral Masuda spoke after receiving that investigation report?

This question was objected to by the accused on the ground that it was immaterial, irrelevant, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The ones I remember are Mark, Ichiro, Saburo and Levitikes. I do not know about Admiral Masuda.

205. Q. Then you do not know that Admiral Masuda spoke to any natives other than the ones who were executed. Is that correct? *JK*

This question was objected to by the accused on the ground that it was much too broad in its scope.

The judge advocate replied.

The commission announced that the objection was not sustained.

The commission then, at 3:16 p.m. took a recess until 3:36 p.m., at which time it reconvened. *JK*

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. *JK*

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

(Cross-examination continued.)

The question was repeated.

A. No. He has talked to natives other than the ones that were executed.

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206. Q. Did you see him talk to any other natives while in the Ammunition Station or the Transmitting Station?

A. I saw him by the Second Ammunition Dump talking with the natives.

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

A. I forget the names.

208. Q. Do you remember in connection with what incident?

A. I do.

209. Q. What incident was it?

A. It was the Inrodj incident.

210. Q. After Admiral Masuda wrote the decision on the so-called judgment paper did you go with Admiral Masuda to where the natives were confined?

A. Yes.

211. Q. In the case of all the natives sentenced did Admiral Masuda tell the natives what the sentence was while you were with him?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination, far too broad, immaterial and irrelevant.

The judge advocate replied,

The question was repeated.

The commission announced that the objection was not sustained.

A. He did.

212. Q. Did Admiral Masuda take the judgment paper with him?

A. He took the judgment paper with him.

213. Q. Did he read the judgment paper to the natives when he told them what the sentence was?

A. Looking at the paper, he told them the sentence and the specifications.

214. Q. Then, when you took the native criminals to the place of execution, they already knew that they were sentenced to death by Rear Admiral Masuda and the crimes for which they were sentenced. Is that correct?

A. Yes.

215. Q. Did you on December 3, 1946, write a statement concerning the execution of these natives?

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.

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A. I did.

216. Q. In this statement you wrote that you made the native criminals sit down and spoke to them as follows: "You have been sentenced to death by Rear Admiral Masuda for treason and other crimes which you have committed against the state (I indicated the crimes with which each native was linked.)" *JK*
Why was it necessary for you to tell these natives what crimes they were alleged to have committed and to tell them that they were being executed by order of Rear Admiral Masuda if they already had been informed by Rear Admiral Masuda himself concerning the crimes and the sentence?

This question was objected to by the accused on the ground that since this document has already been received in evidence, it is the best evidence and it speaks for itself and the judge advocate should not be allowed to quote for him questions from it. *JK*

The judge advocate replied.

The commission announced that the objection was not sustained.

A. To the natives who were to be executed that this be related, I thought this was how it was to be done by the executioners. Also, after the natives had received sentence by Admiral Masuda, they may have become unnerved and not think about what they had done; and to let them know, I thought was my duty.

217. Q. You have testified concerning certain natives who received the sentence of fifteen years at hard labor. Did you and Admiral Masuda go to these natives and pronounce sentence on them?

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.

The question was repeated.

A. I did not state that there were natives who received a sentence of fifteen years of hard labor.

218. Q. You have testified concerning certain natives who received the sentence of hard labor. Did you and Admiral Masuda go to these natives and pronounce sentence of them?

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. Natives who received sentences of hard labor, Admiral Masuda stated that a reprimand would be sufficient for them and the sentences were not enforced.

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219. Q. Were these natives advised of these sentences?
A. Yes.

220. Q. Were the sentence documents read to these natives?
A. No.

221. Q. Were you present when these natives were informed concerning their sentences?
A. I was not there.

222. Q. Were you the commanding officer of the Second Battalion of the First South Seas Detachment?
A. Yes.

223. Q. Did you come under the commanding officer of the Sixty-second Naval Guard Unit because he was senior to you in rank?

This question was objected to by the accused on the ground that it called for the opinion of the witness and that in translation the term "rank" would be vague to the witness. *gk*

The judge advocate replied.

The commission announced that the objection was not sustained. *gk*

The question was repeated.

A. Because he was senior in rank may also have been one of the reasons, but the main reason was the order of the Sixth Base Force commanding officer.

224. Q. Were you second in command at Jaluit?

This question was objected to by the accused on the ground that it called for the opinion of the witness, was vague and uncertain, and that in translation the term "second in command" would be uncertain to the witness. *gk*

The interpreter stated that there was no exact translation into Japanese of the phrase "second in command".

The judge advocate withdrew the question.

225. Q. Were you second in seniority of rank on Jaluit, and therefore in the event of Admiral Hasegawa's death, would you take over the military command of Jaluit Atoll?
A. Yes.

226. Q. In the event of extreme illness which prevented Admiral Hasegawa from performing the duties, was it your responsibility to exercise command on Jaluit?

This question was objected to by the accused on the ground that it called for the opinion of the witness and was too broad in its scope.

The judge advocate replied.

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The commission announced that the objection was not sustained.

A. Even though Admiral Masuda may have been extremely ill, unless I am ordered by him to take command, I cannot do so.

227. Q. Was Admiral Masuda extremely ill from the period from May through August 1945?

A. No.

228. Q. Were you the head of the Defense Section?

A. Yes.

229. Q. Were you the head of the Commission for Defense or Committee for Defense?

A. Yes.

230. Q. Were you in charge of seeing that no natives escaped from Jaluit?

A. My responsibility was to train and teach the district commanding officers who were responsible for the prevention of the natives escaping. Concerning the desertion of the natives, the district commanding officer was held directly responsible to Admiral Masuda.

231. Q. Did you write the Handbook of Patrol that you referred to yesterday?

A. It was made mainly by First Lieutenant Morikawa when he was the Intelligence Officer. *JK*

232. Q. Are you familiar with the contents of this handbook?

A. I am.

233. Q. You stated this handbook instructed in the method of handling spies. Did it contain any reference to the Hague Convention which requires trial of spies before they were punished? *JK*

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. No.

234. Q. No, what?

A. It doesn't contain any reference to the Hague Convention.

235. Q. From your testimony, I understand that in April 1944, a dispatch came to Admiral Masuda with reference to the command of Jaluit. Do you remember the exact language of that dispatch?

A. I know its gist, but I do not remember each phrase and each word.

236. Q. Did you see that dispatch?

A. I did.

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237. Q. Do you remember whether that dispatch stated that the Supreme Commander shall command all civilians?

A. As I remember, it was written that civilians shall be commanded.

238. Q. Do you remember anything else that this dispatch contained?

A. I do.

239. Q. Tell us all that you remember that this dispatch contained.

A. Hereafter, the Supreme Commander of every base shall command all military personnel, government officials, and civilians and exercise judicial and administrative authority.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, April 3, 1947.

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THURSDAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, April 3, 1947.

The commission met at 9:08 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, President, JK
Colonel Vernon M. Guyman, U. S. Marine Corps,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army, JK
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, JK
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 Jade, 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 twenty-second day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, the witness on the stand when the adjourn-
ment was taken on April 2, 1947, resumed his seat as a witness in his own
behalf. He was warned that the oath previously taken was still binding, and
continued his testimony.

(Cross-examination continued.)

240. Q. When did you last see the dispatch orders to Admiral Masuda giving
him command over the military and civilian government?
A. Around April 1944.

241. Q. You testified concerning an order to the branch governor. Did you see
that order?
A. I did.

242. Q. Do you remember the exact language?
A. I do not remember the exact language.

243. Q. What do you remember of its language?

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A. The gist of this was that the governor of the South Seas Government hereafter comes under the command of the Commanding Officer of the Fourth Fleet and all of its judicial and administrative authority therefore on government officials and civilians shall come under the command of each Base Commanding Officer.

244. Q. Did this dispatch give Admiral Masuda the same administrative and judicial powers that the Branch Governor had over the natives?

A. All authority the head of the Jaluit Branch Office had was vested in Admiral Masuda.

245. Q. Did you see any other dispatch that changed the authority Admiral Masuda had over the natives?

A. I do not recall seeing any.

246. Q. Did Admiral Masuda's powers and authority extend to any other islands outside of Jaluit?

A. It did not go beyond Jaluit.

247. Q. Did these dispatches that you have referred to give Admiral Masuda any power that belonged to any government agency on any atoll other than Jaluit?

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. No.

248. Q. Then these dispatches did not give Admiral Masuda the authority that belonged to any government agency on Ponape?

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. Yes. It did not give Admiral Masuda any authority over any government agency on Ponape. The authority that Admiral Masuda had been given by the governor of the South Seas Government was all the judicial and administrative authority over government offices and civilians on Jaluit Atoll. JH

249. Q. During the period from May to August 1945 did the 62nd Naval Garrison maintain radio communication with the Fourth Fleet Headquarters?

A. Yes.

250. Q. Do you know if Admiral Masuda ever communicated with the Fourth Fleet Headquarters with regard to the execution of the natives?

A. I do not know.

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James P. Harvey *J.P.H.*

251. Q. Was the power that Admiral Masuda derived from those dispatches you referred to in April 1944 subject to any legal limitations?

This question was objected to by the accused on the ground that it called for a legal opinion from the witness. The judge advocate has in no way qualified him to give a legal opinion.

The judge advocate replied.

The commission announced that the objection was sustained.

252. Q. You testified that Admiral Masuda derived certain authority from these dispatches. Was this authority broad enough to authorize violation of International Law?

A. It does not include the violation of International Law.

253. Q. Was this authority broad enough to empower Admiral Masuda to punish with death without a trial? *JK*

This question was objected to by the accused on the ground that it was too broad in its scope.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I am convinced that he had the authority to give examination and consultation by special procedure in place of trial.

254. Q. Is there any provision that you recall from these dispatches you have referred to which gives Admiral Masuda such authority?

A. There were no exact words to that effect such as in the question, but the dispatch clearly stated that Admiral Masuda was given judicial authority. I am firmly convinced that he had that authority. *JK*

255. Q. You have testified concerning a certain judgment paper. Did you write this judgment paper?

A. The judgment papers were not written by myself, but by Admiral Masuda.

256. Q. Did this appear on a single sheet of paper?

A. Yes.

257. Q. How large a sheet of paper was it?

A. It was about the size scrap paper which is usually used in Japan.

258. Q. I show you a piece of paper 8 x 10½ inches. Was it about this size?

A. It is larger than this.

259. Q. I show you a sheet of paper 8 x 13 inches. Was it about this size?

A. It is a little wider. (Indicating about three or four inches) When the names of the persons were fewer it would be one-half of that page, according to the number of persons, it would be cut in half and only half of the page used.

260. Q. I show you a sheet of paper 10 x 14½ inches. Is this the size scrap

you referred to?
A. Yes.

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261. Q. Were these sheets torn in half when the judgment paper was written?
A. It is written lengthwise.

262. Q. Were these sheets torn in half when the judgment paper was written?
A. There are times when it is cut in half and sometimes when it is not.

(The judge advocate indicated a piece of paper which had been marked off to a width of five inches and a length of fourteen inches.)

263. Q. You have testified that Admiral Masuda wrote this judgment paper. Did you write any part of this judgment paper?

A. I wrote on the same paper. What I wrote was my opinion.

264. Q. Did the words "judgment paper" appear at the top of this sheet of paper?

A. Yes.

265. Q. Would you write in the upper portion of this paper those words in approximately the same size and the same script and the same position as they appeared on the judgment papers?

This question was objected to by the accused on the ground that it was not proper to require this witness to write those words in his own handwriting. He has testified that he did not write in the words "judgment paper." *OK*

The judge advocate replied.

The commission then, at 10:10 a.m., took a recess to give the judge advocate an opportunity to prepare the rest of his reply to the objection, until 10:32 a.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 accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, the witness under cross-examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony.

(Cross-examination continued.)

The commission announced that the objection was not sustained.

A. Are the words "judgment paper" the only things necessary?

266. Q. What?

A. Are the words "judgment paper" the only things necessary?

267. Q. Do you recall the approximate size, position and script used in writing the words "judgment paper" which you testified you saw on these judgment sheets?

A. I remember.

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268. Q. Will you write these words in the approximate position, size and script as they appeared on the judgment paper you referred to?

A. I will.

269. Q. This sheet of paper on which you have written "Hanketsu sho" is marked in width at five inches and extends in length to thirteen inches. The width is similar to that of the one-half sheets of paper on which you indicated certain judgments were written. Does the script "Hanketsu sho" appear in the approximate manner and size and position in which it appeared on those original judgment documents that were torn in half and were five inches by fourteen inches?

A. Yes.

270. Q. Did Admiral Masuda's signature appear on this document?

A. Yes.

271. Q. Will you indicate where Admiral Masuda's signature appeared and write in in approximately the same size script and manner in which Admiral Masuda signed the document?

A. Yes. I would like to explain concerning the position. It states "judgment paper" in this position, then "decision" is written here and this line designates the last line of the decision, it is not a line there to make a separation, it shows the last line of the decision. It is written here "Rear Admiral Masuda" and has his seal.

272. Q. I reserve near the signature of Admiral Masuda a small circular object. Is that stamped in or written in?

A. It was written there.

273. Q. Is that the approximate size of that written in portion?

A. This circle just shows the position. The actual signature was a little bigger than this circle.

274. Q. Will you correct this circle to indicate the full size of the area occupied by that signature?

A. Yes.

275. Q. Did Admiral Masuda's signature appear anywhere else on this document?

A. His signature did not appear anywhere else.

276. Q. Did the names of Captain Inoue, Lieutenant Commander Shintone and Furuki appear anywhere on this document?

A. The names did not appear.

277. Q. Did the signatures of Lieutenant Commander Shintone, Furuki or Captain Inoue appear on this paper?

A. I understand signatures as the name and that does not appear.

278. Q. Was this judgment document divided into several different portions?

A. Yes.

279. Q. Were there headings on these divisions?

A. I would like to have the question repeated.

280. Q. Were there headings on these divisions?

A. Yes.

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James P. Karry H. SX

281. Q. Will you divide this paper into those divisions in which the original judgment paper was divided and will you place the headings in the appropriate divisions?

A. Yes.

282. Q. Do you recall the judgment decision with regard to any cases where the judgment paper was written on this size sheet?

A. I do.

283. Q. Will you write in that decision in its entirety in the area you have indicated?

A. Yes. This is decision, name of criminal, decision is death Mandala, decision death Laperia.

284. Q. Was the remainder of this sheet of paper filled in with other writing?

A. Yes.

285. Q. What other writing appeared on this paper?

A. My opinion and the signatures of Shintone and Inoue, showing that they had seen the document.

286. Q. You were asked several questions ago whether the names of Furuki, Shintone and Inoue appeared anywhere on this document. You answered "No." How do you explain your conflicting answers?

A. When I said "No" the other time I meant the name spelled out, Shintone and Inoue, did not appear. What I mean now is that there is not a written signature, but their written initial. This same thing that was at the bottom of Admiral Masuda's name.

287. Q. You stated before that by the word "name" in answer to a previous question you included signature. Were not these initials a form of signature of Shintone, Inoue and yourself?

A. I believe this will have to be explained. In Japanese when you say the word "Shomei" it means writing your name in characters and also whenever there is a legal signature you write your name in Chinese characters, you put your signature and these initials or it is not legal. When one means signature he means that it was not written out in Chinese characters, that just the initials were written there, the word "Shomei" means written out in characters.

288. Q. Would you indicate on this sheet of paper that you have, the approximate position and size of these initials?

A. Yes. There were two ways to write it. In some cases it was written on the top, in some cases it was written here,

289. Q. Is that the approximate size and the approximate position of those three initials indicated by the circles?

A. The size is greater.

290. Q. Will you make then the approximate size?

A. This would be the approximate size.

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James A. Kenny Lt. USN

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291. Q. Will you indicate what was placed below that portion of the document which is already written in?

A. Yes. My opinion as judge advocate.

292. Q. Did that fill in the entire remainder of that sheet of paper?

A. This is the end of the paper, from this position which was used to file the paper. You make holes here and you file it.

293. Q. Would you indicate where those filing holes are on the document and will the interpreter mark them "holes one and two" "locations 1 and 2"?

A. Yes. The holes are here located one and two and it is folded here.

294. Q. Will you signify by a line or mark where the top of the next writing begins?

A. Yes. From this point below.

The commission then, at 11:30 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.

Joseph Kase, junior, yeoman second class, U. S. Navy, reporter. JMK

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

295. Q. This morning you testified concerning a certain judgment document and you illustrated this testimony on this sheet of paper. Is that correct?

A. Yes.

296. Q. On all the judgment papers that you have seen, was the top portion of the judgment paper the same as this top portion here with the one difference that on some occasions the initials of Inoue, Furuki and Shintone were on the side, and on other occasions they were on the top?

A. Concerning the judgment paper, yes.

297. Q. On the remainder of this sheet of paper, you have testified that there was additional writing. What was on the remainder of this sheet of paper?

A. The opinion that I wrote was on the paper; also on the spare space of the paper, an order of execution was written by Admiral Masuda.

298. Q. Will you indicate on this sheet of paper, if you recall, where the execution order of Admiral Masuda was written in the case of Mandala and Iaporia to which this particular judgment sheet refers? JMK

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A. I do not remember exactly whether it was written at the bottom of the paper or at the end of the writing; or it may have been written on the back of the sheet.

299. Q. Do you remember where the execution sentence in the case of Melain and Najkane was written?

A. It was either one of the three I mentioned before, but I cannot remember exactly which it was.

300. Q. Can you remember in any case exactly where the execution sentence was placed?

A. I remember that the order was written on all the judgment documents.

301. Q. Do you remember in any case where on the judgment document the order appeared?

A. I do not remember exactly where it was written and what incident.

302. Q. In the Mandala and Laperie judgment sheet, was there anything in addition to your opinion and this portion which you have already written which appeared on the judgment sheet?

A. The order concerning the execution was written in.

303. Q. What did your opinion consist of in the Mandala and Laperie case?

A. My opinion was as follows: The specifications were written in, laws to be applied, points which special notice was to be taken, and opinion as to punishment.

304. Q. Did you follow this same general series of classifications on all your opinions on all the judgment sheets?

A. Yes.

305. Q. Did you have the paper where your opinion appeared divided into separate groups or divisions with these headings written in that you referred to?

A. Yes.

306. Q. On the sheet of paper that you have, will you write in the headings in the same place and size as on the original document?

This question was objected to by the accused on the ground that it would be requiring this witness to manufacture evidence against himself and was strictly at variance with section 235, Naval Courts and Boards.

27K
27K

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 not sustained.

The question was repeated.

A. I cannot remember the exact position, the exact order, and how they were lined up. I cannot remember exactly.

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James P. Loney Lt. USN

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307. Q. Did the specification appear in one column, working from the position you have indicated where the writing began to the bottom of the page?
A. No.

308. Q. How did the specifications appear on that sheet of paper?
A. It was written at the very top of the opinion paper.

309. Q. Did the word "specification" appear there?
A. It was written in I think.

310. Q. Were the specifications written horizontally across the page or were they written vertically down the page?
A. They were written to fit in the space, but either they were on vertically or whether they were on horizontally, I do not remember. *JK*

311. Q. Did the words "judgment paper" appear on the paper when you wrote the opinion on it?
A. It did not appear on the paper.

312. Q. Did your opinion and Admiral Masuda's appear on the same sheet of paper?
A. Yes.

313. Q. Did you always leave the same amount of paper at the top of the page for Admiral Masuda's judgment?
A. Yes.

314. Q. Did you always fill in the bottom of the page before Admiral Masuda wrote the judgment part?
A. Yes.

315. Q. When you wrote your opinion on this sheet of paper, did you know that Admiral Masuda's judgment would be written in at the top portion of this sheet of paper?
A. Yes.

316. Q. Was there any title or anything written in above your opinion, such as "Opinion of Major Furuki"?
A. I wrote it.

317. Q. What words did you write?
A. I wrote "opinion"; below that "Major Furuki."

318. Q. Do you know of any case in which the judgment appearing on the judgment document was hard labor?
A. I do.

319. Q. In what case did the words "hard labor" appear in the judgment paper?

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.

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A. It was in the case relating to Leschr, Kohri and the others.

320. Q. Do you recall any sentence of judgment paper in the incident of Malain and Majhane in which hard labor was adjudged?

A. I do not remember.

321. Q. Do you remember whether the natives who were sentenced to hard labor were punished in accordance with this sentence?

A. I do.

322. Q. Were their sentences enforced against them?

A. They were carried out.

323. Q. How do you explain your testimony on the twenty-second day before this commission in which you were asked, "You testified concerning certain natives who received the sentence of hard labor," and you answered: "Natives who received sentences of hard labor, Admiral Masuda stated that a reprimand would be sufficient for them, and the sentences were not enforced." ?

A. What I formerly meant was that persons who came from Imrodj were returned and punished according to this lighter form of punishment.

324. Q. You have testified on the one hand that certain natives were sentenced to imprisonment at hard labor and that this sentence was enforced against them; you have also testified that instead of being enforced against them, Admiral Masuda reprimanded these natives and did not enforce the punishment. Which of these two statements is the correct one?

A. The statement that Admiral Masuda reprimanded them is correct.

325. Q. When you say that Admiral Masuda reprimanded them, do you mean that they were reprimanded and placed on probation and sent back to their home islands? JTC

A. When I say reprimand, I mean, he was punished at the home island under the supervision of the district commanding officer and did hard labor.

326. Q. Do you know whether any of the natives who were sentenced by Admiral Masuda to hard labor were in fact punished with hard labor when they returned to their home island?

A. Admiral Masuda, when he made the decisions against four natives of hard labor, in passing the sentence he stated that this should be dealt with as a lighter form of punishment (reprimand); and that lighter form of punishment concerning these people shall be passed to the district commanding officer of their original island from Admiral Masuda, and he ordered them punished by the lighter form of punishment.

The commission then, at 3:39 p.m., took a recess until 3:58 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 accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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The accused, Furuki, Hidesaku, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony. JK

(Cross-examination continued.)

327. Q. In your first day of testimony, you related in detail the type of examination and consultation which was held with regard to each of the native cases and you testified that Admiral Masuda, after the original consultation, with you, Shintone, and Inoue, called you back a day or so later and made up a judgment paper. Is that what happened in each of the native cases? JK

A. Yes.

328. Q. Did Shintone, Inoue, and yourself initial the paper at that time?

A. It was not at that time.

329. Q. Was the sentence written in on this sheet of paper by Admiral Masuda at this second meeting?

A. Yes.

330. Q. Were the initials of Shintone, Inoue and yourself placed on this sheet of paper after the sentence was written in? JK

A. Yes.

331. Q. When Admiral Masuda wrote up this judgment paper, did he take a blank sheet of paper and write this judgment at the top of it?

This question was objected to by the accused on the ground that it was repetitious and beyond the scope of the direct examination.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. No.

332. Q. Were the names of all the natives connected with each incident placed on the same judgment paper?

A. No.

333. Q. You have testified that Namura knew that Lesohr planned to kill Okamoto and that Namura also decided to desert, but later decided against it and that when you asked Admiral Masuda about it, he told you that this was not a crime, and ordered Namura released. Was Namura released without any sentence?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Yes.

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James P. Kenny, Jr. WSK

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334. Q. You have heard Morikawa testify that Obetto and Boru refused to participate in the escape of Malein and Hajkane, but they were sentenced to imprisonment. How do you explain the fact that in the Namura case there was no crime, but with regard to Obetto and Boru, who refused to participate, they were sentenced to imprisonment at hard labor?

This question was objected to by the accused on the ground that it was calling upon the witness to comment upon the testimony of a previous witness.

The judge advocate replied,

The commission announced that the objection was sustained.

335. Q. Do you know whether Obetto and Boru refused to participate in the escape of Malein and Hajkane?

A. I do.

336. Q. Did they refuse to participate in the escape of Malein and Hajkane?

A. According to the report of the investigators, they refused. *OK*

337. Q. Did you write up the opinion concerning Obetto and Boru which was submitted to Admiral Masuda?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember having written an opinion.

338. Q. Did you write up the opinion on the native cases in which Admiral Masuda gave sentences?

A. Yes.

339. Q. In your opinion, did you state the laws applied?

A. Yes.

340. Q. Do you know what laws were applied in the case of Obetto and Boru? *OK*

A. I do not know.

341. Q. Do you remember seeing the names of Obetto and Boru on a judgment paper?

A. I do not remember having seen them on a judgment paper.

342. Q. Do you remember having seen the names of Malein and Hajkane on a judgment paper?

A. I have.

343. Q. Do you remember if the names of Obetto and Boru were on the same judgment paper?

A. I do not remember.

344. Q. Did you testify that a regular trial could not be held because it was impossible to assemble the officers for a trial?

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James P. Laury Lt. USN

This question was objected to by the accused on the ground that it was much too great in its scope and much too broad.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not think I have testified as such as yet.

345. Q. Why was it impossible to hold a regular trial?

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. On Jaluit there were no court systems, there were no specialists, such as a lawyer or a judiciary officer, the war conditions on Jaluit would not permit a large number of men to assemble and conduct an examination and consultation undisturbed. At that time the American planes activities were conducted on Enidj and at the outlying islands enemy war ships conducted activities. The outlying units fought face to face with the enemy. The natives continued to desert, because of the desertion of the natives, positions had to be shifted; because of this, therefore, the guard positions also had to be shifted. Continuous movement of personnel and ordinance to the outlying islands from Enidj Island was necessary. Admiral Masuda at that time judged that we could not tell when the enemy would come to invade Jaluit. The reason for this (1) the resistance of Jaluit was zero point (2) because of the many desertions of the natives, the Americans must know that the conditions of Jaluit Defense Garrison through the natives. The continued activities of enemy forces around Jaluit was through the increased aircraft activities against Jaluit. Therefore, at that time, the people on Enidj or the outlying islands were all at their battle stations. Admiral Masuda was at his command post, was commanding battle day and night. Myself, as head of the Defense Section and Head of the Commission on Preparation of Battle, helped Admiral Masuda. Shintone and other high ranking officers according to their duties helped Admiral Masuda. At that time, even under ordinary conditions, cripples and patients were appointed duties; hands were very short. Because many natives deserted, many men had to be sent from Enidj to outlying island; therefore, the shortage of personnel on Enidj was very acute. All materials were destroyed. Great efforts were made to produce things needed to live. This was in turn destroyed or lost due to the inferior material and could not be used. These were the conditions on Jaluit. The necessary food to exist for that day had to be provided for, and all provisions to exist had to be sent, too, and there was no time to spare. Almost all the anti-aircraft installations were destroyed. The persons using air raid shelters were only a few, the rest had to scatter over Enidj and make damage by plane as small as possible. There were no means of relaying, and other warning installations. Many times people were caught unawares or surprised by air raids. Damage by this was not small. There were many people who died at the ages of an air raid shelter due to the bombing and strafing of American planes. Each person always had to be on

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James P. Henry Jr. USA

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the alert against planes. Sometimes the sound of an automobile or a boat at night or seeing a bird flying or seeing a person run, would be taken as an air raid, and everyone on Emidj had to take shelter many times. Each person was on edge and very nervous; it was impossible to keep calm. It was impossible for a large number of people to assemble at one place. Personnel were short, and one person had many duties. Under those conditions, it was very difficult to live. We were ordered absolutely that Admiral Masuda, myself, and Shintome should not leave the command position together.

The commission then, at 4:54 p.m., adjourned until 9 a.m., tomorrow, Friday, April 4, 1947.

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James A. Kenney Jr. USA

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TWENTY-FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, April 4, 1947.

The commission met at 9:00 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, *JK*
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.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, the witness under cross-examination when
the adjournment was taken on April 3, 1947 resumed his seat as a witness in
his own behalf. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Cross-examination continued.)

346. Q. In your last question yesterday, you were asked "Why was it impos-
sible to hold a regular trial". One of the reasons you gave was, "On Jaluit
there were no court systems". What did you mean by that?

A. As I recall when I answered yesterday I answered that there was no
formal form of trial and when I said this formal system of trial I mean that
there was no court martial established as in the Fourth Fleet, and also that
there were no courts as the civilian courts of Ponape and Palau.

347. Q. Did Admiral Masuda have the authority to order a trial for the
natives?

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. He did.

348. Q. In your answer to the last question yesterday you stated "There were no court systems", but it is true that Admiral Masuda had the power to convene and hold a trial?

A. Yes.

349. Q. In response to the question "why was it impossible to hold a regular trial?", you said, "There were no specialists", meaning law specialists. Were there people familiar with the naval and army court-martial law in the armed forces at Jaluit?

A. I do not know if there were any there.

350. Q. Did you testify yesterday concerning martial law?

This question was objected to by the accused on the ground that the witness has not had an opportunity to verify his testimony.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember if I testified on martial law or not.

351. Q. Did you write up the opinions on the judgment papers?

A. When you say "opinions on the judgment papers", do you mean my opinion that was written on the same paper?

352. Q. I do.

A. I did.

353. Q. You testified yesterday that the opinion you wrote contained the laws applied in each case. Is that correct?

A. Yes.

354. Q. Did you act as the judge advocate in these proceedings?

A. Yes.

355. Q. Now, I ask you again the original question. Was there anyone on Jaluit Atoll, who was familiar with the law to be applied in native trials?

A. There was.

356. Q. You testified in response to the question "Why was it impossible to hold a regular trial?" "The war conditions on Jaluit did not permit a large number of men to assemble and conduct an examination and consultation undisturbed." Did Admiral Masuda, Lieutenant Commander Shintone, Major Furuki and Captain Inoue assemble in Admiral Masuda's room?

A. Yes.

357. Q. Was it because you did not desire to risk the lives of the accused natives that you did not have them present at these proceedings?

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

The judge advocate withdrew the question.

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James A. Conroy J.P. USA

358. Q. Were the natives ever present at these conferences in Admiral Masuda's office?

A. They were never present at the times of examination and consultation.

359. Q. Do you know why they were not present?

A. I do. JK

360. Q. Was it because you feared for their lives because of the absence of a proper bomb shelter?

A. At that time the conditions were that they could not let the natives be brought near the command post because the natives were continually deserting to the Americans. The command post area was the most vital part of the defense of Jaluit. To show them or let them see this part could not be permitted through military reasons. Actually in the case of a spy who came into Jaluit and escaped, he was looked for for two days and two nights. Also a native who was brought from the outlying islands escaped and we had much difficulty in locating him. To show the natives who might desert the head and the heart of Jaluit, could not be done. JK
JK

361. Q. As a Japanese army officer are you familiar with the use of blind-folds?

A. I am familiar.

362. Q. As a Japanese army officer are you familiar with the methods of restriction of the movements of the body and restricting the possibility of escape by tying the hands and legs?

A. I am familiar.

363. Q. As a matter of fact, is it not true that the natives, when they were brought to Jaluit, were bound hand and foot and blindfolded?

A. Their hands and feet were tied, but as the natives made great efforts to escape some did escape.

364. Q. These conferences in Admiral Masuda's office, were they held in connection with every native who was executed?

This question was objected to by the accused on the ground that it was beyond the scope of direct examination and that it was too broad in its meaning.

The judge advocate stated that he was willing to restrict this question to the thirteen natives and reframed the question.

365. Q. These conferences in Admiral Masuda's room, were they held in connection with all the thirteen natives who were executed and whose executions are charged in the specifications of this trial?

A. Yes.

366. Q. Were Admiral Masuda, Lieutenant Commander Shintono, Major Furuki, and Captain Inoue present at each conference?

A. Yes.

367. Q. Were they present both at the conference where the investigation report was considered and later at the conference where Admiral Masuda announced his decision?

A. Yes.

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James A. Kenny Lt. USN

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368. Q. In each of the first of these two conferences were the investigation reports and the investigations of the natives discussed?

A. Yes.

369. Q. Before the third conference when Admiral Masuda called you, Shintone and Inoue into his room did he say, and I quote: "your duties require you to judge on spies. Furuki, you shall act as judge advocate, Inoue, Shintone and myself shall act as judges. Inoue and Shintone shall express your opinion as judges".

The accused requested that the record show from what document the judge advocate was reading.

The judge advocate replied that he was reading from the prior testimony of this witness on the afternoon of the twentieth day.

A. Yes.

370. Q. Did you act as a judge or as a judge advocate in these proceedings?

A. I acted as judge advocate.

371. Q. You have heard defense witness Inoue testify that he did not know that there was a trial and did not know that he was a judge until after the end of the war. Is it true that Admiral Masuda told him the words that you have said Admiral Masuda spoke at that first meeting?

This question was objected to by the accused on the ground that the judge advocate was misquoting the testimony of a witness. JIC

The commission announced that the record would be checked.

The commission then, at 10:00 a.m., took a recess to permit the judge advocate to go check the record until 10:17 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.

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

(Cross-examination continued.)

The judge advocate withdrew the question.

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Jones A. Loney Lt. USA

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372. Q. I remind you of defense witness Inoue's testimony that he did not know there was a trial until after the end of the war. You have testified that at this first conference Admiral Nagata at various times referred to Shintone and Inoue as judges and instructed them to act as judges. Being reminded of Inoue's testimony, do you desire to change your testimony?
A. What I have testified to was what I remember. There can be no change in this. I do not remember well what Inoue testified to.

373. Q. Were you present at the conference concerning the Majkane incident?
A. Yes.

374. Q. Were Shintone and Inoue present as judges?
A. Yes.

375. Q. Do you know what punishment Inoue pronounced with regard to Majkane?

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 don't remember well.

376. Q. What do you remember concerning Inoue's opinion as to punishment?

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. When you asked the opinion you mean only in the case of Majkane?

377. Q. I do. That is opinion as to punishment.
A. I do not remember.

378. Q. Do you remember whether Inoue said she should be allowed to go home?
A. I do not remember.

379. Q. Do you remember if Shintone said that Majkane should be allowed to go home?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember.

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380. Q. Do you remember what your opinion was as expressed on the opinion paper as to the punishment of Mejkane?

A. I remember that.

381. Q. What was your opinion?

A. As I remember, it was fifteen years hard labor.

382. Q. I will attempt to refresh your recollection as to the alleged occurrences at that meeting and I will read to you from the testimony of Inoue, defense witness before this commission. . . .

This question was objected to by the accused on the ground that it was highly improper procedure.

The judge advocate replied.

The commission announced that the objection was not sustained.

382. (Continued) Q. I refer you to this document which is a transcription before this commission of the eighteenth day of proceedings. "Q. At the meeting at Admiral Masuda's office concerning the woman, Mejkane, did Shintone give his opinion as to the sentence?" "A. As I remember, it was to return to her former island and have her watched there." "Q. What opinion did you give in this case?" "A. I expressed the opinion to return her to her original island and have her watched." Does that refresh your recollection as to Shintone's and Inoue's opinion as to what the punishment was?

A. I do not remember.

383. Q. Do you remember the opinions of Shintone or Inoue as expressed in any other native cases referred to in the specifications?

A. I think sometimes when I expressed an opinion of death, Inoue expressed opinions that they should be sentenced to hard labor at their original island. I remember sometimes when Shintone's opinion was the same as mine.

384. Q. In the cases of the thirteen natives do you remember any case in which Inoue did not agree with Admiral Masuda's opinion that they should be punished with death?

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. Inoue did not express any opinions after the decision was made.

385. Q. You have testified that in the first conference Shintone and Inoue gave their opinions as to punishment. Do you remember if in the case of any of the thirteen natives that the opinion expressed by them was different from Admiral Masuda's decision of death punishment?

A. In the case of Mandala and Laperia I think Inoue may have said hard labor at their original island.

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The accused moved to strike out this answer on the ground that it was hearsay and that it was the opinion of the witness.

The judge advocate replied.

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

386. Q. Do you remember in any of these thirteen cases whether both Shintome and Inoue expressed the opinion that the punishment should not be the death sentence?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I can not recall well.

387. Q. Do you recall whether in the case of any of these thirteen natives both Shintome and Inoue expressed an opinion other than the death sentence? *Ja*

A. I can not recall.

388. Q. You state that you do not now remember what the opinions were. At the times you executed the natives did you know what the expressed opinions of Shintome and Inoue were as to punishment?

This was objected to by the accused on the ground that it was immaterial and irrelevant and that it called for hearsay.

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 not sustained.

A. Concerning whether I know their opinions or not at that time I do not remember at present.

389. Q. How long after each first conference did the execution's take place?

A. I think it was about three or four days later.

390. Q. You have testified that you are familiar with certain provisions of law. Are you familiar with that portion of Court Martial Law that provides that the decision of the court is determined by the majority?

A. I do not know.

391. Q. Are you familiar with Court Martial Law?

A. No.

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392. Q. At the Academy or in the fourteen years you have been in the army, did you have any contact with Court Martial Law?

A. I do not remember having come in contact with Court Martial Law.

393. Q. Did you learn the contents of any provisions of Court Martial Law in your fourteen years in armed service?

A. I do not remember learning it.

394. Q. During your fourteen years in armed service did you learn about the Japanese Criminal Code and the Japanese Naval Criminal Code?

A. At Jaluit, I have looked up the Naval Criminal Code, also the Japanese Criminal Code.

The commission then, at 11:30 a. m., took a recess until 2:04 p. m., at which time it reconvened.

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

Burn Heine, official native observer from the Marshall Islands,
Mark Juda, official native observer from the Marshall Islands,
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

395. Q. This morning you testified that you looked up the Japanese Criminal Code and the Japanese Naval Criminal Code. Did you also look up the Japanese Court Martial Law?

A. I did not look up the Court Martial Law.

396. Q. Then, you did not look up the Court Martial Law to see whether or not these proceedings were legal, did you?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not look this up.

397. Q. In addition to Admiral Masuda, Lieutenant Commander Shintone, Furuki and Inoue, did any other persons participate at these conferences?

A. No one else participated.

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398. Q. Now, Masuda, Shintone, and Inoue, you have stated, were judges, and you were the judge advocate. Was there any defense counsel present at these conferences?

A. There was no one.

399. Q. In these alleged conferences, did Masuda, Shintone and Inoue confer about the investigation report and about your opinion paper?

A. At the conference, as I recall, there were questions from Inoue and Shintone concerning the investigation report that I read. I do not remember Masuda and Shintone and Inoue discussing this document all together.

400. Q. Do you mean by that, that on such occasion Shintone did comment on it - on the investigation report - and your opinion?

A. Yes.

401. Q. And that perhaps during that same conference concerning that native incident, Inoue might not make any comment at all about the investigation report or the opinion?

A. As I remember, there were times when he asked no questions.

402. Q. Were there ever any of these conferences on any native incident in which neither Inoue nor Shintone asked any questions or made any comments about the investigation report and your opinion paper?

A. I do not think there were any in which both Shintone and Inoue did not ask.

403. Q. You stated that there were some conferences in which either Shintone or Inoue did not ask any questions or make any comments concerning the investigation report or your opinion paper. At these times, did they express any opinion as to the guilt of the native accused?

A. There were no times in which they did not express opinions.

404. Q. You testified that you were the judge advocate in these conferences. What were your duties?

A. I read the investigation report on the specification of the crimes; also expressed my opinion by my opinion paper.

405. Q. Did you do anything else at these conferences?

A. I do not remember what else I may have done.

406. Q. You testified that the investigators were to make daily reports to Admiral Masuda and in his absence to make the reports to you. Did the investigators ever report to you during the course of their daily questioning of natives?

A. I remember cases in which they reported to me.

407. Q. Did you ever go to where the natives were confined and personally question them?

A. To Halsei I went by myself and the other instances I went together with Admiral Masuda.

408. Q. Do you know if Admiral Masuda went to see Hajjano?

A. I do.

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409..Q. Did he?

A. He did.

410. Q. Did you go with him when he went to see Majkane?

A. Yes.

411. Q. You testified that all the natives confessed. Were you present when they confessed?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination, immaterial, and irrelevant.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. When I went to investigate the natives, the natives confessed to Admiral Masuda and myself.

412. Q. Were you present when Majkane confessed?

A. Yes.

413. Q. You have testified you were present when Majkane was questioned by Admiral Masuda and you have testified that you were present when Majkane confessed. Did you see Majkane on these occasions?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination, immaterial and irrelevant.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I saw Majkane.

414. Q. Did you see any marks or any bruises or black and blue spots on her body when you saw her?

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. No, I did not see it.

415. Q. Do you know if any of the natives were beaten or tortured in order to obtain these confessions?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

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The commission announced that the objection was not sustained.

A. I do not know of their being beaten or tortured to ^{ob}tain confessions. *JK*

416. Q. Did you speak with Mark, Ichiro, Saburo and others in the Melain and Mojane incident.

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. I did.

417. Q. Did you also question Levitikos?

A. It was not questioning, but I spoke to him; it is the same with Mark.

418. Q. Did you also speak with Obette and Boro?

A. No.

419. Q. In the Ghuta and Chomohle incident, did you speak with Enos?

This question was objected to by the accused on the ground that it was beyond the scope of the direct examination, immaterial, and irrelevant.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated in Japanese.

A. No.

420. Q. Ain?

A. No.

421. Q. Moses?

A. No.

422. Q. When you spoke to these natives during the [✓]course of their confinement, were they bound? *JK*

A. Among the natives that I talked to were Mark, Ichiro, Saburo and Levitikos. This was after they had been cleared of suspicion and were not tied. The other natives were tied.

423. Q. Did you question or speak with any of these other natives while they were tied?

A. When do you mean by the "other natives"?

424. Q. The ones you referred to in your answer to the last question.

A. Mark, Ichiro, Saburo and Levitikos were not tied. But the other natives that I talked to were tied.

425. Q. What are the names of the other natives, if you recall them?

A. All the natives that I executed and the four natives who were brought from Inrodj Island--I do not remember their names.

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426. Q. Did you execute Leschr, Kohri, Kozima and one unknown?

A. I did.

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427. Q. Did you execute Gata and Chammohle?

A. Yes, I did.

428. Q. Did you execute Tiagrik, Arden, Makui?

A. I did.

429. Q. You have testified that these natives did not have a regular trial. Did you know these natives did not have a regular trial when you executed them?

A. I thought they were executed without a regular trial, but I thought they were executed legally by examination and consultation by special procedure.

430. Q. Did you ever consult the court martial law to ascertain if this was a legal procedure?

A. No.

Reexamined by the accused:

431. Q. You just now stated that this execution was done by legal decision, by a special examination and consultation procedure, and that you executed a legal duty as the judge advocate on a legal decision. Were the duties of executioner included in the duties of the judge advocate?

This question was objected to by the judge advocate on the ground that it was leading and beyond the scope of the cross-examination.

The accused withdrew the question.

432. Q. You were the executioner. Was the duties of executioner the official duties of the judge advocate?

A. Yes.

433. Q. Could Admiral Masuda relieve himself of responsibility of command simply by ordering you to take over command?

A. I cannot grasp the question. I would like it explained more concretely.

434. Q. In case of illness of Admiral Masuda, could he relieve himself of the responsibility of command on Jaluit by ordering you to take over the command?

A. He cannot relieve himself of the responsibility.

435. Q. On cross-examination, the judge advocate read from a document questions and answers purporting to be the questions that you were asked and the answers that you gave on Kwajalein, were you told that you did not have to testify at Kwajalein?

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

This accused replied.

The commission was cleared. The commission was opened, and all parties to the trial entered. The commission announced that the objection was sustained.

436. Q. Were you allowed to verify the answers you gave at Kwajalein?

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

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The accused replied.

The commission announced that the objection was sustained.

437. Q. What happened to the natives who were sentenced to hard labor when the war ended on Jaluit in August 1945?

A. The period of their sentence of hard labor was one month, and by the time the war ended they had already served their term and were released.

438. Q. What did you mean by "Jaluit" when you answered: "Admiral Masuda's authority did not go beyond Jaluit."?

A. The Jaluit Atoll.

439. Q. Approximately how many islands were included in the Jaluit Atoll? *PK*

A. There was over a hundred.

440. Q. How long were you on Jaluit?

A. About a year and nine months.

441. Q. You testified that you were on Jaluit for a year and nine months, therefore, were you not in a better position in which to judge as to the danger of allowing natives charged with capital crimes to view the command post than someone who was not present on Jaluit?

This question was objected to by the judge advocate on the ground that *PK* it called for the opinion of the witness, that it was irrelevant and immaterial, and leading.

The accused replied.

The commission announced that the objection was sustained.

442. Q. Was there a copy of Navy Court Martial Law on Jaluit during the period that you were there?

A. I think there was.

443. Q. Where do you think it was?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and beyond the scope of the cross-examination.

The accused replied.

The commission announced that the objection was not sustained.

A. I think it was in the office of the Naval Guard Unit.

444. Q. Whose office was that?

A. The officer-in-charge of general affairs.

445. Q. Who was that?

A. He was an Ensign, and I forget his name.

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446. Q. Tell the commission in what capacity you executed the four natives in specification one - Leschr, Kohri, Kozina, and one unknown.

A. By Admiral Masuda's orders and as the legal duty of a judge advocate I executed the native criminals. It was a legal death sentence from a decision reached by the best possible special examination and consultation procedure on Jaluit and as official capacity as executioner.

447. Q. As to the victims named in specification two - Arden, Makui and Tiagrik. Tell the commission in what capacity you executed the victims executed in specification two - Arden, Makui, and Tiagrik.

A. By Admiral Masuda's orders and as the legal duty of a judge advocate in executing. A criminal was given a death sentence from decision reached by the best possible special examination and consultation procedure on Jaluit and as official capacity as executioner.

448. Q. Did you execute the victims named in specification three - Chuta and Chomohle - for the same reasons?

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.

449. Q. Tell the commission if the victims listed in specification three - Chuta and Chomohle - which you testified to prior as having executed, were executed as you stated for Leschr, Kohri, Kozina and the one unknown, and for Arden, Makui and Tiagrik? OK

A. It was in the same capacity.

450. Q. As to the victims in specification four - Mandala and Laperis?

A. It is the same.

451. Q. As to the victims in specification five of charge one - Mojane and Malain?

A. It is the same.

Recross-examined by the judge advocate:

452. Q. Did you read the court martial law to ascertain what the official duties of a judge advocate are?

A. No.

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

The commission did not desire to examine this witness.

The commission then, at 4:05 p.m., adjourned until 9 a.m., tomorrow, Saturday, April 5, 1947.

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TWENTY-FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, April 5, 1947.

The commission met at 9:28 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guyson, 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 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 twenty-fourth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

The accused, Furuki, Hidesaku, a witness in his own behalf, was
recalled and warned that the oath previously taken was still binding.

The witness made the following statement:

The natives who were confined on Enidj were tied by the order of
Admiral Masuda to prevent escape. There had been cases when a spy from
Hille escaped from Enidj. Everyone on Jaluit looked for him for two or
three days. Native suspects escaped from Enidj; after looking everywhere
they could not be found. On the outlying islands there were many cases in
which natives confined escaped. On Enidj Island the strength of the mili-
tary and gunboats had so wasted away that they had to rest to walk one
hundred meters. They could not run to overtake the natives, and once
escaped, it was difficult to conduct a search for them under the attack of
planes. Under the war conditions in confinement of the natives in which
who tried to desert, under the war conditions on Enidj, this was necessary
to prevent their escape. There was no other way to prevent their escape.
After the end of the war, Admiral Masuda came back from a talk with
Lieutenant Commander McKinson and related as follows: Lieutenant Commander
McKinson had asked, "Were there any Marshallese natives executed?" and he

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stated that he replied as follows: "There has been executions. This was done by the laws of Japan and by my authority, with the necessary procedure and that this was lawful action." He said this was how he replied, and also Admiral Masuda expressed his conviction that the native executions were lawful. People present when this was stated were Lieutenant Commander Shintone, Lieutenant Commander Sumiki, Lieutenant Commander Nakamura, Captains Umi and Inoue; also present was the head of the civilian government of Jaluit, Takemura. These people heard what was stated. Admiral Masuda, concerning the problems of the Jaluit Defense Garrison, decided then all, even to the smallest decision. As example he gave instructions as to the duties of even one gunsoku and to the labor of even one native. Clothing, how the men on guard and on the outlying islands were to be clothed, and on Jaluit and on Riddj because there was no material, he even decided upon the use of a piece of sheet metal, also to the use of a piece of lumber, locked into each case and decided on its use. He was ailing, but seeing the intervals in the activities of the planes, he rode around instructing the positions to bolster the morale of his men. Every three months or so he would be laid up with a fever of forty degrees (centigrade) from his chronic ailment, I forget whether it was kidney or the lungs. Even at such times, he would want all documents brought to him. He made all decisions that were necessary.

This statement was objected to by the judge advocate and he moved that those portions of the statement dealing with the alleged conversation after the war between Lieutenant Commander McKinnon and Admiral Masuda be stricken from the record as clearly hearsay and irrelevant and immaterial. Similarly, the judge advocate moved that the portion of the alleged conversation when Inoue and Shintone were present, be stricken from the record as hearsay, irrelevant, and immaterial.

The accused replied.

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

The commission announced that the objection was not sustained and that the commission would accept the statement as a whole and accord it its proper weight.

The witness resumed his status as accused.

The defense rested.

The commission then, at 10:55 a.m., adjourned until 9 a.m., Monday, April 7, 1947.

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EXHIBIT-SIX

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, April 7, 1947.

The commission met at 9:07 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon H. Gwynn, 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.
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The rebuttal began.

The judge advocate announced that by agreement between the prosecution and defense, Buorn Heine, official native observer from the Marshall Islands would act as interpreter.

The interpreter was duly sworn.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, occupation and address.
A. Mashe Saburo, student, medical hospital, Majuro Atoll.
2. Q. If you recognize the accused, state as whom.
A. Yes, the Riddj Daitaicho (battalion commanding officer).

Interpreters note: The Japanese word "Daitaicho" means "Battalion Commander".

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3. Q. Were you in Jaluit Atoll in the year 1945?
A. Yes.

4. Q. During the year 1945, were you investigated by the Japanese military authorities?
A. I was.

5. Q. Where were you investigated?
A. I was investigated at Ainsman Island at the radio station.

6. Q. During what period of time were you investigated?
A. From the end of July 1945, until about the eleventh of August.

7. Q. Will you tell the commission about the investigation during your period of confinement, relating specifically what happened to you, what you saw, and what you heard?

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

The judge advocate withdrew the question.

8. Q. In connection with what executed natives were you investigated?

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

The judge advocate withdrew the question.

9. Q. In connection with what native incidents were you investigated?
A. I was investigated in connection with the Melain and Majhane case.

10. Q. Will you tell the commission about this investigation during the period of your confinement on Ainsman Island, relating specifically what happened to you, what you saw, and what you heard?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The Japanese took me from Pingalap Island to investigate me in connection with Melain and Majhane. They bound my legs and arms behind my back with a rope around my neck so I couldn't hardly move without hurting my throat. I served three days with my arms tied behind my back. I could not sleep for three days so I asked them to ungle my arms and tie them in front of me. When Majhane came questioning me, he put a wire up my nose. He was questioning me about Melain and Majhane and also about how people escaped from Pingalap and why they escaped, and when I say "I do not know," he pushed the iron up my nose again. He pushed it four or five times. During thirteen days I was bound, and also I was blindfolded. Sometimes they tied

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my mouth so I could not speak. I was blindfolded all the time except when I ate and when they were questioning me and when I came to the toilet house. On the last day the Daitaicho (battalion commanding officer) came with several men and officers and they told us that we may go back to our homes, and when we got there to our homes, we must work and help them make food. I went back to Pingelap with Mark, Ichiro, and Obetto, and one of the officers told us that Helen will stay on Ruidj Island until the war is over, but Majkane, because she is a woman, she will go back to her island.

11. Q. You have testified that you were investigated from the period of the end of July until about the eleventh of August. Did anything happen after the eleventh of August?

A. Nothing happened, because I was blindfolded and I couldn't see anything around.

12. Q. Did you stay in confinement on Ainemau after the eleventh of August?

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, I wasn't on Ainemau Island at this time.

13. Q. When you were questioned at the transmitting station on Ainemau Island, who questioned you?

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. Second Lieutenant Morikawa.

14. Q. Did anyone else question you while you were in confinement?

A. Only Morikawa, but sometimes the army officer who was in charge of Pingelap Island came with him.

15. Q. You have testified that army officer Lieutenant Morikawa questioned you and that sometimes the army officer from Pingelap was also with him. Did you ever see any other officers present when you were questioned?

A. Only Morikawa and the other officer from Pingelap.

Cross-examined by the accused:

16. Q. You testified that you went home together with Mark, Ichiro and Obetto. Were you all confined together?

A. We went back together, but we did not live together on Ruidj Island. Obetto was not living with us on Ruidj Island.

17. Q. Were you together with Ichiro?

A. Yes.

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18. Q. Is Ichire from the same island as you are?

A. Yes, from the same island.

19. Q. Do you know if Ichire sent a letter for First Lieutenant Ieki after he had returned to his island thanking him for his treatment while at headquarters?

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

The accused replied.

The commission announced that the objection was sustained.

20. Q. While you were confined on Enidj, did you ever receive cigarettes from Japanese officers?

A. Yes. Baitaicho (battalion commanding officer), he gave Mark, Ichire and myself each a tobacco leaf.

21. Q. You, Ichire, and Mark were told that you were not bad, and is it not correct that you were treated kindly?

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

The accused withdrew the question.

22. Q. You testified that you, Mark, and Ichire received tobacco leaves from the battalion commander. Is it not correct that instead of being mistreated by the Japanese officers, you were treated kindly? JIC

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

The accused replied.

The commission announced that it desired to hear the answer before ruling on the objection.

A. It was good.

The judge advocate moved to strike the question and answer on the ground that it was obvious from the answer that the witness had been misled.

The accused replied.

The commission directed that the question and answer be stricken out.

23. Q. When you were confined, was there any difference in your treatment at the beginning of your confinement and at its end?

A. The change of treatment was when I asked them to untie my arms from behind my back and tie them in front of me.

24. Q. After this, were your hands in front of you?

A. Yes, they were in front of me.

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25. Q. Isn't it correct that they were tied loosely instead of tight?
A. I feel it little loose, but on the last when the untied my arms, there were wounds.

26. Q. Other to the investigations, did you talk frequently with the Japanese officers?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination, immaterial and irrelevant. *JK*

The accused replied.

The commission announced that the objection was sustained.

27. Q. Have you ever asked the Japanese officers, "Give me a cigarette?"

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was not sustained.

A. I didn't ask, but sometimes they gave us cigarettes.

28. Q. Then, isn't it correct that in general your treatment by the Japanese officers was kind?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination, irrelevant, and immaterial.

The accused withdrew the question.

29. Q. During your confinement, isn't it correct that the officers you came in contact with, as a rule, treated you kindly?

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

The accused replied.

The commission was cleared.

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

The commission announced that the objection was not sustained.

The question was repeated.

A. The soldiers, the enlisted men, who guarded us, gave us cigarettes, but the officers put the iron up my nose and bound my legs and arms and I do not know how to answer this.

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30. Q. You testified that your hands were tied behind you, and that you asked them "to tie my hands in front of me." What was it that you asked this? je

A. This happened after three days.

31. Q. Do you know who did this for you?

A. I told Second Lieutenant Morikawa about this and he told the enlisted men to do this.

32. Q. You stated that you were blindfolded, wasn't the period that you were blindfolded only during the time you were brought from Pingelap?

A. I was blindfolded all the time during my stay on Ainsmen Island, except when questioning me, and at meal times, and when I went to the toilet.

33. Q. Were you blindfolded when your hands were retied in front of you?

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

The accused withdrew the question.

34. Q. You testified that all the time you were confined, you were blindfolded, except at meal times and when you were questioned and you went to the toilet. How was it when you asked to have your hands retied and when they were retied?

A. Yes, I was still blindfolded.

35. Q. How was it when the enlisted men gave you cigarettes?

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. Were you blindfolded when you were given the cigarettes by the enlisted men?

A. Yes, I was still blindfolded.

37. Q. You stated that you asked to have your hands retied in front of you. How did you know that it was Second Lieutenant Morikawa, if you were blindfolded?

This question was objected to by the judge advocate on the ground that it has not been brought out in examination that the witness was blindfolded when his hands were retied.

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I asked Morikawa to retie my hands in front of me while he was questioning me.

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38. Q. And then the enlisted men retied your hands. How did you know they were enlisted men?

A. I can tell by hearing their talk with me because when I had my meals the enlisted men were with me; then, after that they retied my hands.

39. Q. You stated that when your hands were retied you were blindfolded. I am asking how did you know that they were enlisted men?

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

The accused withdrew the question.

40. Q. You stated that when you received cigarettes from the enlisted men you were blindfolded. How did you know the people who gave you the cigarettes were enlisted men?

A. Sometimes when we ate our meals, the enlisted men were with us and after we ate our meals, they gave us cigarettes. Sometimes, they gave us cigarettes during the period when the officers were not present with us and they were then talking to each other, and I know about this; and also, they told us not to show our smoking when the officers were present.

41. Q. When you were given cigarettes, you were not always blindfolded. Is that correct?

A. Sometimes, after our meals, they gave us cigarettes and sometimes when we were blindfolded they gave us also.

42. Q. You stated that Major Furuki told you you could go home and when you returned home to work hard. When were you told this?

A. On the last day before we returned.

43. Q. What date was this?

A. I think it was about the eleventh of August, but I forgot it.

44. Q. Were you blindfolded then?

A. At this time we were not blindfolded.

45. Q. You were asked by the judge advocate, "Did anything happen after the eleventh of August?" and you answered, "As I was blindfolded, I do not know." JK
What was the reason for this?

A. My first answer was after the eleventh day nothing happened; but, during the eleventh day, at nine o'clock, Furuki came; we were untied, the blindfolds taken off.

The witness was duly warned.

The commission then, at 11:31 a.m., took a recess until 2:04 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.

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

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No witnesses not otherwise connected with the trial were present.

Sakuro, Washo, 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.)

46. Q. In your last answer there is a difference. When you were asked by the judge advocate, "Did anything happen after the eleventh of August" and you answered, "As I was blindfolded I do not know." Are you changing your testimony?

This question was objected to by the judge advocate on the ground that it was not clear what the inconsistency in the testimony was.

The accused replied.

The commission directed that the last question and answer of the morning session be read.

The commission announced that any apparent inconsistencies were explained by the answer to the last question, and therefore, the objection of the judge advocate was sustained.

47. Q. You testified that you were investigated by Morikawa. How many times were you questioned by him?

A. I can not remember how many times because some days he questioned me and some days he did not, so I could not remember how many times. JK

48. Q. When were you questioned?

A. I can not remember it exactly now, but I think on the second or third day.

49. Q. What sort of things were you asked?

A. He asked me why Hajkane went to the southern island and came back again to Pingalap Island.

50. Q. What did you reply to this question?

A. I said that I did not know anything about Hajkane.

51. Q. Were you ever questioned with Hajkane present?

A. No.

52. Q. You stated that when Morikawa questioned you he stuck a wire in your nose. When was this?

A. I can not remember exactly, but it was not on the first day.

53. Q. Do you know the place where this was done?

A. In the room where they questioned me.

54. Q. Tell us the conditions, how it was in detail when this was being done.

A. What I remember about this was that when he asked me about Hajkane and when I answered and said that I do not know, then he pushed the iron up my nose.

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55. Q. Were there any Japanese soldiers other to Morikawa present at that time?

A. No one else.

56. Q. Were there any natives?

A. No, only myself and Morikawa.

57. Q. What time of day was it when this was done?

A. I can not remember exactly whether morning or afternoon.

58. Q. In what part of the room that you were investigated in was this done?

A. In the middle of that room.

59. Q. Do you know how the room looked?

A. The floor and the walls of the room were concrete, but there were some windows.

60. Q. You stated that you were investigated in the middle of the room. Do you remember what was around you?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. A table and two chairs.

61. Q. Was there anyone at the table and sitting in the chairs?

A. Yes. Morikawa and myself were sitting on the chairs.

62. Q. Where were you seated in relation to the table and Morikawa?

A. We were both seated on one side of the table.

63. Q. Were the questions and answers between you and Morikawa conducted quietly?

A. Sometimes we spoke quietly to each other and sometimes he scolded me and said that I was lying.

64. Q. Do you remember what Morikawa said when he placed the iron in your nose?

A. Morikawa said that I am lying so he pushed a wire up my nose and told me that I must not move, if I move my head it shows that I am lying.

65. Q. Do you know the reason why he said to not move and said if you move your head you are lying. Is there anything among the natives concerning this?

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.

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66. Q. What sort of a thing was this wire or iron that was stuck in your nose?

A. I think it was electric wire, a small wire from an electric line.

67. Q. Do you remember how long it was?

A. I think it is about two feet long.

68. Q. Was it soft?

A. I do not know because I did not hold it.

69. Q. How much was stuck in your nose?

A. I do not know because when I felt the pain in my nose I moved my head.

70. Q. To what part of your nose did it penetrate?

A. I felt it at the upper part of my nose, the bridge.

(Witness indicated the bridge of his nose.)

71. Q. Did you feel only the pain or did anything else happen?

A. I felt the pain and also I sneezed.

72. Q. How old are you?

A. Twenty-three years.

73. Q. Do you understand Japanese?

A. I can understand and speak a little Japanese.

74. Q. Where are you going to school now?

A. I am working and studying at the hospital at Majuro Atoll.

75. Q. Is this an American school?

A. Yes.

76. Q. Had you been to school before this present going to school?

A. Yes. I went to school with the Japanese, a Japanese school, and also I attended the Japanese medical school.

77. Q. This morning you testified that Halsein would stay on the island. Who was it that told you this?

A. I do not remember whether it was Morikawa or Ieki.

78. Q. When was this?

A. On the last day before we returned to our island.

79. Q. Do you remember exactly what day of the month that was?

A. I think it was on the eleventh of August.

80. Q. Did Morikawa or Ieki also tell you about Halsein that day?

A. They told us that Halsein would stay on Rongerik until the war was over, but Halsein, because she was a woman, she will return to her island.

81. Q. Was it at this time that you were released and told to go back to your island?

A. Yes.

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82. Q. What else did they tell you that day?

A. "Daitaicho" gave to each one of us a tobacco leaf and told us when we got back to our homes we must work hard.

83. Q. Who told you this?

A. The battalion commander.

84. Q. Who was the battalion commander?

A. He is seated behind you.

(The witness pointed to accused.)

85. Q. Who was with the battalion commander when he told you this?

A. I saw "Daitaicho", Ieki, Morikawa and some other officers, but I do not know them. Some Navy and Army men.

86. Q. Do you remember the day of the month this was?

A. I do not exactly remember the date, but I remember that it was on the last day.

87. Q. Was the admiral there that day too?

A. I did not see him.

88. Q. Did you complain to the battalion commander that day about your mistreatment?

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

The accused replied.

The commission announced that the objection was not sustained.

A. No.

89. Q. Did you ever tell anyone about this putting of the iron prong into your nose before today?

A. Yes. I told it to the people on Pingelap Island.

90. Q. What people on Pingelap Island?

A. I told the natives on Pingelap Island.

91. Q. When did you first tell the Americans about it?

A. I told the doctors at the Majuro hospital and also I told the officers on Kwajalein.

92. Q. When did you tell the officers on Kwajalein?

A. Last month, but I do not remember the exact date.

93. Q. Now, when Lieutenant Morikawa put this iron prong into your nose, were you and he alone in the room at that time?

A. Myself and Morikawa only.

94. Q. Where did he get this prong?

A. I do not know where he got it.

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95. Q. Did he take it with him when he left you?
A. I do not know.

96. Q. Was he carrying or wearing his pistol that day when he came in to question you? JK
A. Yes. He had his pistol and sword with him.

97. Q. Did he also have a walking stick?
A. I think there was none.

98. Q. Was this in the same room that you were confined in?
A. No, this was in another room.

99. Q. How did you get from your room of confinement over to this other room?
A. I was still blindfolded, but the enlisted man came into the room and led me in to the next room and back again.

100. Q. Could you see through your blindfold?
A. Sometimes when the blindfold was a little loose I could see below, but I could not see forward. JK

101. Q. Did Morikawa take the blindfold off you that day?
A. Yes, when I was in the room he told the enlisted man to untie the cloth from my eyes.

102. Q. Did the enlisted man give him this iron prong?
A. I do not know.

103. Q. Did Morikawa tell the enlisted man to leave the room while he was questioning you?
A. Yes. All the time while he was questioning me I was alone with Morikawa.

104. Q. How long did the questioning last?
A. Sometimes from nine o'clock until meal times, dinner time.

105. Q. That day, how long did the questioning last?
A. I can not remember exactly.

106. Q. Did he beat you that day?
A. Nothing else besides putting the wire into my nose. JK

107. Q. Did he ever beat you?
A. No.

108. Q. How soon after this questioning were you released?
A. I can not remember.

109. Q. Did Morikawa question you in Japanese that day?
A. Yes.

110. Q. Do you remember whether this was in the morning or in the afternoon?
A. I forget it.

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111. Q. Did you tell the enlisted guards that Morikawa did this to you that day?

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

The accused replied,

The commission announced that the objection was not sustained.

A. No, I did not.

112. Q. Did the battalion commander ever mistreat you?

A. I saw him only during the last day.

The commission announced that they felt that the witness did not understand the question because the answer was not responsive to the question.

113. Q. Did the battalion commander ever mistreat you?

A. He did not do anything to me.

114. Q. When did you first know Second Lieutenant Morikawa?

A. Before this time, Morikawa came several times to Pingalap and I knew him at that time.

115. Q. You knew him well then, did you?

A. I think so.

116. Q. There can be no mistake that it was Morikawa that put this prong in your nose?

A. I really know that it was Morikawa.

117. Q. Can you describe Morikawa?

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 immaterial and irrelevant.

The accused replied,

The commission announced that the objection was sustained.

118. Q. Did you get the same kind of food as the enlisted men at the time of your confinement? *for*

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 immaterial and irrelevant.

The accused replied,

The commission announced that the objection was sustained.

119. Q. Do you know whether you got the same kind of food while you were in confinement that the enlisted men did?

A. I do not know, because I do not see what the enlisted men eat.

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The commission then, at 3:22 p.m., took a recess until 3:42 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.

Saburo, Washo, 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.)

120. Q. Were you on Jaluit all during the war?
A. Yes.

121. Q. During the time you were confined by the Japanese, did the Japanese try to guard you from American air raids?

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 immaterial and irrelevant.

The accused replied.

The commission announced that the objection was not sustained.

A. When I was on Ruidj Island I remember once when American planes came and dropped bombs on Ruidj Island and myself and I do not remember whether Halsea or Mark were in one of these rooms of that building.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.
A. Levitika.

2. Q. Where do you live?
A. Jaluit Atoll.

3. Q. If you recognize the accused state who he is.
A. "Daitaicho".

Interpreters note: The Japanese word "Daitaicho" means "Battalion Commander".

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4. Q. What is your present occupation on Jaluit Atoll?

A. I am a policeman on Fingalap Island.

5. Q. Were you headman of Jaluit Village in the year 1945?

A. Yes.

6. Q. Have you continued in that capacity up to the present time?

A. Yes.

7. Q. During the year 1945, while the atoll was occupied by the Japanese, were you taken prisoner?

A. Yes.

8. Q. On what date were you taken prisoner?

A. They took me to Ruidj on the night of the 25th of July.

9. Q. Who took you to Ruidj?

A. An army officer, if I remember his name correctly, it was Kadota.

10. Q. How were you transported to Ruidj Island?

A. They took me to Ruidj on a motor boat and when I reached Ruidj they took me on a truck and when I was on the truck they blindfolded me.

11. Q. Did they also bind you at that time?

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

The question was withdrawn.

12. Q. Other than blindfolding you, did they do anything else to you at that time?

A. When they took me to the house and when I reached the house, they bound my arms and legs.

13. Q. For how long a period were you kept prisoner?

A. I think about four days.

14. Q. During the period that you were prisoner did you see any natives mistreated by the Japanese?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Yes. I saw a man and a woman.

15. Q. Do you know the name of the man you saw mistreated?

A. Yes.

16. Q. What was the name of the man?

A. His name was Paul (Boro).

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The accused moved that this answer be stricken from the record on the ground that it was immaterial and irrelevant to the issues on trial before this commission.

The judge advocate replied,

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

17. Q. By whom did you see Boro mistreated?

A. An army officer, if I remember his name correctly, it was Morikawa.

18. Q. Tell us what you saw Morikawa do to Boro?

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 Morikawa tell Boro to stand and he kicked him and told him to stand and when Boro stood up he pushed him by striking his back and told him to go forward.

19. Q. Will you describe what you observed about Boro on this occasion?

A. I saw his arms were tied with a big fish line and the fish line was cutting his arms.

20. Q. What was the name of the woman you saw mistreated?

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

The judge advocate replied,

The commission announced that the ^{obj}jection was not sustained.

A. Her name was Hajkane.

21. Q. What Japanese did you see mistreat Hajkane?

A. The same man, Morikawa.

22. Q. Tell us what you saw Morikawa do to Hajkane.

A. I saw Morikawa strike Hajkane's face with his hand.

23. Q. For how long did Morikawa strike Hajkane on the face with his hand?

A. I saw him strike Hajkane's face four times.

24. Q. Tell us what you observed about Hajkane at that time?

A. When they questioned myself and Hajkane I saw her dress was torn to pieces, the upper part of her dress was all torn and I could see on her back long bruises, and also her black eyes.

25. Q. What was she doing while Morikawa was striking her?

A. When Morikawa was striking her face I heard her cry and say, "Soldier forgive me."

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James P. Kenny *JP VK*

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26. Q. During the period of your imprisonment by the Japanese, what did they question you about?

A. They asked me, is it true that Majkane brought a letter to me and I also wrote a letter and gave it to her and told her to take it back?

27. Q. What did you tell them?

A. I told them that I did not meet her and also I did not write a letter.

28. Q. Did you at any time change that story?

A. No.

The witness was duly warned.

The commission then, at 4:22 p.m., adjourned until 9 a.m., tomorrow, Tuesday, April 8, 1947.

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James P. Kenney Lt. USN

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THIRTY-SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, April 8, 1947.

The commission met at 9:09 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,
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Buorn 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 twenty-sixth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the accused:

29. Q. Since when have you been living in Jaluit?

A. Since I was born.

30. Q. Do you understand Japanese?

A. I cannot understand the Japanese language, just a few words I understand.

31. Q. Were there any other natives in the house that you were confined in,
upon your arrival at Ruidj?

A. There was no one; I just arrived.

32. Q. Do you know if Paul and Obetto, Majkane, were there?

A. I do not know whether they live.

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33. Q. Then, you were confined by yourself in a room. Is that correct?
A. There was an enlisted man with me, always.

34. Q. Were you ever investigated by a Japanese officer?
A. Yes. Three officers investigated me.

35. Q. Do you know the names of these three officers?
A. Yes.

36. Q. Please state their names.
A. Ieki, Kadota, and Morikawa.

37. Q. When you were investigated where was the place where you were investigated?
A. In the room where I lived on Ainemar Island.

38. Q. While you were being investigated, were any other natives brought into that room?
A. Yes, on the first day they brought in two natives.

39. Q. Were they brought there to be investigated, or confined there?
A. They brought them to be investigated.

40. Q. Do you know the names of the natives who were brought?
A. Yes.

41. Q. Tell us their names.
A. The woman was Hajkane; the man was Obetto.

42. Q. Was Hajkane confined there?
A. No.

43. Q. How many times were you questioned?
A. They questioned me twice a day for three days.

44. Q. Who was the main person who asked you the questions?
A. It was Ieki that was questioning me.

45. Q. By Ieki, do you mean he did most of the questioning?
A. Yes, Ieki questioned me and I answered his questions.

46. Q. Did Morikawa question you?
A. No, he did not question me, but sometimes he spoke to me or sometimes he says I am lying.

47. Q. While you were being questioned by Morikawa and Ieki, were you mistreated?
A. They mistreated me by using force to answer. JK

48. Q. What were you forced to answer?
A. They forced me to answer when they questioned me about the letter which Hajkane brought to me, as she told them.

49. Q. Did you ever go outside of the room you were confined in and questioned in?

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

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The accused replied.

The commission announced that the objection was not sustained.

A. No.

50. Q. In answer to the question by the judge advocate, you stated that you saw Paul kicked by Morikawa. Where did you see this?

A. Paul was lying on the floor--on the veranda there. I can look through the door and see him.

51. Q. Where was this veranda?

A. The veranda was part of the room where I lived, just outside the door.

52. Q. Was this the only time you saw Paul?

A. I saw him twice when they brought him to the same veranda.

53. Q. What was the distance from the place you saw Paul and where Paul was?

A. The distance is from where I am sitting to that corner over there. (Indicating by pointing a distance of about fifteen to twenty feet).

54. Q. Was the door of the room always open?

A. There was no door on the room.

55. Q. You stated that you saw Morikawa strike Mejkane in the face. Where did you see this?

A. I saw Mejkane in the next room through the wall. There was a big hole made by bombs so I can look through it and see Mejkane and Morikawa in that room.

56. Q. Was there anyone else in that room other than Morikawa and Mejkane?

A. Yes, besides them, Ieki and Shiroshita.

57. Q. Was this the only time you saw Morikawa strike Mejkane?

A. Yes, this is the only time I saw.

58. Q. How did Morikawa strike Mejkane's face? Did he strike her with an open hand or was it with a closed fist?

A. With an opened hand. (Indicating with open hand, palm toward cheek). JK

59. Q. Was it from the side?

A. Yes, from the sides. (Again indicating with open hand).

60. Q. While you were on Jaluit a long time did you ever see a Japanese strike a person's face?

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.

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James P. Kanny *JP. KX*

61. Q. When you saw Morikawa through the wall strike Nejkane, what was the color of the dress she was wearing?

A. A reddish color, red leaves, and it was only the lower part of her dress.

62. Q. Was there any clothing around the shoulders?

A. There was none.

63. Q. Were you questioned together with Nejkane in the same room after you saw Nejkane being struck by Morikawa?

A. They questioned both of us before this, before I saw Morikawa strike Nejkane's face.

64. Q. How many times were you questioned together with Nejkane?

A. Only once on the first day.

65. Q. You stated that on the first day when you were questioned together with Nejkane, this was the only time that you were questioned together. Then, you were not questioned together with Nejkane the day you say Morikawa struck Nejkane. Is that correct?

A. This was on the same day. They questioned us together; then after that Morikawa took Nejkane to the next room.

66. Q. What day after your arrival on Ainsman was it that you saw Morikawa strike Nejkane in the next room?

A. It was on the first day. This was in the afternoon of the first day. After they questioned me they took her to the next room and struck her there.

67. Q. You stated when Nejkane was struck she said "Soldier, forgive me." Did she say this in native tongue or did she say this in Japanese?

A. The words she used were "Heidaisan". (Interpreter's note: "Soldier" in Japanese). Then she said "Forgive me" in the Marshallese.

68. Q. You stated that Nejkane had a black eye. Will you explain further on this?

A. I cannot explain to this, but I only saw her black eyes.

69. Q. Will you describe that black eye?

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

The accused withdrew the question.

70. Q. Was Nejkane's eye swollen at that time?

A. Her eyes and face were swollen a little and also the inside of her eyes were red and black.

The commission then, at 10:29 a.m., took a recess until 10:47 a.m., at which time it reconvened.

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James P. Kenny Lt. USN

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.

Levitikos, the witness under examination when the recess was taken, entered and continued his testimony.

(Cross-examination continued.)

71. Q. Did Majkane have a light colored complexion?

A. Light brown.

72. Q. You stated that there were black and blue bruises on her back. In what part of her back were these bruises?

A. On the upper part of her back from shoulder to other shoulder.

73. Q. Tell us what kind of bruises they were.

A. Long and black bruises from one shoulder to the other shoulder.

74. Q. Was it swollen?

A. Yes, they were a little swollen.

75. Q. Was there blood coming from the bruises?

A. No.

76. Q. You testified that Majkane and you were questioned together. Who questioned you?

A. Ieki.

77. Q. When you were questioned together, what was your position in relation to Majkane?

A. We both sat on the floor and sitting opposite Ieki.

78. Q. What was the distance between you and Majkane?

A. About two feet.

79. Q. Were you sitting on the floor.

A. Yes, on the floor.

80. Q. Was there anything between Ieki, Majkane and you?

A. There was nothing. Ieki sits on a chair and myself and Majkane sit on the floor and Obette was on the right side.

81. Q. You stated that there were holes in the wall between your room and the next room. What part of the walls were there holes in?

A. There are many holes on the walls. Some are about two feet from the floor and some are on the upper part of the wall.

82. Q. Was the wall wood, or was it concrete?

A. It was concrete.

83. Q. Was this room on the surface of the earth or was it underground?

A. It is on the ground.

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James P. Kenny D. V. S.

84. Q. When you saw Morikawa strike Majhane, was Majhane sitting on the floor or was she sitting in a chair?

A. She sits on the floor.

85. Q. You stated that you were confined for four days. What happened after that?

A. On the last day, Furuki came.

86. Q. What did Furuki do after he came?

A. He was thanking me for coming and told me to go back home and also he told me to work hard when I go back home.

87. Q. When you went home did you go by yourself or with someone else?

A. I went back with the army officer who was in charge of Jaluit Island and also with another native.

88. Q. Who was the native you went back with?

A. His name was Lemaek.

Re-examined by the judge advocates:

89. Q. You have mentioned in your testimony another prisoner named Obetto. Who was he?

A. Obetto is my son, who was the Headman of another island in the Jaluit Atoll.

~~Neither~~
Neither the judge advocates nor the accused desired further to examine this witness. JK

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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name.

A. Obetto (Obet).

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

A. Enidj Kaitaiche (battalion commanding officer). JK

3. Q. During the year 1945, while the Japanese forces occupied Jaluit, were you taken prisoner?

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

The judge advocate replied.

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James P. Kenney Jr. DSX

The commission announced that the objection was not sustained.

A. Yes.

4. Q. When were you taken prisoner?

A. On July twenty-third they took me to Enidj Island.

5. Q. Who took you to Enidj Island?

A. First Lieutenant Ieki.

6. Q. Will you tell us how Ieki took you to Enidj Island?

A. He bound my arms and legs and blindfolded me and took me to Enidj.

7. Q. For how long a period were you kept prisoner by the Japanese?

A. About two weeks and four or five days.

8. Q. Were you kept bound during that entire time?

A. Yes. I was bound from the beginning to the end of these days. *JK*

9. Q. Concerning what matter did they question you?

A. They questioned me concerning Mejkane and Melein.

10. Q. What did they question you about concerning Melein and Mejkane?

A. They questioned me whether it was true that Mejkane brought a letter and gave it to me from Melein.

11. Q. What did you tell the Japanese officers about this?

A. I told them that I did not.

12. Q. Did you at any time change that story?

A. No, I did not change my words. *JK*

13. Q. During the period of your imprisonment did you see any other natives?

A. Paul, Mejkane, and Levikikos. *JK*

14. Q. Did you see any of these natives mistreated by the Japanese?

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. Yes, I saw them mistreat Paul.

15. Q. By whom did you see Paul mistreated?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. When I entered the room I saw Morikawa strike Paul three times.

16. Q. With what did Morikawa strike Paul?

A. He beat Paul with a piece of board.

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James P. Kenny Lt. USA

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17. Q. Was he in the act of striking Paul when you entered the room?

A. When I was about to sit down in that room I saw him strike Paul three times.

18. Q. Did you see any other mistreatment of Paul?

A. I just saw when they beat him, but Paul told me that they filled his mouth and nose with water.

The accused moved to strike the words "but Paul told me that they filled his mouth and nose with water" out of the answer on the ground that they were hearsay.

The judge advocate made no reply.

The commission announced that the motion was sustained and directed that the words be stricken.

19. Q. Were you at any time questioned in the same room with Mejkane?

A. Yes.

20. Q. Describe Mejkane's appearance?

A. When I saw her she wore a reddish color dress, but only a lower part of the dress, and her eyes were black and there were bruises on her back.

The witness was duly warned.

The commission then, at 11:29 a.m., took a recess until 2:08 p.m., at which time it reconvened.

Presents:

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

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

No witnesses not otherwise connected with the trial were present.

Obetto, 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.)

21. Q. Were there any other Japanese present while Morikawa was beating the native Mejkane?

A. Yes, Iaki, Kadota and the interpreters.

22. Q. Were you present when Melein was questioned by the Japanese?

A. On the last day before I was released and went back, I was questioned together with Melein and Mejkane.

23. Q. Tell us what you heard and saw with reference to Melein.

A. When I saw Melein his arms and legs were bound and they asked him "Is it true that you wrote a letter and gave it to Mejkane to take to Obetto?"

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James P. Lenny Lt. USN

24. Q. What was Melein's reply?

A. Melein said that he did not write a letter and also that he did not send a letter to Obetto.

The accused moved that the answer to this question be stricken on the ground that it was hearsay. JK

The judge advocate replied.

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

25. Q. Did you see any marks on Melein's body?

A. I did not see anything on his face and on his body he wore clothes, so I could not see.

Cross-examined by the accused:

26. Q. After you were taken prisoner were you ever confined together with other natives?

A. In the house where I sleep, myself, Mojkan and Boro.

27. Q. Were there only three including yourself?

A. Yes, only three.

28. Q. When you were questioned was it in a separate room?

A. We sleep on the veranda and when the questioning was, they brought us into the room.

29. Q. When you were questioned in the room, were you ever questioned together with other natives?

A. Yes. I was questioned with Mojkan. JK

30. Q. Is that yourself and Mojkan?

A. When I first met Mojkan the first day it was only myself and Mojkan.

31. Q. Was this the only time that you and Mojkan were questioned together?

A. The second time I was questioned with Mojkan, Levitkos was present, the third time Melein was present.

32. Q. Are these the only times that you were questioned together with the other natives?

A. Yes.

33. Q. Have you ever met Boro?

A. They never questioned myself and Boro together, but I met him once and I was interpreter for him.

34. Q. Where did you see them strike Paul?

A. In the same room where I interpreted for Paul on Naidj Island.

35. Q. When he was beaten was it when you were interpreting for him?

A. The same time, but they beat him before I interpreted.

36. Q. When was Mojkan struck?

A. On the second day when I was investigated with Mojkan and Levitkos was present.

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James P. Lenny Lt. USN

37. Q. Do you know what day this was?

A. I think about the 25th or 26th of July.

38. Q. Did Majkane act as if she was crazy after she was taken prisoner?

A. I do not know whether she acted crazy.

39. Q. When were you released?

A. I was released on the eleventh of August. And I went to Pengelap and the boat did not go on to the island where I live so I went back again to Baidj, so on the 12th of August I went to my home.

40. Q. Did you meet any Japanese officers when you were released?

A. Yes, I met Ieki, he came and told me to go back to my home and work hard. JK

41. Q. Was it only Ieki?

A. Yes, only Ieki.

42. Q. How did you feel toward the Japanese officers or enlisted men when you were released?

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

The accused replied.

The commission announced that the objection was sustained.

43. Q. Did you meet any Japanese officer or men after you returned to your home island?

A. Yes, I met the Japanese on the island where I lived, but no officers.

44. Q. Who were the Japanese that you met?

This question was objected to by the judge advocate on the ground that it was without the scope of direct examination and that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

45. Q. Have you ever talked to anyone concerning your confinement?

A. No, I did not say anything to anyone.

46. Q. Have you never said anything also to an American officer?

This question was objected to by the judge advocate on the ground that it was without the scope of direct examination and that it was irrelevant and immaterial. JK

The accused replied.

The commission announced that the objection was not sustained.

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James P. Kenny Lt. USN

A. No.

47. Q. Do you know a Japanese enlisted man by the name of Nishida? He is a person who was on your island.

A. On the island where I lived there were two Japanese named Nishida.

48. Q. Is there an enlisted man named Nishida?

A. One of them was an army enlisted man and the other was seaman first class.

49. Q. After you returned to your home you told this Nishida that you had been treated well at the headquarters on Enidj Island and were very grateful and you made a poem which you stated and were very happy. Is that correct?

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

The accused replied.

The commission announced that the objection was not sustained.

A. It was true that I made the poem, that is all, but the Japanese told us to make a feast and be happy, make a holiday for celebrating with coconut toddy, so we made many songs and dances, so I made this song.

50. Q. Then is it true that you also said "I was treated well on Enidj and am grateful"?

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.

51. Q. You have only answered one part of my last question. You also told Nishida that you were treated well at headquarters and were grateful. Is this true?

A. No, I did not say this to Nishida.

52. Q. You testified that you were confined in the same room with Paul and Mojane. Was the room that Levittos was confined in in the same building?

A. No. The house in which myself, Boro and Mojane lived was on Enidj and the house in which Levittos lives was on Ainsman Island.

53. Q. In the room of what building were you questioned?

A. On Enidj Island.

54. Q. You stated that you saw Morikawa strike Mojane. In what room was this?

A. I saw Morikawa striking Mojane's face in the room in a building on Ainsman Island.

55. Q. How many times were you questioned together with Levittos and Mojane?

A. I was questioned only once with Levittos and Mojane.

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James P. Kanny Lt. USN

96. Q. Was Mojane struck in the same room in which you were in?
A. When we were about to return to Midj Island they brought Mojane. She was in front of the room in which I was staying in and I saw them strike her at that time.

97. Q. Who do you mean when you say "we were about to return."
A. Myself, Mojane, Ieki, Morikawa and some enlisted man.

98. Q. Was this in the morning or afternoon of that day?
A. In the morning we were preparing to return to have our dinner.

99. Q. How old are you?
A. Twenty-five.

60. Q. Do you remember the month of the year in which you heard Malein say he did not write the letter?
A. Eleventh of August in the afternoon, before they took me to the boat to return to my island.

61. Q. You heard Malein say that he did not write the letter on the eleventh of August 1945?
A. Yes, it was on August 11th, before I returned to my home.

62. Q. Were you released to go home on the eleventh of August 1945?
A. Yes, I was told by Ieki on the eleventh of August that I may go back home.

63. Q. Was Malein released?
A. No.

64. Q. Do you know what happened to Malein?
A. I do not know, I just saw him with his arms and legs bound.

65. Q. Was Malein under a sense of impending death when he spoke the words you testified to?

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.

66. Q. All the things that you have testified to, were they gained during the time you acted as interpreter?

This question was objected to by the judge advocate on the ground that it was too broad in its scope.

The question was withdrawn.

67. Q. The things that you testified to regarding Malein and Mojane, were they the result of your acting as an interpreter at that time?
A. I only interpreted for Bere for about ten minutes.

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James P. Kennedy Lt. USN

68. Q. Did Malein and Majkane live in the same house that you did?

A. I did not see Malein. I only know about myself, Majkane and Bore.

69. Q. Did Majkane live in the same house that you did?

A. We all lived in the same house, but Majkane lived under the house and I lived on the first floor.

70. Q. Did I understand you to say that Majkane returned when you did?

A. No, I did not say that.

71. Q. Were you and Majkane questioned at your home island?

A. No, they questioned us at Ainanman.

The commission then, at 3:25 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Presents

All the members, the judge advocate, 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. *JK*

Ootto, 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.

Re-examined by the judge advocate:

72. Q. During the period of your imprisonment were you ever told by any Japanese officer that you had been found guilty of a wrong?

A. Nobody told me this.

73. Q. Were you ever told that you had been sentenced to do hard labor?

A. No.

74. Q. Did any Japanese officer ever come to your place of confinement and read to you from a document?

A. No.

75. Q. During your confinement did you ever see a Japanese naval officer?

A. No.

Re-cross-examined by the accused:

76. Q. What did they tell you when they released you?

A. Before I go back to my home, Ieki told me when I go back to work hard and also to tell the other natives to work hard also.

77. Q. Ieki did say then to you go home and work hard?

A. Yes.

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

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James P. Kearney Lt. USA

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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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name.

A. Enoe.

2. Q. Where do you live?

A. Kwajalein.

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

A. I do not recognize him.

The accused objected to the competency of this witness on the ground that the witness did not recognize the accused and therefore anything that he might say would be irrelevant.

The judge advocate replied.

The commission announced that the objection was not sustained.

4. Q. Where were you living in the year 1945?

A. Jaluit Atoll.

5. Q. On which island in the atoll?

A. Medjai Island.

6. Q. During that year were you taken prisoner by the Japanese?

A. Yes.

7. Q. When were you taken prisoner?

A. About the beginning of July 1945.

8. Q. What was done to you at the time you were taken prisoner?

A. They bound my arms.

9. Q. Where did they take you?

A. They took me to Ruidj Island.

10. Q. Were any other natives with you at the time you were taken to Ruidj Island?

A. Yes.

11. Q. Who were they?

A. Myself, Ain, Enoe, Enoe, Garta, and Chomohle.

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James P. Kenny *W. S. H.*

12. Q. How long were you kept there as a prisoner?
A. Four days.

13. Q. During these four days of your imprisonment did you see any natives mistreated?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

14. Q. Whom did you see mistreated?
A. Moses.

The accused moved that this answer be stricken on the ground that it was irrelevant and immaterial.

The judge advocate replied.

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

15. Q. By whom did you see Moses mistreated?
A. I do not know their names.

16. Q. Were they Japanese?
A. Yes.

17. Q. What did you see them do to Moses?
A. I saw them beating Moses.

18. Q. With what were they beating Moses?
A. They beat him with a baseball bat and also with an iron rod.

19. Q. Describe the position of Moses at the time you saw him being beaten.
A. They bound his arms behind his back and hung the ropes on the ceiling, the rope with which they bound his arms, and his toes hardly touched the ground and then they beat him.

20. Q. On what part of the body did they beat him?
A. On this part of his body.

(Witness indicating buttocks).

21. Q. Was there any Japanese officer present at this time?
A. I saw two.

22. Q. During this time was Moses being questioned by the officers?
A. Yes.

23. Q. Did you see or hear any mistreatment of any other natives during your confinement?

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James P. Lenny Lt. USN

A. I heard the voices of Chuta and Chomohle and also heard them beaten.

Cross-examined by the accused:

24. Q. Do you understand or speak Japanese?

A. I can understand a little.

25. Q. Where were you confined?

A. In a building on Enidj Island.

26. Q. Were you ever questioned by a Japanese officer?

A. Yes, two officers.

27. Q. Where were you questioned?

A. In this same building in which I lived on Enidj Island. OK

28. Q. Was it in the same room that you were confined in?

A. No, in another bigger room.

29. Q. Was there a partition between your room and the big room?

A. Yes, there is a wall between these rooms and also a door.

30. Q. Were you living in the same room with Chuta, Chomohle, Ain and the others?

A. Yes.

31. Q. Was the room you were living in and the room you were investigated in far apart, or was it next door?

A. These two rooms were separated by just one wall. OK

32. Q. When you were questioned were you questioned by yourself or were there other natives?

A. They questioned me myself and the other men were outside.

33. Q. Was there an interpreter when you were questioned?

A. Yes, Horehita.

34. Q. Does Moses understand Japanese?

A. I do not know.

35. Q. You stated that Moses was being questioned while he was being beaten. Did he speak in Marshallese or did he speak in Japanese.

A. He spoke Marshallese.

36. Q. When Moses was questioned was he questioned in the room they were confined in, or were they questioned in the big room where you were questioned?

A. They questioned him in the same room in which they questioned me.

37. Q. Then is it correct that you were not questioned in the room in which you were confined?

A. Yes.

38. Q. While Moses was being questioned were you in the next room?

A. I stand outside of that room.

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James P. Kenny Lt. USA

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39. Q. Then did you see him beaten?
A. Yes.

40. Q. Where did you see this from?
A. The door was open and I could look through it.

41. Q. You stated that you heard Chuta and Chomohle beaten. Did you see them being beaten?
A. I did not see them, but I just hear.

42. Q. When you saw through the door it was only in the case of Moses?
A. Yes, only in the case of Moses.

43. Q. When Chuta and Chomohle were being beaten was the door open or was it shut?
A. At this time the door was still open, but we were under the house and Chuta and Chomohle were in that room.

44. Q. Where were Chuta and Chomohle questioned?
A. In the same room that they questioned me.

45. Q. Was this room next door to you or was it above your room?
A. It was next door to the room in which we lived.

46. Q. You just stated that Chuta and Chomohle were questioned in the room above?
A. In the same room in which they questioned me, but underneath the floor we stand there, when they questioned Chuta and Chomohle.

47. Q. When you stated you were underneath the room where Chuta and Chomohle were being questioned, do you mean the room where you were living?
A. They questioned Chuta and Chomohle and we were underneath that room. OK

48. Q. The place you were standing underneath the room where Chuta and Chomohle were questioned. Was that the room in which you were living?
A. Not the room in which we lived.

49. Q. You stated that you were standing beneath the room where Chuta and Chomohle were being questioned. What was the roof of the place you were standing made of?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I do not remember.

The witness was duly warned.

The commission then, at 4:32 p.m., adjourned until 9 a.m., tomorrow, April 9, 1947.

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James P. Kery Lt. USN

THIRTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, April 9, 1947.

The commission met at 9:07 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, President,
Colonel Vernon H. 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 James P. Kenny, judge advocate.
Duorn Heine, official native observer from the Marshall Islands.
Nary Jada, 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 twenty-seventh day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Kase, the witness under examination when the adjournment was taken on
April 8, 1947 entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Cross-examination continued.)

50. Q. What was the building that the room you lived in and was questioned
in made of?

A. Made from cement.

51. Q. What was the wall between your room and the room you were questioned
in made of?

A. I forget.

52. Q. Was the whole room made of concrete?

A. The side of the room was made of cement, but I do not know the floor-
work, what it was.

53. Q. What was the door leading to the other room made of?

A. The door is iron door.

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54. Q. You stated that you saw Moses being beaten and questioned, that his hands were bound and he was strung up by a rope from the ceiling with the toes barely touching the ground. Do you know how he was tied up to the ceiling?

A. There was a rope hanging from the ceiling and they bound his arms with that rope.

55. Q. How was the rope tied to the ceiling?

A. The rope was held by a block.

56. Q. Did you see this rope hanging from the block through the crack in the door?

This question was objected to by the judge advocate on the ground that it misquoted the testimony of the witness.

The accused withdrew the question.

57. Q. You stated that you heard Chuta and Chomohle being beaten. You stated also that you were under the room where they were. Was the only time you were there the time Chuta and Chomohle were being questioned?

A. This is the only time I was there under the house.

58. Q. You stated that you were there only once. Were you taken there on this occasion?

A. Before they questioned us they took us down under the house, and we stayed there and waited while they questioned the other man.

59. Q. When you were not being questioned and another person being questioned, were you always taken under the house?

A. Yes.

60. Q. You stated that you were in the next room when Moses was questioned. You also stated when another person was questioned all the natives were always taken under the house. Then, is it correct that you were in the next room when Moses was questioned?

A. When they questioned Chuta and Chomohle upstairs, we were under the house. After they finished questioning them, they brought them under the house and took us up - four of us, and questioned Moses.

61. Q. What did you mean when you stated "when another person was questioned we were always taken under the house?"

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

The accused replied.

The commission announced that the objection was not sustained.

A. When I answered this, I did not understand it very much.

62. Q. Which question do you mean?

A. The question I do not understand was when we were under the house when Chuta and Chomohle were upstairs.

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63. Q. Then, other to the time when Guta and Chomohle were being questioned, *JK*
you were in the next room to the one in which the questioning was being
conducted?

A. I was under the house only at that time when they questioned Guta and
Chomohle, then the other time and when they questioned Moses we were
standing outside that room.

64. Q. Were any other natives that were living with you questioned, other
to Guta, Chomohle and Moses?

A. All of us, myself, Ain and Rute.

65. Q. Were these people questioned before Guta and Chomohle were
questioned?

A. After Guta and Chomohle.

66. Q. When the natives who were with you, other to Guta, Chomohle and
Moses, were questioned, were you in the next room?

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

The accused withdrew the question.

67. Q. Were you in the next room, when the natives you just stated were
questioned?

A. I was with them.

68. Q. What do you mean when you say you were together with them?

A. They called in Moses and Rute first and questioned them, and myself and
Ain standing outside the room and seeing them.

69. Q. Where do you mean when you say outside?

A. We stood by the door and looked at them.

70. Q. While the four of you were being questioned, was Guta and Chomohle
kept under the house?

A. Yes, they were still under the house.

71. Q. What day after you arrived was Guta and Chomohle questioned?

A. On the fourth day after I arrived.

72. Q. Before Guta and Chomohle were questioned were you all together
upstairs?

A. Yes.

73. Q. Was it in the morning or in the afternoon that Guta and Chomohle
were questioned?

A. I do not remember.

74. Q. Do you remember having eaten your afternoon meal while Guta and
Chomohle were being questioned?

This question was objected to by the judge advocate on the ground that
it was misleading and vague.

The accused withdrew the question.

75. Q. Do you remember if you ate your noon meal before or after Guta
and Chomohle were questioned?

A. I cannot say, because I do not remember.

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76. Q. You stated that you were confined for four days. What time were you released on the fourth day?
A. In the evening of that day.

The commission then, at 10:26 a.m. took a recess until 10:43 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.

Moses, the witness under examination when the recess was taken, entered and continued his testimony.

(Cross-examination continued.)

77. Q. Were you questioned before Moses questioned, or after?
A. After Moses was questioned.

78. Q. Did the questioning of Moses take a long time?
A. Yes.

79. Q. Approximately how long did it take?
A. I forget it.

80. Q. How long did your questioning take?
A. About a half an hour.

81. Q. How long did the questioning of Moses take compared to yours?
A. The questioning of Moses was longer than they were questioning me.

82. Q. Approximately how many times longer was the period of Moses's questioning compared to yours?
A. I cannot say, because I have forgotten it.

83. Q. How long did the questioning of Ain and Ante take?
A. I forget it.

84. Q. Were you released right after your questioning was over?
A. After they questioned us they took us into a room and shut it and we waited until the evening to go to our home. JK

85. Q. Where was this room that was where you were taken?
A. The same room in which we sleep.

86. Q. Was it the room next to the room where you were questioned?
A. Yes.

87. Q. You stated that you released in the evening. Do you recall when Chuta and Chomohle were questioned?
A. I do not remember the exact hour.

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88. Q. Do you remember if it was in the morning or around the noon period or was it in the evening?

A. I do not remember which.

89. Q. You stated that the building you were confined in and the room you were questioned in were made of concrete and also stated that the door was made of iron. Can you describe them?

This question was objected to by the judge advocate on the ground that it was not clear.

The accused withdrew the question.

90. Q. You stated that the place where you were confined and the place where you were questioned made of concrete and had an iron door. Can you describe these rooms in more detail?

A. The door was to the east and I do not remember whether there were tables or chairs in the house.

91. Q. How many doors did the room you were confined in have?

A. There is a door in the room in which we were confined and inside there was still another iron door to the room in which we were questioned.

92. Q. Then, do you mean that there was door into your room and then there was another door from your room leading to the room that you were questioned in?

A. Yes.

93. Q. You stated you were standing outside the door when Moses was being questioned. Which door do you mean?

A. I stood outside the door leading to the outside of the house and we can look through all the doors because they are all open.

94. Q. I am not clear on your answer, but do you mean that you were standing outside of the door leading out of the room that you were confined in?

A. I stand near the door out of the room in which we were confined.

95. Q. What was the distance between the door you were standing by and the door leading into the next room? JK

A. The distance is from here to that table (indicating a distance of about twelve to fifteen feet.)

96. Q. When you stated that the door was open, do you mean the door was open that leads into your room or do you mean the door that led into the questioning room?

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

The accused replied.

The commission announced that the objection was sustained.

97. Q. What was the size of the door - the size of the door leading into the room where you were confined and the size of the door leading into the questioning room?

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A. The door was a little higher than that door (indicating a height of about eight feet), and the width from about that chair to the end of that table (indicating a distance of about ten to twelve feet).

98. Q. Then, do you mean that the height of the door was larger than the door over there, and the width from that point to the end of that table (indicating a distance of about ten to twelve feet)?

A. Yes.

99. Q. You stated that the height of the door was higher than that door over there, and the width was from that point to the end of the desk (indicating a distance of about ten to twelve feet). Is this a true statement?

A. The door was a double door and when we closed it and when we opened it, it was wide.

100. Q. Then, was the room that you were confined in and the room that you were questioned in connected horizontally?

This question was objected to by the judge advocate on the ground that it was not clear.

101. Q. Were the rooms connected in a straight line, or was there just a partition making it two rooms?

A. The rooms were in a row.

102. Q. You stated that when Moses was being questioned you were standing by the door. Were you the only one who was standing by the door when Moses was questioned?

A. Myself, Ains, and Eate.

103. Q. What were the positions of the three when they were standing by the door?

A. We just stand in front of the door just outside.

104. Q. What was the distance from where you were standing to the door?

A. About two feet.

105. Q. What was the position of Ains, Eate, and yourself in relation to each other when you were standing two feet from the door?

A. I do not remember.

106. Q. Do you remember if there was anyone on each side of you or in front of you or in back of you?

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

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

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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 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.

Encs, 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.)

107. Q. How wide was the door to the questioning room opened? The door leading to the questioning room. The door leading from the room of confinement to the room where you were questioned.

A. It was wide open.

108. Q. How wide was it opened?

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

The accused withdrew the question.

109. Q. What kind of a door was it. Was it a door in which you pull out, was it a swinging door or was it a sliding door?

A. It was a sliding door.

110. Q. Did the door open all to one side or did it open to each side?

A. I do not know, as I did not look at it carefully.

111. Q. When the door was open, in Japan, it is usually when the door is made of two pieces and is a sliding door, only half of the doorway is open, the other half being covered by the open half and the remaining half. Was it this way, or did both halves or all open completely?

A. I cannot remember it because at that time I was afraid and I did not look around.

112. Q. What was the size of the room that you were questioned in compared to this room?

A. It was smaller than this room.

113. Q. How much smaller was it?

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

The accused replied.

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The commission announced that the objection was not sustained.

A. I do not remember it well.

114. Q. Then can it be taken that it was a little smaller than this room?

This question was objected to by the judge advocate on the ground that the question was a conclusion on the part of the counsel, as the witness had stated he did not remember the size of the room.

The accused withdrew the question.

115. Q. Do you know in what part of the room Moses was being questioned?

A. Just underneath a block in the middle of the room.

116. Q. You stated that you were standing two feet outside of the door leading to the room that you were confined in and that you saw through the open door into the questioning room. From where you were standing to what extent could you see into the questioning room?

A. I can see where Moses was standing.

117. Q. I am asking what part of the room you could see from where you were?

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

The accused replied.

The commission announced that the objection was sustained.

118. Q. From where you were standing looking through the door leading into the questioning room, how much of the room could you see?

A. I can see the part of the room in which Moses stood.

119. Q. Could you see the ceiling of the questioning room, from where you were standing looking through the top of the door?

A. I do not remember.

120. Q. Are you sure that you do not remember?

A. I do not remember whether I saw the ceiling or not from there.

121. Q. Then you did not see the block to which the rope was tied. Is that correct?

A. When I was questioned I saw the rope and the block, because they tied my arms also and hang me at that same block also.

122. Q. Then, you did not see it in the case of Moses, but that was how you thought it was. *OK*

This question was objected to by the judge advocate on the ground that it was argumentative and misleading.

The accused replied.

The commission announced that the objection was not sustained.

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The question was repeated.

A. The reason I saw that it was a block on the ceiling, because when I entered the room I saw the rope and that block also. When they beat Moses, I do not remember whether I saw the block, because I was afraid at that time and I do not remember whether I looked up at that time or not. *JK*

123. Q. How many nights did you sleep at this place where you were confined?
A. Four.

124. Q. Did all six of you sleep in one room?
A. Yes.

125. Q. Did you sleep on the floor?
A. I slept on the floor.

126. Q. Was the floor made of cement like this floor?
A. I do not remember.

127. Q. Did Moses tell you about his being beaten when he was questioned?
A. I saw it with my eyes.

128. Q. But Moses also told you about it, didn't he?
A. I do not remember whether he say or not.

129. Q. How many people were beating Moses when you saw them?
A. Two men.

130. Q. Do you remember who they were?
A. I do not know their names.

131. Q. Did Chuta and Chomohle tell you that they were beaten?
A. No, but I just heard it when I was under the house.

132. Q. What did you hear when you were under the house?
A. I heard them cry and also I heard when they beat them with a bat and a stick.

133. Q. Were Chuta and Chomohle the only ones that stayed at this place after the rest of you left to go home?
A. Yes, they stayed by themselves.

134. Q. Do you know what happened to Chuta and Chomohle?
A. 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 said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

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Examined by the judge advocate:

1. Q. State your name.

A. Ain.

2. Q. Where do you live?

A. Namorik Atoll.

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

A. I do not know him.

The accused objected to the competency of this witness on the ground that he had testified that he did not know the accused.

The judge advocate replied.

The commission announced that the objection was not sustained.

4. Q. Where were you living in the year 1945?

A. Medjai Island.

5. Q. During that year were you taken prisoner by the Japanese?

A. Yes.

6. Q. How old were you at that time?

A. I was thirteen years old.

The accused objected to the competency of this witnesses testimony on the ground of his extreme youth.

The judge advocate replied.

The commission announced that the objection was not sustained.

7. Q. Tell us what happened when you were taken prisoner.

A. They tied my arms.

8. Q. Where did they take you?

A. To Eridj Island.

9. Q. Were any other natives with you while you were being taken to Eridj Island?

A. Yes.

10. Q. Who were they?

A. Myself, Chuts, Chomohle, Eeco, Ents, and Eoses.

11. Q. How long were you kept prisoner by the Japanese?

A. Four days.

12. Q. During that time did you see any of the other natives mistreated by the Japanese?

A. Yes.

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James P. Kenny Lt. USN

13. Q. Which natives did you see mistreated?
A. Moses.

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

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

14. Q. By whom did you see Moses mistreated?
A. I do not know their names.

15. Q. Were they Japanese?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Yes.

16. Q. What did you see them do to Moses?

A. They tied his arms behind him and hung him with his toes touching the ground and they beat him?

17. Q. With what did they beat him?

A. First they beat him with a baseball bat; after that, beat him with an iron rod.

The commission then, at 3:16 p.m. took a recess until 3:39 p.m., at which time it reconvened. *OK*

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.

Ain, the witness under examination when the recess was taken entered and continued his testimony.

Cross-examined by the accused:

18. Q. How many nights were you confined?

A. We stayed there four days and three nights.

19. Q. Were you allowed to sleep during the night?

A. Yes, they allowed us to sleep.

20. Q. Did all six of you sleep in one room?

A. Yes. *OK*

21. Q. Did you sleep on the floor?

A. We slept on the floor, not in beds.

22. Q. Do you know if the floor was cement like this? *362*

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A. As I was very afraid at that time, I couldn't think very much, so I cannot tell.

23. Q. Did all six of you go home after four days?

A. No, only four.

24. Q. Who were the two that did not go home?

A. Guts and Chomohle.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The judge advocate stated that further evidence would be offered in rebuttal, but it would not be available until tomorrow, and requested the commission to adjourn until that time.

The commission announced that the request was granted.

The commission then, at 3:45 p.m., adjourned until 9 a.m., tomorrow, Thursday, April 10, 1947.

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THIRTY-NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, April 10, 1947.

The commission met at 9:08 a. m.

Presents:

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 Hanson 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,
Lieutenant James P. Kenny, U. S. Navy, judge advocates,
Barn Haine, official native observer from the Marshall Islands,
Mark Jula, official native observer from the Marshall Islands,
Lajero, 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 twenty-eighth 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. Former Lieutenant Commander, Imperial Japanese Navy, Shintaro, Sanjiro.
2. Q. Where do you reside?
A. My address is Kagoshima Ken, Kawanabe-Gun Kasada-cho Jito-cho, No. 201.
3. Q. If you recognize the accused state as whom.
A. I believe he is battalion commander, Major Furuki.
4. Q. Were you in the Marshall Islands during the period from May to the end
of the war, in 1945?
A. Yes.
5. Q. What were your duties during this period and to what organization were
you attached?

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A. I was attached to the Jaluit Defense Unit. My duties were engineering officer, construction officer, communications officer, transportation officer; I also had collateral duties as executive officer.

6. Q. Who was your commanding officer?

A. Rear Admiral Masuda.

7. Q. Do you know anything about the execution of any natives on Jaluit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated in Japanese.

A. I never heard anything. I do not know.

8. Q. Were you ever present at any official meeting where any of these natives were discussed?

A. I do not believe it was an official meeting, but I did happen to come upon Major Furuki while he was making a report to the commanding officer.

The accused moved to strike the words "I do not believe it was an official meeting" out of the answer on the ground that they were the mere opinion of the witness.

The judge advocate replied.

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

9. Q. Was anyone else present besides Admiral Masuda, Major Furuki and yourself?

A. Captain Inoue was present.

10. Q. Besides this one meeting that you have referred to, do you remember any other meeting at which you were present with these other officers and at which the native criminals were discussed?

A. I do not remember.

11. Q. Does that mean: "I do not remember any other meeting"?

A. I firmly believe that it was one. I was very busy as my duties concerned many matters, I did not have the time to spend time on matters other than my duties.

12. Q. Will you tell the commission what you remember concerning this one meeting that you were present at.

A. I went to the presence of the commanding officer to make a report on some matters concerning my duties. I think it was something to do with gun repair or regarding generators for the radio. There I saw Battalion Commander Furuki with some documents unfolded near him and I understood that he was making a report regarding natives. I just happened to come in.

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13. Q. Tell the commission what you heard and what you saw after you happened to come to this meeting.

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 made a sudden appearance. I saw the battalion commander with some unfolded documents. He was reporting about natives. I do not remember clearly the contents of his report. I recall that at this time no one asked me my opinion. Under Rear Admiral Masuda was an army battalion commander and myself. My duties concerned strictly the administrative part of the set up. As I stated, I had my duties, but primarily, I was an engineering and construction officer. During the bombings, guns, ships and buildings were destroyed. I was in charge to rebuild them, also I had to deal with the question of self-support. The commanding officer's immediate subordinate, Furuki, handled operational plans and intelligence. Under the bombings our ships were destroyed. We had to support our own food. So I had to repair ships in order to transport these foods. For the foregoing reasons I happened to go and make a report, and I came on the scene when the report was being made, concerning natives. I do not know or remember what the actual content of the report was.

14. Q. Did you make your report to the commanding officer?

A. Yes, it was a pressing matter. I did make my report.

15. Q. Did you remain at the meeting after you made your report?

A. It happened a long time ago and I do not remember exactly, but I am definite that I did stay a little while.

16. Q. Do you remember whether you said anything at that meeting?

A. The battalion commander was making his report from the documents, and on account of this report, I heard the commanding officer mention that certain natives must be punished according to the law, with death. At that time conditions were very severe, especially regarding self-supporting measures. Coconuts and coconut toddy were the main food items. The natives cooperated with the Japanese forces in maintaining support. We needed this cooperation and from this standpoint, it was a pity to execute a native. First, it was a pity to execute natives that were cooperating with us to help us in our self-support measures. Secondly, it was not to our advantage to do anything against getting food.

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

The commission directed that the answer be stricken out and directed the witness to answer the question.

A. As I stated, for the foregoing reasons, I told the commanding officer that it was a pity to execute the natives. Although they did not ask me my opinion, I stated so.

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James P. Kenny Lt. USN

17. Q. In addition to saying, "It's a pity to execute the natives," did you make any other statement?

A. I did wish they would wait a while, thus meaning to stop the execution.

18. Q. When you said that it is a pity to execute the natives, did you give any reason for your belief?

A. Yes, as previously stated. First, because they had given excellent cooperation; second, one and all natives were necessary for our self-support. Instead of killing them, it would be to our advantage to let them live and gather for us a pint or two more of coconut today.

19. Q. Was this meeting which you happened to be at a trial? JK

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, and all parties to the trial entered. The commission announced that the objection was sustained. JK

20. Q. Were you a judge at this meeting?

A. No, I wasn't anything.

21. Q. Do you know if anyone in the meeting was a judge advocate?

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. No, I never heard.

22. Q. Was anyone else at the meeting referred to, or did anyone else at the meeting act in the capacity, as a judge?

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. I never heard any reference to anyone as a judge or acting in the capacity of a judge.

23. Q. Were any native defendants present at this meeting?

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

The judge advocate replied.

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James O. Kanny *et. al.*

The commission announced that the objection was not sustained.

A. No.

24. Q. Were any defense lawyers present?

A. No. No lawyers were present.

25. Q. How many years have you been in the navy?

A. Thirty-four and one-half years.

26. Q. Do you know if judges, judge advocates, defense counsel, and the accused must be present in order to have a trial?

A. My knowledge of law is limited. I have never studied it ever. I do know that in court proceedings in a trial, there must be a judge advocate, lawyers, judges, and the accused.

27. Q. Do you know if Major Furuki acted in the capacity of the judge advocate at any proceedings other than the meeting you referred to?

A. I never heard from Major Furuki that he had acted as judge advocate. JK

The commission then at 10:16 a. m., took a recess until 10:41 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.

Shintone, Sanjire, the witness under examination when the recess was taken, entered and continued his testimony.

Cross-examined by the accused:

28. Q. Does the witness know about the incident where natives attempted to kill gunzoku Kurooka and petty officer Okamoto?

A. As you mention it, I recall that I did hear about it.

29. Q. Did you hear this directly from petty officer Okamoto?

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

The accused withdrew the question.

30. Does this Okamoto incident have any relation to the native incident previously mentioned by the judge advocate?

The commission announced that the question was not clear.

The accused withdrew the question.

The witness was duly warned.

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The commission then, at 10:47 a. m., took a recess until 2:13 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.

Shintone, Sanjiro, 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.)

31. Q. The witness previously stated that he came upon Captain Inoue, Major Furuki and Admiral Masuda in a room where Major Furuki was giving his opinion as to the case of the natives to Admiral Masuda. In answering my previous question you said that you know about the Okamoto petty officer case. Has this case any connection with the case that was discussed?

This question was objected to by the judge advocate on the ground that it was too broad and that it was beyond the scope of direct examination. *JK*

The accused replied.

The accused withdrew the question.

32. Q. You said that you were present when Captain Inoue, Major Furuki and Admiral Masuda were discussing the case of the natives and that Major Furuki was giving his opinion. Do you know about what case they were discussing?
A. The case of Okamoto was only referred to me just previously and as I had at the time arrived at the meeting in the middle I do not know.

33. Q. You testified that at the meeting you said that it is a pity that the natives should be executed. You moreover stated that the cooperation of the natives was absolutely necessary. This was your personal opinion. If you can give a personal opinion, you must have known about the case. What was the case?

This question was objected to by the judge advocate on the ground that it was argumentative. *JK*

The accused replied.

The commission announced that the objection was sustained.

34. Q. You testified that Major Furuki with an open document in front of him was making a report. Do you know if he was in charge of the investigation and that he was acting in this capacity?

A. Judging from the fact that he was head of the guard unit on Jaluit Island, that is to say Major Furuki was a direct subordinate of the commanding officer and he was the intelligence officer, and I am certain that he knew everything regarding this matter. He commanded the investigation and the persons making it.

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35. Q. Your reply does not exactly answer my question. You do not have to answer anything beside the point. Then, is it true that Major Furuki was making a report about the case from the investigation reports to Admiral Masuda? Jx

A. Yes, I believe so.

36. Q. You testified that you did not know much about law; however, that when a trial is held a judge and a judge advocate must be present, you said that you know this much. You stated that you know that in court there is a judge and a judge advocate. Do you know the nature of the work of a judge advocate?

A. I think that the duty of a judge advocate is to investigate the truth.

37. Q. Then the work of Major Furuki, was it not the work of a judge advocate?

A. If I may say so, Major Furuki's duty corresponded to that of a judge advocate, I would think.

38. Q. You previously testified that there was no judge advocate. Have you now changed your mind as to whether there was one or not, present? Were you under a mistaken idea?

A. As I came upon him in the middle of his making this report, I do not know whether he was making the report in the status of a judge advocate or that of a judge. I never heard.

39. Q. Then your testimony stating that there was not a judge advocate, what do you mean by this?

A. I cannot say that there was a judge advocate in this room because I was not told that there was a trial. Moreover, no one told me that he was a judge advocate, therefore I cannot say that there was a judge advocate in the room.

40. Q. Then your statement to the effect that there was not a judge advocate in the room is your personal opinion. Is it not a fact?

A. It is my opinion.

41. Q. You testified that you had been in the navy for thirty-four and one-half years. Are you a graduate of the Japanese Naval Academy?

A. I came up from the ranks.

42. Q. Have you always been on active duty?

A. Yes. I was put on the reserve list just prior to the end of the war.

43. Q. When were you demobilized?

A. December, 1945.

44. Q. During your experience have you ever been on duty at a place where martial law was in effect?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was sustained.

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James P. Kanny B. S. K.

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45. Q. You testified that you heard the commanding officer say that certain natives must be punished according to law. What was the law in effect on Jaluit at that time?

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

The accused replied.

The commission announced that the objection was sustained.

46. Q. Do you know what the law was under which natives were punished on Jaluit for crimes which they committed?

A. I do not know. The question is not clear.

47. Q. Were natives accused of crimes on Jaluit punished by Naval Court Martial Law? OK

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

The accused replied.

The commission announced that the objection was sustained.

48. Q. You testified this morning stating that you were so busy on Jaluit. Why were you so busy on Jaluit?

A. Because I had so many different duties. Besides, all of them were concerned with operations. Every day, due to the bombing, guns, houses and boats were damaged and they had to be repaired. Every day was the same.

49. Q. Were you the only one that was so busy on Jaluit?

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

The accused replied.

The commission announced that the objection was sustained.

50. Q. In your naval experience have you had anything to do with Naval Court Martial Law?

A. No.

51. Q. You testified that you also had duty as executive officer. What was the nature of your duties as executive officer at Jaluit?

A. The duty regarding internal administration.

52. Q. Will you explain a little further what you mean by internal administration?

A. As far as the Jaluit Island Defense Units were concerned, I do not think there were any special duties as that of an executive officer. The title was more or less in name only.

53. Q. Were you on duty at Admiral Henshaw's headquarters?

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A. I was in a different building from that of the commanding officer. I was under the command of the commanding officer and I was at headquarters.

54. Q. Were you in the same building as Major Furuki?

A. No.

55. Q. Do you know what Major Furuki's duties were on Jaluit?

A. He was head of the intelligence department and also in matters regarding operations he was the commanding officer's right hand man. He was also an army battalion commander.

56. Q. What was his general reputation on Jaluit?

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

The accused made no reply.

The commission was cleared.

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

The commission announced that the objection was not sustained.

A. Major Furuki's reputation was very good. He was a very sincere man and thought a lot of his subordinates. In case one of them would die he would attend the funeral. He was liked by everyone. This is my personal opinion of him also. JFK

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:

As I stated this morning I happened to be present when Major Furuki was making a report to the commanding officer from some documents. This report was made regarding the case of the natives. Major Furuki was making his report stating everything according to the law. In regard to this report, I heard the commanding officer say that a certain number of natives must be executed. I do not recall the exact number. Although my opinion was not called upon, I stated that it was a pity to kill the natives. The natives, even though they were criminals, had shown good cooperation. Moreover, this was the time when every hand was needed for our self-support. For these two important reasons I instantly asked to stay the execution. The natives were necessary to make coconut toddy and gather coconuts for this was our main food. It would be to our advantage to use them in this work and it would be an easy way out of the question. I so advised and I recall that Major Furuki also expressed the same opinion as this measure would be advantageous to our self-support and also in the viewpoint of operations. The commanding officer stated that this crime, the punishment for this crime and the weight of the punishment could not be compared in the light of other matters. To look upon this in the same light of other matters

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would be destructive to military discipline. Moreover, it would be detrimental to the prestige of the commanding officer. Moreover, considering the extreme shortage of food and difficult operational conditions this cannot be done. Therefore, although it is very unfortunate for the natives they must be punished according to the law. I remember that he said words to the foregoing effect. We were very sorry to hear the commanding officer say the foregoing; however, that was his different opinion. We did not know much about law. We could not do anything about it. I do not know what was settled or what was decided upon after this. I recall that at that moment my duties were pressing and I left. I do not have anything further to add.

The witness was duly warned and withdrew.

The rebuttal ended.

The accused did not desire to offer any evidence in surrebuttal.

The commission then, at 3:40 p.m., took a recess until 3:58 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.

The accused read a written statement in Japanese in his defense, appended, marked "AA."

An interpreter read a translation of the statement of the accused in English, copy appended marked "EB."

The accused and the judge advocates requested an adjournment until Monday, April 14, 1947, to complete the preparation of their arguments.

The commission then, at 4:55 p.m., adjourned until 9 a.m., Monday, April 14, 1947.

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THIRTIETH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, April 14, 1947.

The commission met at 9:10 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,
Duorn Heine, official native observer from the Marshall Islands,
Mark Jada, 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 twenty-ninth day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written opening argument, appended marked "CG".

The accused requested the commission to recess in order that the opening argument of the judge advocate might be translated into Japanese.

The commission then, at 9:30 a.m., took a recess until 10:47 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.

The accused waived the right to have the opening argument of the judge advocate read in Japanese in open court. *PK*

Mr. Shimoto, Imishiro, a counsel for the accused, read a written argument in Japanese, original appended marked "DD".

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The commission then, at 11:40 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 reporter, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, Yuichiro, a counsel for the accused, continued reading a written argument in Japanese, original appended marked "DD."

The commission then, at 3:23 p.m., took a recess until 3:47 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.

Mr. Akinoto, Yuichiro, a counsel for the accused, continued reading a written argument in Japanese, original appended marked "DD."

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Tuesday, April 15, 1947.

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THIRTI-FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, April 15, 1947.

The commission met at 9:12 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 Belton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Bura 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 thirtieth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, Yuichiro, a counsel for the accused, continued reading a
written argument in Japanese, original appended marked "ED."

An interpreter read an English translation of the argument of Mr.
Akinoto, copy appended marked "EE."

The commission then, at 10:22 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. JK

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Seiso, counsel for the accused, read a written argument in
Japanese, original appended marked "FF."

The commission then, at 11:24 a. m., took a recess until 2:07 p. m.,
at which time it reconvened. JK

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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.

Mr. Suzuki, Saine, counsel for the accused, continued reading a written argument in Japanese, original appended marked "FF."

The commission then, at 3:15 p. m., took a recess until 3:44 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.

Mr. Suzuki, Saine, counsel for the accused, continued reading a written argument in Japanese, original appended marked "FF." PK

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Wednesday, April 16, 1947.

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James P. Kennedy Lt. Col.

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THIRTY-SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, April 16, 1947.

The commission met at 9:09 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon H. 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.
Buena Heine, official native observer from the Marshall Islands,
Mark Jahn, 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. JK

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

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Seiso, counsel for the accused, continued reading a written
argument in Japanese, original appended marked "FF".

An interpreter read an English translation of the argument of Mr. Suzuki,
copy appended marked "GG".

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the
accused, read a written argument appended marked "HH".

The commission then, at 10:13 a.m., took a recess until 10:43 a.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.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the
accused, continued reading a written argument, copy appended marked "HH".

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James P. Kenny *JK*

The commission then, at 11:28 a.m., took a recess until 2:10 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 reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, continued reading a written argument, copy appended marked "III".

The accused waived the right to have the argument of Commander Carlson read in Japanese in open court.

The judge advocate requested a recess in order to prepare his closing argument.

The commission then, at 2:20 p.m., took a recess until 2:33 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 reporter, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written closing argument, copy appended marked "II".

The commission then, at 3:00 p.m., took a recess until 3:18 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.

The judge advocate continued reading his written closing argument, copy appended marked "II".

The commission then, at 3:55 p.m., took a recess until 4:08 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.

The judge advocate continued reading his written closing argument, copy appended marked "II".

The commission then, at 4:28 p.m., adjourned until 9 a.m., tomorrow,
Thursday, April 17, 1947.

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James P. Renny Sr. USA

THIRTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, April 17, 1947.

The commission met at 9:07 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guymon, U. S. Marine Corps,
Lieutenant Colonel Henry K. Rensse, 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 Hain, official native observer from the Marshall Islands, JHC
Mark Jada, 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 thirty-second day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate continued reading his written closing argument, copy appended marked "II."

The commission then, at 9:43 a. m., took a recess until 9:55 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.

The judge advocate continued reading his written closing argument, copy appended marked "II."

The commission then, at 10:40 a. m., took a recess until 10:50 a. m., at which time it reconvened.

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James P. Kenny *St. PSK*

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.

The judge advocate concluded reading his written closing argument, copy appended marked "II."

The accused waived the right to have the closing argument of the judge advocate read in Japanese in open court.

The trial was finished.

The commission then, at 11:13 a.m., took a recess until 2:11 p.m., at which time it reconvened.

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

Joseph Kane, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The judge advocates were recalled and directed to record the following findings:

The first specification of the first charge proved.

The second specification of the first charge proved.

The third specification of the first charge proved.

The fourth specification of the first charge proved.

The fifth specification of the first charge proved.

And that the accused, FURUKI, Hidesaku, then a major, Imperial Japanese Army, is of the first charge guilty.

The first specification of the second charge proved.

The second specification of the second charge proved.

The third specification of the second charge proved.

The fourth specification of the second charge proved.

The fifth specification of the second charge proved.

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James P. Kenny Lt. USN

And that the accused, FURUKI, Hidesaku, then a major, Imperial Japanese Army, is of the second charge guilty.

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

The commission announced its findings.

Mr. Akinoto, Yuichiro, was recalled as a witness for the defense as to matters in mitigation and warned that the oath previously taken was still binding. 87K

Examined by the judge advocate:

1. Q. State your name.
A. Akinoto, Yuichiro.

Examined by the accused.

2. Q. Are you the defense counsel in the case?
A. Yes.
3. Q. Do you have certain documents in your possession which you desire to introduce into evidence?
A. I have sixty-three documents to introduce as evidence.
4. Q. Are the original documents in Japanese?
A. Yes.
5. Q. Will you waive the reading of these documents in Japanese at this time?
A. I do.
6. Q. It will be satisfactory then with the interpreter to read them in English?
A. Yes.
7. Q. Are these documents evidence of character of the defendant, Major Furuki, to be introduced in mitigation?
A. Yes.
8. Q. Have these documents been translated into English?
A. They have all been translated.
9. Q. Do you wish to offer these documents in evidence in behalf of Major Furuki?
A. Yes.

The witness produced sixty-three documents in Japanese in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection they were so received and are appended marked "Exhibit 7" through "Exhibit 69."

The accused waived the reading of these documents in Japanese.

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The witness produced sixty-three documents, the English translations of "Exhibit 7" through "Exhibit 69," in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection they were so received and are appended marked "Exhibit 7a" through "Exhibit 69a."

The interpreter read the English translations of twenty-one petitions in mitigation, appended marked "Exhibit 7a" through "Exhibit 27a."

The commission then, at 3:58 p. m., took a recess until 4:13 p. 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.

Mr. Akineto, Yuichiro, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued.)

The interpreter read the English translation of one petition in mitigation, appended marked "Exhibit 28a."

The commission then, at 4:27 p. m., adjourned until 9 a. m., tomorrow, Friday, April 18, 1947.

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James P. Kenny Lt. JN

THIRTY-FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guan, Marianas Islands.
Friday, April 18, 1947.

The commission met at 9:09 a. m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy, president,
Colonel Vernon M. Guymon, U. S. Marine Corps,
Lieutenant Colonel Henry K. Rescoe, 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.
Suorn Reine, official native observer from the Marshall Islands, 8K
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 thirty-third day of the trial was
read and approved.

Mr. Akimoto, Yuichiro, the witness under examination when the
adjournment was taken, resumed his seat as a witness for the defense as to
matters in mitigation. He was warned that the oath previously taken was
still binding and continued his testimony.

(Examination continued.)

The interpreter read the English translation of fifteen petitions in
mitigation, appended marked "Exhibit 29a" through "Exhibit 43a."

The commission then, at 10:45 a. m., took a recess until 10:58 a. 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.

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Mr. Akimoto, Yuichiro, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued.)

The interpreter read the English translation of twenty-six petitions in mitigation, appended marked "Exhibit 44a" through "Exhibit 69a."

The accused did not desire further to examine this witness.

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

The witness resumed his seat as a counsel for the accused.

The commission was cleared.

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James P. Kenny Lt. 1522

The judge advocates were recalled and directed to record the sentence of the commission as follows:

The Commission, therefore, sentences him, Furuki, Hidesaku, Major, Imperial Japanese Army, to be confined for the term of his natural life.

Arthur G. Robinson,
Rear Admiral, U. S. Navy, President.

Vernon H. Guymon,
Colonel, U. S. Marine Corps, Member.

Henry K. Rouse,
Lieutenant Colonel, Coast Artillery Corps, United States Army, Member.

Victor J. Garbarino,
Lieutenant Colonel, Coast Artillery Corps, United States Army, Member.

Ramon J. Wallenborn,
Commander, Dental Corps, U. S. Navy, Member.

Charles E. Ingalls, junior,
Commander, U. S. Navy, Member.

Bradner W. Lee, junior,
Lieutenant Commander, U. S. Naval Reserve, Member.

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

James P. Kenny,
Lieutenant, U. S. Navy, Judge Advocate.

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James P. Kenny Lt. JSA

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

The commission then read and pronounced the sentence to the accused.

The three official native observers from the Marshall Islands stated they wished to submit a written statement concerning their observations at this trial.

The commission announced that permission was granted and a written statement was submitted, appended marked "JJ."

The commission, having no more cases before it, adjourned to await the action of the convening authority.

Arthur G. Robinson,
Rear Admiral, U. S. Navy, President.

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

James P. Kenny,
Lieutenant, U. S. Navy, Judge Advocate.

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U. S. War Department

(MATERIAL MUST NOT BE REMOVED FROM OR ADDED TO THIS FILE)

WAR CRIMES OFFICE

**Judge Advocate General's
Office**

File No. 48-33-1
Sub. HIDEYAKU FURUKI
NAVY CASE
PART 2

See also Nos.

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U. S. GOVERNMENT PRINTING OFFICE 16-62370-1

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0462

ARGUMENT IN OBJECTION TO THE JURISDICTION DELIVERED BY MR. AKIMOTO, YUICHIRO

Original objection in Japanese appended to the original record.
Certified translation appended herewith marked "M."

0463

ARGUMENT IN OBJECTION
CONCERNING THE JURIS-
DICTION DELIVERED BY
MR. AKIMOTO, YUICHIRO.

Gentlemen of the Commission:

The defense would like to deliver this argument in objection concerning the jurisdiction of this case.

We object that this Military Commission has no jurisdiction over this case alleged in these charges and specifications.

I would like to enumerate the reasons as follows:

1. The accused's nationality, acts and the place where the acts were committed:
 - (a) Country and nationality of the accused.
 - (b) The place where the acts of the accused were committed and the sovereignty of the place.
 - (c) To what country did the persons who were killed belong and by what laws they were governed when they were executed by the accused.
 - (d) For what deeds and by what laws were these executed persons punished.
 - (e) Relation between the acts of the accused and war crimes.

2. On efficacy of the Criminal Code:

- (a) Over time.
- (b) Over person.
- (c) Over place.

3. Jurisdiction of the trial.

After I argue on the general rules of the foregoing items, I would like to go on to the conclusion.

I. The accused's nationality, acts; the place where the acts were committed and their relation to war crimes.

1) Country and nationality of the accused. As shown in each specification of Charge I and II, FURUKI, Hidesaku, was a soldier in the Japanese armed forces and it is unnecessary to state that he was /and is/ a subject of Japanese Empire.

2) The place where the acts of the accused were committed and the sovereignty of the place. Each specification of Charge I and II reads that the accused murdered in 1945 on Jaluit Atoll, Marshall Islands, natives of the above island. Jaluit Atoll, in the Marshalls was formerly the territory of Germany. After the termination of the World War I, the Atoll was mandated to Japan by the League of Nations, and since then it has been under Japanese mandate. As you know there are three types of mandatory rule "A", "B", and "C" types.

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James P. Kenny *Lieut. BSC*

- 1 -

"M(1)"

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"A" type is where a territory has reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. For example: Iraq and Palestine under British Mandatory formerly belonging to Turkey, and Syria under French Mandatory.

"B" type being of lower culture and development than "A" type Mandate. The Mandatory must be responsible for the administration of the territory. For example: Territories in Central Africa, Cameroons (British and French), Togoland (British and French), Ruanda-Urundi under Belgium, etc.

"C" type is where the territory is completely administered under the laws of the Mandatory as an integral portion of its territory. For example: The German Protectorate of South West Africa (Union of South Africa), Samoa (New Zealand), Nauru (Britain), all the former German islands situated in the Pacific Ocean lying south of the Equator (Australia), all the former German islands situated in the Pacific Ocean lying north of the Equator (Japan), etc.

Therefore, the islands in this case, Jaluit Atoll in Marshalls is a "C" type Mandatory. This island is, exactly speaking, not a Japanese territory but an integral portion of the Japanese Empire, and is administered by Japanese laws as any other portion of the Japanese Empire. Japan established a civil government in Palau and under its jurisdiction established at various places branch offices and courts and completely enforced administrative and judicial powers, etc. As stated, this territory administered by Japan, was Japanese territory and being completely under Japanese authority, no other nation had a right to interfere.

3) Therefore, the natives executed by the accused are in the same category as Japanese citizens administered to by Japanese laws.

4) The natives who were executed had been punished by Japanese laws because they had violated the Japanese Criminal Code, Naval Criminal Code, Military Secret Law, and others.

5) The relation between war crimes and acts committed by the defendant.

I believe the regulations issued by the Supreme Commander Allied Forces Japan, General Order Number 20 dated 26 April 1946 concerning the Far East International Military Tribunal can not be adapted to this Military Commission, which is not an International Military Tribunal.

The above International Military Tribunal regulations were issued with a special purpose and system. The sphere of War Crimes to which it was to be adopted was very large. In article five of the above order there are the following rules:

1. Crimes against peace.
2. Conventional War Crimes, Violations of the Laws and Customs of War.
3. Crimes against Humanity.

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James P. Keary
- 2 -
"A(2)"

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Even if we compare the acts committed with these regulations, we would find the following:

Acts that were committed and punished by a citizen of Japan, in Japanese territory, in violation of Japanese laws and punished by an official of that country as an act of his office does not constitute a violation of (1) Crimes against peace. It could not be said to have (2) violated the laws and customs of war, and it is logically clear that it does not come under the category (3) of crimes against humanity. Crimes against humanity may have been committed under the circumstances prevailing in a country like Nazi Germany, but I think there were no such cases under the circumstances that existed in a country like Japan. Reason would not permit the actions of the defendant in this case to have violated this article. I believe it is reasonable that this Military Commission, which is not an International Military Tribunal should define its conception of a war crime in a narrow sense. Therefore, I am convinced that the actions of the defendant in this case absolutely do not constitute a war crime.

II. The efficacy of the Criminal Code. In other words, I would like to speak on its efficacy, the sphere to which it can be adapted and an outline of the theory upon which the law is based.

1. The efficacy of the law over time:

- (a) It is the general principle in law that a law shall have no effect on actions which occurred before its enforcement. This is called "Principe de non-retroactivite", or ex-post facto principle. In the Japanese criminal code there is a special clause concerning this principle (Criminal Code, Article 6): "If there be amendment of punishment by a new law promulgated after the crime, the lighter punishment shall be adopted."

2. The efficacy of law over person. Laws have full efficacy over any person with the exceptions provided for in domestic and international laws. But, of course, the efficacy over person is limited by that of place. In International Law, persons who are excepted from the efficacy laws are as follows:

- (a) Heads of nations and Presidents of foreign countries, their families and subordinates.
(b) Legally admitted diplomats of foreign countries, their families and employees who are citizens of foreign countries.
(c) Military personnel and civilians in military service who are attached to foreign troops, war-ships or planes which were legally admitted.

3. Efficacy of law over land. In the efficacy of law over land, you have made a distinction between the efficacy of Criminal Law and jurisdiction. The latter I shall argue on later.

Concerning the efficacy of criminal law on land from an academic standpoint we can make the following four distinctions:

- (a) Principe de universalite or universal principle.
(b) Principe de territorialite or territorial principle.
(c) Principe de personnalite or principle of persons.
(d) Schutz prinzip or principle of protection.

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James P. Kenny *James P. Kenny*

0466

In the Japanese Criminal Code (b) and (c) are adopted. In Articles 1 and 2 of the Japanese Criminal Code, it is stated that this criminal code shall be applied both to offenses committed in Japanese territory and to the offenses of Japanese, committed even in foreign countries.

Article 1 of the Japanese Criminal Code states that: "This code shall be applied to all offenses of any person, committed in Japan or in Japanese vessels outside the Japanese territory."

Article 2 of the same code states that: "This code shall be applied to specified offenses committed by foreigners in foreign countries." And in the offenses provided here, "treason" (Articles 81 to 89) is included).

In Article 4 of the Criminal Code of the Japanese Army and Article 5 of the Criminal Code of the Japanese Navy are the following provisions: "Violation of Criminal Codes or other laws by Japanese Army (Navy) personnel in territory occupied by Japanese Forces shall be dealt with in the same way as an offense in Japan. The aforementioned offense of Japanese civilians, foreigners in service of Japanese Forces and prisoners of war, even though they are not Japanese Army (Navy) personnel, shall be dealt with according to the above provisions."

"Regulations for court procedure in South Sea Islands" was promulgated in 1921 by the Imperial Ordinance Number 26. Since then the Japanese Criminal Code has been enforced there.

III. Jurisdiction and the principles of International Law.

There are three kinds in jurisdiction just as in the efficiency of the criminal code. They are: (1) over time, (2) over person, (3) over place. But, since jurisdiction is the actual use of sovereignty, it rests within the scope of sovereign power, although the efficacy of criminal code may reach farther. And the scope of the jurisdiction is limited within the territory of the state if not otherwise provided in International Conventions.

I shall not discuss here about jurisdiction over time, because it has no connection with this case.

(1) Jurisdiction over offense. Citizens or subjects of a country are under the jurisdiction of the country whether or not they are in the country.

(2) Jurisdiction over place. A country has jurisdiction over any offenses and any persons within the scope of its sovereign power. It has jurisdiction over persons of any nationality. As I mentioned about the efficacy of criminal code, it has also no jurisdiction over the following persons though they are in the place under its jurisdiction.

- (a) Heads of nations or Presidents of foreign countries, their families and subordinates.
- (b) Legally admitted diplomats in foreign countries, their families and employees who are citizens of foreign countries.
- (c) Military personnel and civilians in military service who are attached

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James P. Keamy *Lieut. USN*

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"M(4)"

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to foreign troops, war-ships, or planes which were legally admitted. But a country has full jurisdiction over war-ships, ships, and planes of the country though they are in foreign territories. Extra-territoriality is an exception principle to use jurisdiction in foreign territories.

Concerning this point, Dr. George Grafton Wilson, Professor of the Harvard University in his work "International Law", pages 130-131 states:

"Nationals are persons who owe allegiance to a state and are entitled to its protection. Citizens and subjects owe allegiance to and are entitled the protection of a given state whatever their status under domestic law.

"Over its nationals within its own jurisdiction a state has full authority. This jurisdiction extends not only to its domain, but to craft, its flag on the sea, or in the air outside the jurisdiction of the state.

"Lex Loci Læ fori is the accepted principle as stated by the Supreme Court. The general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.

"A state has, in general, jurisdiction over its nationals when in a foreign port or vessel flying its flag, for acts beginning and ending on board the vessel, or for acts which do not take effect outside the vessel."

Then he cites the examples of trials of such cases and explains it in detail (pages 147-148 of the above volume). But, I would like to omit them. However, according to what he says, the United States rejected the jurisdiction of foreign countries over its citizens and even over foreigners who declared their intention to become citizens "with an intimation that force would be needed."

And at the end he states:

"After mentioning that the man (Kasota) had by declaration manifested his intention of making the United States his permanent abode, Secretary Morcy says: The establishment of his domicile here invested him with the national character of this country and with the character he acquired the right to claim protection from United States, and they had the right to extend it to him as long as that character continued. The right to protect a person having a domicile though not native born or national citizen rests on the foundation of justice and the claim to be protected is earned by consideration which the protecting power has liberty to disregard."

In conclusion:

"A national is subjected to the jurisdiction of his state and is exempted from those of other states. Secretary Morcy says: The right to protect the nation

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James A. Kearney, Lieut. USN

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"M(5)"

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is based upon the fundamental rule of justice, and no one is able to disregard it freely."

It is quite proper for the United States, which highly advocates righteousness and humanity to the world to show exactly the fundamental rule of justice and to object absolutely the jurisdiction of foreign country for the protection of its citizens. I agree from the bottom of my heart to this disposition. But, on the other hand, we must admit that it is quite natural to respect the jurisdiction of other countries over their citizens.

CONCLUSION:

As is clear in the theory mentioned above, we can easily and definitely conclude that the jurisdiction of this case lies in Japan not in the United States. That is to say:

1. FURUKI, Hidesaku, the accused, is a subject of Japan attached to highly organized Japanese Military Forces, and, as an official of that Force, he discharged his duty in Japanese territory. As I stated above, even foreign troops who enter another country by, to which they belong, admission go under the jurisdiction of the country to the exclusion of the jurisdiction of the country they entered. This is the principle in International Law. Considering this point it is unnecessary to argue further that the United States has no jurisdiction over the accused.

2. The acts of the accused specified in Charge I and Charge II were done at Jaluit Atoll, Marshall Islands. Whereas, Jaluit Atoll was then a Japanese mandate, a component part of Japan, and a territory under the sovereignty of the Japanese Empire. Therefore, the offense committed in the area is under the jurisdiction of the Japanese Empire and no country can intervene in it.

3. The victims stated in the specifications of Charges I and II are all natives of Jaluit Atoll, Marshall Islands. It is clear that these natives were then Japanese subjects and were under the sovereignty of Japan. As I mentioned above, no country other than Japan can have jurisdiction over this case from any point of view, such as efficacy over person, efficacy over place, etc.

4. There is also another point which is hard to understand:

Each of the specifications of Charge II state that the acts of the accused violated the laws and customs of war. However, the acts specified in Charge I are quite the same as those in Charge II. Why does Charge II allege simple murder and Charge II was crimes? Why did the prosecution allege the same acts in the two different charges? It is hard to understand. This is not a trifling question concerning the technique of prosecution but an important problem both of trial and of punishment.

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James I. Kasey, Lt. USN

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If one act violates several laws, it is not several crimes but one crime so that several trials are not allowed for the act. In this case, we must allege it as a crime, and apply the most important law among many of those the act violated. Article 54 of the Japanese Criminal Code states "If one act violates several crimes if the act which comes from either means or the result of the crime violates another law, the heaviest punishment among them shall be applied."

Besides the act of the accused FURUKI is the performance of duty as an officer by the order of the law. What the accused did to execute Japanese subjects under the sovereignty of Japan by Japanese law, because they violated the law. Therefore it has no connection with the laws and customs of war. He applied Articles 81 to 87, inclusive, of the Japanese Criminal Code, the offense of treason, for these activities. He specified their crimes under the name of "spies." The prosecution mistook this for "spies" written in the International Law. I think this is the reason why Charge II was served. But it means the "spies" in domestic law, not in International Law.

In short the accused has no connection with the laws of war so that he is out of the category of "war-crimeals."

Therefore, from any point of view, the jurisdiction of this case belongs to Japan, and it is illegal to try him in this Military Commission, an American Court. I believe the charges and specifications out to be rejected.

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James P. Henry *Gen. A. K.*

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"M(7)"

0470

ARGUMENT IN OBJECTION TO THE JURISDICTION DELIVERED BY MR. SUZUKI, SAIZO

Original objection in Japanese appended to the original record.
Certified translation appended herewith marked "O."

0471

ARGUMENT IN OBJECTION TO JURISDICTION

Delivered by SUZUKI, Saizo.

The accused, FURUKI Hidesaku objects that this commission has no jurisdiction over the offenses alleged in each of the specification of Charge I, and wishes to deliver an argument in objection to its jurisdiction.

The offenses alleged in each of the specifications of Charge I, can be summarized as follows: At a time when a state of war existed between the U.S.A. and Japan, the accused FURUKI, committed murder against the natives of the Marshall Islands at Jaluit Atoll, and violated article 199 of the Japanese Criminal Code which prescribes the crime of homicide. From the above we are able to see that,
(1) the person who committed the crime is a subject of Japan.
(2) The place of the crime is Jaluit Atoll which is a Japanese mandated area governed as a component part of the territory of the Empire of Japan.
(3) All of the victims of the crime are the natives of the Marshall Islands who are subject to the rule of the Japanese sovereignty and substantially composed a part of the Japanese nation.

An offense composed of the preceding elements is definitely a domestic crime of Japan, whether the offender was in the military service or not, and in the light of the hitherto recognized principle of International Law, it is a criminal case and highly proper to come under the jurisdiction of the Japanese Court. No one will object to this conclusion. I believe with sufficient reasons that the prosecution also adopts this same point of view.

Why is it necessary to apply the Japanese Criminal Code? Since the prosecution did not apply American Law and instead applied only article 199 of the Japanese Criminal Code, I cannot help but attribute its cause to the fact, that the prosecution is also convinced that this act of murder should be punished by the Criminal Code of Japan and that it is purely a domestic crime, therefore, we should face this important issue and seek a proper solution for it. Have the courts of U.S.A. acquired jurisdiction, after the termination of war over purely domestic offenses of Japan committed by a Japanese, before the surrender or during the war?

With a deep feeling of tragedy Japan accepted the Potsdam Declaration and on 2, September 1945 signed the documents of surrender with the U.S.A. and other allied powers, aboard the American battleship Missouri. Japan now, is faithfully fulfilling the conditions of surrender. According to the conditions of surrender the Emperor and the Japanese Government which rules Japan, have been placed under the authority of the Supreme Commander for the Allied Powers who is empowered to adopt necessary steps in order to carry out the conditions of surrender but differing with Germany, a central Government still exists, administers the Japanese people as a whole and though under the designated restriction of the Supreme Commander, the Japanese Government is acknowledged to exercise its proper power concerning legislation, administration and the judiciary. Especially in regard to the judiciary the Japanese courts still exist and it is acknowledged as a principle to exercise jurisdiction over offenses committed by a Japanese regardless of whether it was committed before or after the surrender, but as an exception, offenses committed by a Japanese against a person belonging to the Allied Powers and the occupation forces, also crimes committed by a Japanese in hindrance to the object of the occupation of Japan, are at present under the jurisdiction of the military courts of the allied power, especially now mainly under the American Military Courts. This exception deals with offenses committed after the surrender and occupation of Japan by the Allied Powers. I do not know of any proclamation or stipulation, promulgating the Allied Powers or American Military Courts to exercise jurisdiction over Japanese domestic crimes committed by a Japanese in the territory of Japan, (100)

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James A. H. H. H.

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before the surrender or during the war. Even in the Potsdam Declaration which served as the basis for the conditions of surrender for Japan, it is declared that stern punishment will be given to the war criminals only. Article 10 of the Declaration reads as follows: "We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be given out to all war criminals, including those who have visited cruelties upon our prisoners", because of the aforesaid reasons, this is substantially a purely domestic crime of Japan and since we are not able to recognize on the face of these specifications that the nature of these offenses is that of a war crime, I believe that the commission has no jurisdiction over the offenses alleged in each specification of Charge I, in the present case, therefore I request that the prosecution be dropped, secondly, I also object to the jurisdiction over the offenses alleged in each of the specifications of Charge II preferred against the defendant FURUKI.

There are five specifications in Charge II, but the offenses are all of the same type. It can be summarized as follows: At a time when a state of war existed between the U. S. A. and Japan, the accused FURUKI, then a Japanese military personnel, at Jaluit Atoll, Marshall Islands did wilfully, unlawfully and without previous warning and cause to be punished as spies assault, wound and killed with a deadly weapon the natives of Marshall Island, this in violation of the laws and customs of war.

Would the offenses of the present case, constitute a war crime as violating the laws and customs of war? Can this commission have jurisdiction in trying this case? We are gravely dubious. In article 30 of Hague Convention governing land warfare, it is clearly stipulated "A spy taken in the act shall not be punished without previous trial". Therefore, it is a violation of the above article to execute a spy without previous trial and would naturally constitute a war crime. But in applying this article 30 of the Hague Convention the point to which we should pay special attention is the nationality of the spy. First spying is not an act which violates the articles of the Hague Convention governing land warfare. This is clearly set out in the Hague Convention. (Refer to Article 24 ibid.) But the act of spying is injurious to the opponent of the belligerents. So it is recognized as a means of self-defense for the opponent of the belligerent to condemn the spy who has been captured to a stern punishment, because spying incurs disadvantage. Assuming that spies may be severely punished as war criminals, article 30 of the Hague Convention which I have cited above, had been drawn up, in order to check the too-widespread punishment of spies.

Therefore, the word "spy" provided in article 30 of the Hague Convention may only be construed as a person belonging to the belligerent or a neutral country. When a man spies against his own country he is not subject to International law but he can be punished, as a matter of course by the laws of his country based on the sovereign right of the country. Accordingly, every country now, has domestic law to the effect that the act of spying, in a far broader sense, than the rigid definition of spy set forth in article 29 of the Hague Convention, shall be severely punished. In Japan we find these stipulations in the Japanese Criminal Code, Army Penal Code, Navy Penal Code and Law concerning the protection of Military Secrets. When a fellow-country-man spies for another country, the act is punishable under domestic law even after the act has been completed without being restricted by the Convention of the Hague Convention. Therefore, when a man is caught spying against his own country for the hostile powers, and executed without proper trial, the act of the persons involved in the execution is, in no way violating article 30 of the Hague Convention. Under certain circumstances, the persons involved in the above act, can only be punished as violating the domestic law.

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James H. Farley
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0473

Now, according to each of the specifications in charge II of this case, all of the persons who had been executed were natives of the Marshall Islands which were a Japanese mandate. The person who without previous trial unlawfully executed these natives is in the Japanese military service. The place of the crime was Jaluit Islands which was under the mandatory of Japan.

What was the relation between the Japanese Empire and the Japanese mandated Pacific Islands, all former German territories, lying north of the Equator and it natives, as to this point, I have already mentioned a little, but for the sake of precision, I will quote article 2 of the mandate granted to the Japanese Empire. It reads as follows:

"The mandatory shall have complete power of administration and legislation over this mandated area, as a component part of the Empire of Japan, and may apply to this area the laws of the Empire of Japan with local alternation if necessary

The mandatory shall, to the utmost, promote the spiritual and material welfare and social improvement of the natives in the area"

From the above citation it is evident, that the mandatory, the Empire of Japan has the power as a principle to exercise unrestricted rule, likewise done in our territory and differing from the A type mandatory. Neither the future independence of the natives nor the termination of the mandate are promised. (This point is further clarified in referring to article 22 of the Charter of the League of Nations)

What nationality did the natives of the Japanese mandated area belong? As this problem, there is no article in the League of Nation Charter or in the mand clarifying this point, and it seems that opinions are divided from the theory of International Law. However, as it is clearly set forth in article 2 of the mand granted to Japan, it would be appropriate to interpret that the natives were under the rule of the sovereignty of Japan, and substantially had constituted a part of the subjects of Japan. Therefore, in applying the Wartime International law, it is proper to heed the facts that the natives had the rights and duties of the Japan subjects, that they ought not be treated as a member of the belligerent, or neutral, and that the mandated areas were a part of the Empire of Japan.

Therefore a synthetis of the foregoing points, would state that the acts alleged in each of the specifications of Charge 2 are; acts of a Japanese in the military person, who captured a Japanese national in the territory of Japan as a spy, and without previous trial, unlawfully executed and killed him, therefore if the above act should constitute a crime, this case should be tried in a Japan Court, which exists today, as a pure domestic offense. Therefore I am of the firm belief that this case should not be tried before this commission as a war crime, violating the above article 30 of the Hague Convention and other Laws and customs of war.

From the reasons that I have stated above, I present this argument in objection concerning jurisdiction. I request your careful consideration in dealing with this issue.

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0474

SPECIAL PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY FURUKI,
HIDESAKU, MAJOR, IMPERIAL JAPANESE ARMY, DELIVERED BY COMMANDER MARTIN E. CARLSON,
UNITED STATES NAVAL RESERVE, AT GUAM, MARIANAS ISLANDS ON WEDNESDAY MARCH 5, 1947.

The accused, Major Furuki, Hidesaku, Imperial Japanese Army, objects to being tried by this Military Commission. This objection on the ground of lack of jurisdiction involves a question as to the legal authority of this commission. We shall show by citing well known cases, long established law, and opinions of leading jurists, that, first, the accused in this case is not subject to the court's jurisdiction, and, second, that the offense is not one cognizable by this Navy convened Military Commission.

We shall show that there was no crime committed.

The accused, Major Furuki, is still an officer of the Imperial Japanese Army, never having been demobilized.

The alleged crimes, said to be murder, were committed on Jaluit Atoll during the months of May, June, July, and August 1945. Jaluit was mandated to the Japanese Government by the Treaty of Versailles on June 28, 1919 and was occupied by and governed by Japan. The victims were native inhabitants of the Marshall Islands. The accused is an officer of the Japanese Army. These are the facts. Now as to the law.

Since the specification does not show on its face the circumstances conferring jurisdiction then it must be shown in some other way since the accused objects to the jurisdiction of this commission to try him.

In his book "The Protection of Nationals" Frederick Sherwood Dunn in writing of the protection of citizens abroad says on page 21, ".....the subject of protection is primarily a legal subject. Governments do not ordinarily claim or demand something of another government as a matter of right unless they mean that they are legally entitled to it. International law is, in one sense, merely a summary of what governments claim as their rights or recognize as the rights of others. Hence we should expect to find, and do find, that the subject of protection of citizens abroad is commonly dealt with as a branch of international law. Questions arising thereunder are usually handled by the law officers of the foreign offices concerned and are dealt with on the basis of legal rules and principles or treaty obligations. Cases not settled by diplomatic negotiations are frequently referred to international tribunals, which dispose of them as juridical questions. Scholars have been diligent in formulating legal rules and principles out of past practice, and in organizing them into a logical system, with the result that we possess at the present time an extensive and well ordered jurisprudence on the subject of diplomatic protection."

This present case is in point with the celebrated Raymond Forniage case. In the Digest of International Law, Volume II, page 260 we read:

"I have said that crimes committed outside of the national territory by foreigners against citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain, or Switzerland. Before showing this I pronounced the Mexican contention that the claim to punish foreigners for offenses committed against Mexicans outside of the National territory was sustained by the French Case, to be wholly unfounded. I shall now show that such a claim has been pronounced by the highest judicial tribunal in France to be unwarranted by the principles of international law."

"P(1)"

0475

I refer to the case of Raymond Fornage, decided by the court of cassation, or supreme court of France, at Paris in 1873, and reported in the Journal du Palais (p. 299 et seq.) for that year. This court being the highest judicial tribunal in France, its decisions in respect to the French law are not to be questioned. The circumstances of the case of Fornage are as follows: The prisoner was indicted by the 'Chambre des mises en accusation' (grand jury) of the court of appeal of Chambéry for the crime of larceny, which was described in the indictment as having been committed in the Canton of Vaud, Switzerland; and the case was referred for trial before a jury to the court of assizes (composed, in departments where there are courts of appeal, of three judges of that court) sitting at Haute-Sevoise. The prisoner did not take an appeal, as he had a legal right to do, from the judgment of reference, but proposed before the court of assizes an exception to the competency of that court, based on the ground that, having the quality of a foreigner, the French tribunals could not try him for a crime committed in a foreign country. But the court of assizes, regarding itself as irrevocably clothed with jurisdiction by the judgment of reference from the court of appeal, which had not been attacked, declared that the exception of the accused was not receivable. Upon these facts the case was argued at length before the court of cassation by M. Requier, a counsellor and reporter of the court, and M. Bedarrides, advocate-general, both of whom, while admitting that the rule was settled that a court of assizes could not declare itself incompetent to take cognizance of a case of which it had been possessed by a judgment of reference from which no appeal was taken within the periods established by law, nevertheless argued that there were considerations of higher order in the case of Fornage, which ought to make it an exception to the general rule. In this relation I quote from the argument of M. Requier, the following passage:

"The right to punish has no foundation except the right of sovereignty, which expires at the frontier. If the French law permits the prosecution of Frenchmen for crimes or misdemeanors committed abroad, it is because the criminal law has something of the character at the same time of a personal statute and of a territorial statute. A Frenchman, when he has reached a foreign country, does not remain the less a citizen of his own country; and, as such, subject to the French law, which holds him again when he reenters France. But the law can not give to the French tribunals the power to judge foreigners for crimes or misdemeanors committed outside of the territory of France; that exorbitant jurisdiction, which would be founded neither on the personal statute nor on the territorial statute, would constitute a violation of international law and an attempt against the sovereignty of neighboring nations. There exists a single exception to that rule of the law of nations. When a foreigner has committed, even outside of the territory, a crime against the safety of the state, he can be prosecuted, judged and punished in France. But, save that exception, founded on the right of legitimate self-defense, foreigners are justiciable only by the tribunals of their own country for acts done by them outside of the territory. The French tribunals, in punishing an act of that nature, would commit a veritable usurpation of sovereignty, which might disturb the good relations of France with neighboring nations...When a crime has been committed outside of the territory by a foreigner the culprit is not subjected by that act to the French law; the French tribunals have no jurisdiction over him; their incompetence is radical and absolute. The criminal court, in punishing the act, would commit an abuse of powers; it would usurp a right of sovereignty appertaining to a foreign power. Would it not be contrary to all the principles of justice to oblige the magistrates to render themselves guilty of an arbitrary act, of a violation of international law?

"R(2)"

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 James H. Henry, Notary Public

0476

"Not only did the court of cassation adopt this view, but in its judgment 'the full test of which is given herewith as Exhibit B) the rule of international law, as laid down by the Government of the United States in Cutting case, is expressed in terms which, for force, precision, and freedom from doubt or qualification, have not been surpassed. Translated, the material parts of the judgment are as follows:

"Whereas, if, as a general principle, the courts of assises, possessed of competence by a judgment of the chamber of indictments not attached within the times fixed by article 296 of the Code of Criminal Procedure, cannot declare themselves incompetent, this rule is founded on this, that the courts of assises, being invested with full jurisdiction in criminal matters, can, without committing any excess of power and without transgressing the limits of their attributes, take cognizance of all acts punished by the French law; but this jurisdiction, however general it may be, cannot extend to offenses committed outside of the territory by foreigners, who, by reason of such acts, are not justiciable by the French tribunals; seeing that, indeed, the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory, that except in the cases specified by article 7 of the Code of Criminal Procedure, the provision of which is founded on the right of legitimate defense, the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived, neither by the silence nor by the consent of the accused; that it exists always the same, at every stage of the proceedings; whereas, indeed, Raymond Fournier was brought before the court of assises of Haute Savoie, accused of larceny committed in the canton of Vaud, Switzerland; and, in ordering the trial to proceed, without passing upon the question of nationality raised by the accused, it (the court) violated article 408 of the code, and disregarded the rights of the defense.

"Annul, etc."

"This judgment may be regarded as finally and conclusively answering the contentions that a precedent for article 186 may be found in the French Code."

"In the United States the territorial principle is the basis of criminal jurisdiction, and the place of the commission of an offense is generally recognized as the proper and only place for its punishment."

"The earliest bestowal by Congress upon the Federal courts of jurisdiction over offenses committed on side of the territory, actual or constructive, of the United States, was in the crime act of 1790, which, as read in the text, has sometimes been supposed by writers to have conferred a far more extensive jurisdiction on courts of the United States than the decisions of those tribunals have attributed to it."

"In 1824, in the case of Appollon, 9 Wharton 362 again stated the rule of law that the laws of a nation have no binding force, except as to citizens, outside of the national territory actual or constructive. Our Supreme Court held:

"The laws of no nation can justly extend beyond its own territories, except for as regards its own citizens. They can have no force to control the sovereign or rights of any other nation within its own jurisdiction."

"In the case of crimes committed aboard ship the rule is: In this regard it is absolutely and permanently established by the laws of the United States that the laws of a nation have no binding force, except as to citizens, outside of the national territory actual or constructive. Our Supreme Court held:

"The crimes of murder and robbery, committed by foreigners on board a foreign vessel, on the high seas, are not justiciable in the tribunals of another country."

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that to which the vessel belongs." Quoting Wharton in Elements of International Law cited by Moore, A digest of International Law Volume II page 264.

Mr. Justice Story in the case of United States v Davis, 1837, 2 Sumner cc 482 had occasion to consider and decide the question of jurisdiction over offenses committed outside of the national territory.

"Of offenses committed on the high seas on board of foreign vessels not being piratical vessel, but belonging to persons under the acknowledged government of a foreign country, this court has no jurisdiction under the act of 1790, ch 36 § 3"

That was the doctrine of the Supreme Court in United States v Palmer, 3 Wheat 610, and United States v. Holmes, 5 Wheat, 412, and United States v. Klintock, 5 Wheat 144, applied it is true, to another class of cases, but in its scope embraces the present..."

Heckworth in his Digest of International Law paragraph 135, Extraterritorial American Territorial Theory of Criminal Jurisprudence, page 179 says: "An American citizen disappeared in China in the summer of 1905, under circumstances pointing to the suspicion that he had been murdered by a French citizen, E. H. LeVergor. In response to an inquiry by the brother of the deceased as to whether LeVergor might be apprehended and returned to China from Algiers for trial, the department of State said that the United States government does not exercise jurisdiction over crimes committed beyond the territorial limits of this country, except a few involving extraordinary elements in which category the one mentioned by you is not included."

In 1909 the German Foreign Office addressed a note verbale to the American Embassy in Berlin with regard to one Max Runge who was being sought by the New York police. The note pointed out that the individual in question would not seem to be extraditable as the offense against him was not included in the extradition treaty of June 16, 1852 but that if he was a German subject he might be prosecuted before the German courts, if this was requested by the United States government and the assurance given of reciprocal treatment on the part of the United States in similar cases. The Department of State instructed the ambassador as follows:

"Inasmuch as, under Anglo-Saxon legal theory, crime is territorial, not personal, and therefore the criminal jurisdiction of the United States does not, as a general rule, extend to crimes committed outside of its jurisdiction, whether by American citizens or aliens, it is not possible to meet the suggestion of the German note verbale that this government guarantee, in cases the criminal prosecution in this country of an American citizen charged with the commission of a crime in Germany."

Charge Hitt to Secretary Knox No. 527, December 6, 1909 and Assistant Secretary Wilson to Ambassador Hill, No. 299, January 11, 1910 M.S. Department of State, file 22867. See also 1910 For. Rel. 517-518.

In the case of the United States v. Bowman brought to the Supreme Court of the United States on writ of error for a review of the ruling of the District Court of the United States for the Southern District of New York, Chief Justice Taft spoke for the court said:

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James A. Keary Sec. 1572

"R(4)"

"We have in this case a question of statutory construction.....Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement, and frauds of all kinds which affect the peace and good order of the community, must of course, be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard. "Hackworth, Digest of International Law, Volume II pp. 197-198.

In Moore's A. Digest of International Law, Volume II (1906) page 4 we find the opinion regarding the supremacy of a sovereign nation within its own territory:

"The jurisdiction of the nation within its territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

Article 22, The Covenant of the League of Nations, Treaty of Peace, June 28, 1919 provides that the South Pacific Islands mandated to Japan shall be administered under the laws of Japan as integral portions of Japan.

Chapter VI Digest of International Law by Green Haywood Hackworth Vol. II is National Jurisdiction - Supremacy of Territorial Sovereign - Jurisdiction - The Nation's Absolute and Exclusive Right. We quote from page 1.

"The jurisdiction of a state extends over not only the land within its territorial limits and the marginal sea or territorial waters, as well as the air-space above them, but also over all persons and things within such territory,..."

The S.S. Lotus case decided by the Permanent Court of International Justice but another instance of the rights of sovereignty. Justice John Rossett Moore in his dissenting opinion said:

"1. It is an admitted principle of international law that a nation possesses and exercises within its own territory an absolute and exclusive jurisdiction, and that any exception to this right must be traced to the consent of the nation, either express or implied. (Schooner Exchange v. McFaddon (1812), 7 Cranch 116, 136) The benefit of this principle equally accrues to all independent and sovereign states and is attended with a corresponding responsibility for what takes place within the national territory." Hackworth, Digest of International Law Vol. II pp. 1-2.

Now, just what is this celebrated case. I shall quote from Charles Cheney R. International Law, Vol. II page 825.

"In 1812, in the case of The Schooner Exchange v. McFaddon, the Supreme Court of the United States rendered a decision which has since guided the legislative and judicial departments of the government. The case raised the question whether a

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James R. Kearney, Secy. USN

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vessel commissioned as a man-of-war by the French government was, upon entering a port of the United States, subject to the jurisdiction of a local court, whose aid was invoked by former owners of the vessel to determine whether their title had been lawfully divested by French authority. Chief Justice Marshall, in the opinion of the court, adverted to the exclusive and absolute jurisdiction of a State within its own territory. He declared that any restriction thereof was to be derived from the nations consent; that such consent might be expressed or implied, and might in some instances be tested by common usage, and by common opinion growing out of the usage. He said that a public armed vessel constitutes a part of the military force of her nation; acts under the immediate and direct command of the sovereign; is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign State. Such interference cannot take place without affecting his power and his dignity. The implied license therefore under which such vessel enters a friendly port, may reasonably be construed, and it seems to the court, not to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rites of hospitality....Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employing force, or by subjecting such vessels to the ordinary tribunals; but until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise. 7 Crench, 144-146.

This case settled the law with respect to the United States. Since the decision there has been no disposition on the part of the Congress to assert jurisdiction over foreign vessels of war."

This was in 1812 and has as Mr. C. C. Hyde said been the law with respect to the United States. We maintain it is still the law. Evidently someone in the Judge Advocate General's office did not realize this case was in point with the facts in this present case. The Schooner Exchange v. McFaddon case is exactly in point and no one can hold that there is any jurisdiction for this Military Commission to try the accused Major Furuki after reading the Schooner Exchange v. McFaddon case. We ask therefore that both charge I and charge II be dismissed as against this accused Major Furuki.

Moore in A Digest of International Law volume II on page 362 says:

A sovereign, according to modern international law, can not exercise the prerogatives of sovereignty in any dominions but his own."

The above rulings from leading cases on jurisdiction and opinions of international lawyers, are particularly applicable to charge one, but they also apply to charge two because the offense is the same identical offense as is charged in charge two it is said to be "in violation of the laws and customs of war."

This allegation "in violation of the laws and customs of war" is a conclusion of the pleader. On the face of the specifications it is alleged the native inhabitants were punished as spies. We ask, "what is the punishment for a spy?" All authorities, as far as I know agree and the rules of land warfare, provide that punishment meted out to a spy may extend to the death penalty.

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James R. Henry Capt. USA

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The acts alleged took place as late as August 10, 1945. It is common knowledge that Jaluit was a by passed island, but the American naval and army air forces bombed Jaluit continuously. The Navy ships came in at close range and shelled the island at will. The garrison at Jaluit were in sore straits. The native inhabitants were difficult to control and having valuable information were very eager to turn this information over to the Americans. The war as you remember ended in August 1945.

The specifications of charge two allege these thirteen natives were punished as spies. Any other punishment under the circumstances would have been no punishment at all.

What laws and what customs of war were violated?

The accused, Major Furuki, is not subject to the jurisdiction of this military commission for a violation of the Hague Convention of 1907 or of the Geneva Prisoners of War Convention or the Geneva Red Cross Convention of July 27, 1929.

International Law such as the Hague Convention provides neither courts or punishments for individuals who violate the laws and customs of war. The prosecution must show for what authority the law of nations permits the trial of individuals and what punishment is provided for the violation of the laws and customs of war. We hold that the state and not the soldier is liable for violation of the laws and customs of war. The burden is upon the prosecution to furnish legal authority and/or specific rulings in order that this Military commission may hold otherwise.

We can only anticipate and ask if the accused is charged with having violated the Hague Convention No. IV of 18 October 1907. If so then we cite Article 2 of this Convention:

"The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."

Since neither Italy or Bulgaria has ever ratified the 1907 Hague Convention the accused claims neither Japan or he as an officer of the Japanese army is bound by the convention although Japan did sign the convention.

Suppose at some stage of the trial the prosecution decide that what they mean by "violation of the laws and customs of war" is the Geneva Prisoners of War Convention of July 27, 1929 then we say to this military commission has no jurisdiction because Japan has not ratified or formally adhered to this Geneva Prisoners of War Convention.

We feel that any opinions from the Judge Advocate General's office of the United States Navy Department should be carefully considered. Is the opinion based on all the facts of this case and second is the opinion an out and out opinion that definitely states that this military commission has jurisdiction of the accused and of the alleged crime. Since the reference in the precept containing the opinion is classified it is impossible to bring this opinion into open court so we ask that the members of the Military Commission read it most carefully and determine if it is binding on this Commission in view of our pleas to the jurisdiction of this Military Commission to try the accused Major Furuki for the alleged crime.

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James P. Keary *Sub. 112*

RC Martin Emilus Carlson,
Commander, U. S. Naval Reserve.

0481

REPLY OF THE JUDGE ADVOCATE IN SUPPORT OF THE JURISDICTION OF MILITARY COMMISSION

delivered by

David Bolton, lieutenant, USN

Prior to a detailed discussion of the argument of defense counsel with regard to jurisdiction, it is desirable to briefly examine the background picture of administration of justice in the Marshall Islands. The following information concerning the Japanese occupation is derived from the Civil Affairs Handbook, East Caroline Islands, OPNAV P22-5 published by the Chief of Naval Operations, Navy Department, 21 February 1944.

When the Japanese military occupation of the Marshall Islands took place in 1914, and for a number of years thereafter, criminal courts were established in Civil Administration Stations, later the Branch Governments. In 1922 when the South Seas Government was formed, a local court was established in Ponape with jurisdiction in the Truk and Jaluit districts. An appellate court was located at Pohnpei to which appeal could be taken from the decisions of any of the local courts. The judges in the local courts were Japanese. In 1941, the local judge at Ponape was Koizo Omori and the public prosecutor was Masayuki Esaki, both Japanese civil servants of Sonin rank. In theory all judicial matters in the mandated area were to be handled by the courts of justice. But in practice certain minor offenses were dealt with by the Branch governor. Village chiefs and headmen, were also authorized to render summary decisions in respect to certain minor offenses committed by natives on isolated islands. All serious crimes were tried in the Ponape Local Court. In 1937, 118 criminal cases were tried in the Ponape Local Court, two of these were cases of murder by Japanese.

Upon defeat and surrender of the Japanese, Ponape was placed under military government, and all remaining Japanese, including civil judicial officers, if any, were subsequently evacuated. By 5 January 1946, at the time when Commander Marianne had taken responsibility for the military government of the Marshall Islands, all Japanese personnel had already been removed from Ponape. The Japanese Ponape Local Court, therefore ceased to exist after the date of surrender. No counterpart of the Japanese Ponape Local Court, was set up by our military government in Ponape. Therefore, no court exists in Ponape with any jurisdiction over crimes committed in Jaluit Atoll, Marshall Islands.

In the Marshall Islands, the jurisdiction of the courts, under existing United States military government, is specifically set forth in a number of Proclamations, Ordinances and Directives.

Proclamation 1, issued by Admiral Chester A. Nimitz, as Admiral United States Navy, Commander-in-Chief, United States Pacific Fleet and Pacific Ocean Areas, as Military Governor of the Marshall Island Areas, proclaims, in section 1 thereof: "all powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me". Section II provides: "The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation". Section IV provides in part: "your existing laws and customs remain in force and effect, except to extent that it is necessary for me in the exercise of my powers and duties to change them."

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James P. Keary *Det. USN*

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Under the provisions of proclamation No. 1, it is clear that no expansion was made in the jurisdiction of the native courts, which might be construed to enable them to try more serious criminal cases.

Under proclamation No. 2, Article IV, it is provided as to Violations of the Japanese Penal Laws, "Any person who commits any act which violates any provision of Japanese penal law in effect in these islands prior to the occupation by the forces under my command, or the provisions of native law customary in the islands, or, 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.....".

Article VI provides, "It shall be a defense to any charge before a Military Court, that the alleged offense was an act of lawful belligerency or otherwise privileged under the principles of international law.

Proclamation IV, establishes certain Military Courts, and in Article II provides for their jurisdiction. Section 3C thereof authorizes Military Courts to exercise jurisdiction over "Offenses against provisions of Japanese penal law in effect at the time of occupation, etc."

Ordinance No. 1 - which established the office of Atoll Administrator magistrate, Section 1 A 4, provides that he shall "sit as a court with jurisdiction over offenses and disputes not reserved for trial by Military Courts, mete out and carry into effect punishments appropriate to the crime, not to exceed thirty (30) days of imprisonment."

Ordinance No. 2, amongst other things, established in each atoll a Marshallese Court to be composed of not less than three (3) or more than five (5) members. It specifically sets forth the jurisdiction of the court and states, in Part III, paragraph 12, that the Marshallese Court shall have jurisdiction over: "all offenses punishable under the provisions of this ordinance, except those offenses for which the penalty is death or imprisonment". Under Part IV, regulations, paragraph 32 provides: "The following acts are criminal offenses which shall be punished as herein proscribed: (a) Murder - the willful 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 of time which shall be not less than ten (10) years, including imprisonment for life. (b) Manslaughter - the unlawful taking of the life of a human being without illful 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.

These proclamations and ordinances with regard to the provisions cited, represent the effective law in the Marshalls. It is clear that the local native courts have not been empowered to exercise jurisdiction over the accused for the offense charged. Jurisdiction has been specifically reserved to Military Courts.

The instant Military Court was convened pursuant to the precept dated 21 February 1947. Authority for the convening of this commission was vested in the convening authority, Rear Admiral Pownall, by virtue of his office as Commander Marianas Area, and Deputy Military Governor of the Marianas Area, by specific authority from the Commander-in-Chief, U. S. Pacific Fleet, Commander-in-Chief,

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James A. Henry Lieut. USN

"Q(2)"

0483

Pacific Ocean Area and Military Governor of Pacific Ocean Area, and further by specific authority from the Judge Advocate General of the United States Navy. The source of authority is set forth in paragraph one of the precept.

In the precept of 21 February 1947, this Military Commission was authorized to try all offenses within the jurisdiction of exceptional military courts and in addition was specifically authorized to exercise 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", Judge Advocate General's despatch 3.1730Z of July 1946.

This despatch ordered the trial of Japanese military personnel alleged to be responsible for the killing on the Marshall Islands, of Marshallese natives during the period of Japanese control of these islands.

Major Furuki of the Imperial Japanese Army, the accused in the instant case, charged in Charge I, with the murder on the Marshall Islands of various Marshallese natives during the period of Japanese control of the Marshall Islands. It is clear that the case of Major Furuki falls within the scope of the authority of the Judge Advocate General's despatch and therefore within the specific jurisdiction of this commission.

This commission is not empowered to divest itself of this jurisdiction specifically delegated to it by virtue of the precept, duly issued and pursuant to the powers of the convening authority as set forth in paragraph one of the precept.

The Judge Advocate General of the United States Navy, the War Department and the Department of State have carefully considered the problem of jurisdiction now raised by the defendant. It is their considered opinion that jurisdiction rests in this commission. The despatch referred to in the precept clearly recognizes the jurisdiction of this commission. In a later communication the Judge Advocate General in referring to the instant case specifically authorizes the charge of crimes of murder as defined under the local applicable law, and this charge constitutes charge I against the accused, Furuki.

The opinion of the Judge Advocate General of the Navy, the War Department and the Department of State as the considered opinion of outstanding authority in the field of military and international law, is not one to be lightly dismissed by this commission.

The Judge Advocate General's determination that this crime should be tried before a military commission, is in accord with the conclusions reached by other eminent international authorities on the subject of jurisprudence and international criminal law, who served in the drafting of the charter for the famous International Military Tribunal at Nuremberg. These authorities determined that crimes committed against the local civilian population need not be tried by the local criminal courts, and are properly triable by military tribunals established for these Nuremberg trials by the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of Soviet Socialist Republics. In establishing the jurisdiction of the International Military Tribunal, the charter provides jurisdiction with regard to crimes against humanity, and specifically includes murder "... against any civilian population before or during the war..."

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James P. Kenny Lieut. Col.

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Article 6(c) reads:

"Crimes against humanity. 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 crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated....."

Similarly, the Supreme Commander for the Allied Powers, in SCAP letter Regulations Governing the Trials of Accused War Criminals AG 000.5 (5 Dec. 45) provides for jurisdiction as follows: "2. Jurisdiction. a. Over Persons Military Commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial. b. Over Offenses. (1) Military commissions appointed hereunder shall have jurisdiction over all offenses including, but not limited to, the following:(c) Murder, Extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war,.... whether or not in violation of the domestic laws of the country where perpetrated.

It should be noted that the SCAP Regulations are applicable to Military Commissions composed solely of U. S. Military members as well as to international tribunals, whereas the International Military Tribunal derives its members from outstanding jurists from several nations.

It should be apparent that since the determination by the Judge Advocate General of the United States Navy, that jurisdiction can and should be vested in this commission, is supported by similar decisions made with regard to Military Commissions set up under the Supreme Commander For the Allied Powers, and by the similar decisions with regard to the eminent International Military Tribunal at Nuremberg, the instant Military Commission can be and, as already discussed, has been empowered by competent authority to exercise jurisdiction over crimes against local civilians committed by Japanese military personnel.

As to the substance of the offense, the law to be applied is the law in effect at the time and the place where the offense was committed. Lex Loci, lex fori. Mr. Suzuki has contended that this is an admission by the Judge Advocate that sovereignty of the Marshall Islands existed in Japan. On the contrary, this merely states what the applicable local law was, and has no bearing on the issue of sovereignty whatsoever. Under the mandate, Japan was delegated authority to establish the applicable local law. Any law could have been used as the basis for local law. If the laws of California had been applied it would not be contended defense that thereby California had sovereignty.

Mr. Akimoto, counsel for the accused in his argument affirms the fact that the time of the commission of the instant alleged crime, Imperial Ordinance 26, for the Treatment of Judicial Affairs in the South Seas Islands, which was enacted in 1923, and revised in 1933, was in effect, and defined the laws and regulations which apply to the mandated islands. The laws of Japan which are specifically stated to apply to the mandated islands include the Criminal Code. (See also CPNAV P22-5, Op. cit. pages 81, 82).

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James P. Keany *Adm. ASK*

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Charge I, murder, sets forth in each specification, the applicable provision of the Criminal Code of Japan, under which the charge is laid. Jurisdiction over the offense has been clearly established.

Charge II, alleged a violation of the laws and customs of war. The crime falls clearly within the scope of offenses set forth in the precept, and similarly falls within the scope of offenses listed in the charter of the International Military Tribunal and the SCAP regulations. The validity of jurisdiction of this commission over the offense charged is clear. Not only military courts but similarly civil courts possess jurisdiction over crime in violation of international law and in violation of the laws and customs of war. *Respublica v. De Longchamps*

1 Dallas 110 (Pa - 1784). The Saboteurs case *Ex parte Quirin*, 317 US 1 (1942)

As the power of the convening authority extends to war crimes as well as violation of local criminal law, it is unnecessary to separately demonstrate that regardless of the question of jurisdiction as a local court, the commission with regard to Charge II - Violation of laws and customs of war has a separate and distinct jurisdiction with regard to such violations of international law.

It may perhaps be contended by defense counsel that we cannot maintain jurisdiction in the same trial, over offenses growing out of violations of local law and violations of international law, that is to say the laws and customs of war. Such contention is specious.

As stated in the Appendix to Glueck's article *The Nuremberg Trial and Aggressive War*, 59 Harvard Law Review, p.g. 455, "Lawfulness as was correctly held by the German Supreme Court in the Leipzig trials, requires the acts of the soldier to be legitimate not only under domestic criminal law, but also under the law of nations, which all States and subjects are bound to obey. Stripped of the mantle of such legality, the act in question stands out starkly as an unjustified and inexcusable killing of a human being something which, by all civilized military and civil penal codes, constitutes plain murder".

Glueck on page 433 of this article, referring to the sinking of the Llandovery Castle and the machine-gunning of survivors in lifeboats, notes that the German Supreme Court, stated: "The firing on the boards was an offense against the law of nations....Any violation of the law of nations in warfare is....a punishable offense, so far as in general a penalty is attached to the deed....The rule of international law, which is here involved, is simple and is universally known....The court must in this instance affirm Patzig's guilt of killing contrary to international law". Judgment in case of Lieutenants Dithmar and Boldt (1922) 16 Am J. Int. L. 674, 721. In footnoting this case Glueck notes decisions of German courts indicating willingness to apply customary international law directly.

Similarly the United States Supreme Court has affirmed the application of laws and customs of warfare to criminal action against an individual charged before a domestic court. In the Saboteurs case, *Ex parte Quirin*, 317 U.S. 1 (1942) the Supreme Court held in effect that despite the absence of any prior domestic legislation authorizing its application, individual offenders could be punished for offenses under the "law of warfare branch of the common law of nations".

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James L. Henry, Secy. USN

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International law, written and unwritten, has been applied as a basic part of the local law. The doctrine is not a new or novel one. It was ably expressed in "local" courts over 163 years ago. In the famous case of *Respublica v. De Longchamps* 1 Dall. 110 (Pa. 1784) the defendant was convicted and sentenced to imprisonment and fine for insulting and threatening the Secretary of the French Legation. The defense argued that the reparation sought and remedy offered, are limited to the municipal law of Pennsylvania which offered only the remedy of "imposition of a legal restraint on the execution" of the threats. The prosecution argued that although the mode of punishment sought, was not set out in the act itself, an offense against the law of nations must necessarily be indictable. The court stated that the case "must be determined on the principles of the law of nations, which form a part of the municipal law of Pennsylvania; and if the offenses charged in the indictment have been committed, there can be no doubt, that those laws have been violated.....The first crime in the indictment is an infraction of the law of nations. This law in its full extent, is part of the law of this State, and is to be collected from the practice of different nations and the authority of writers." (114, 116). It should be noted in passing that reference to the first crime in the indictment as being under the law of nations, indicates that other crimes charged in the indictment were violations of domestic or local law, and that joining of the charges in one indictment, was not prohibited by the court.

Decisions in Federal and State courts, are too numerous to warrant further citation and unnecessary consumption of the time of the commission. Certain classic language used in this connection by these courts is worthy of brief repetition.

Justice Brewer in the court of the decision on the amended bill in the case of *Kansas v. Colorado*, said:Nor is our jurisdiction ousted, even if, because Kansas and Colorado are States sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal. In the *Paquete Habana*, 175, 700 Mr. Justice Gray declared: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." 206 U.S. (1907) 46, 97.

See also the case of the *Lusitania*, in which it was held that "The United States courts recognize the binding force of international law." 251 Fed., 715, 732 (S.D.N.Y., 1918).

Even in a state court, "international law is a part of our law" and must be administered whenever involved in causes presented for determination. *Elizabeth Riddell, executrix v. Sophie V. Fuhrman & Others*, 233 Mass. (1919) 69, 73, 123, N.E. 237, 239.

The essence of such decisions was ably expressed in the leading case of *Kansas v. Colorado* by Chief Justice Fuller who in overruling the demurrer, delivered the opinion of the Supreme Court and stated "Sitting, as it were, as an international, as well as a domestic tribunal, we apply Federal law, state law, and international law, as the exigencies of the particular case may demand....." 185 U.S. (1902) 125, 146, 147.

The judge advocate has briefly presented a picture of the existence of international law.

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jurisdiction over the person of the accused, and over the offenses charged with regard to the violation of domestic or local law as set forth in Charge I, and the violation of international law, viz. the laws and customs of war set forth in Charge II. From this discussion, and our previous argument with regard to the charges and specifications, it is clear that specific authority has been properly delegated to this commission to try Major Furuki for the crime alleged in the instant charges and specifications.

Extensive arguments have been made by counsel for the accused, seeking to persuade the commission that their exercise of jurisdiction in this case is not legally justifiable. The Commission can properly dispose of the defendant's argument against jurisdiction by relying on the specific authority and direction of the Judge Advocate General of the Navy, and similar precedent as outlined in the charter of the International Military Tribunal, and in the Regulations issued by the Supreme Commander of the Allied Powers.

However, in view of the extensive defense argument, and in order to prevent the accused from deluding himself that he is being subjected to the arbitrary fiat of the conqueror rather than sound doctrines of international law, the judge advocate will briefly discuss certain fundamental principles of international law which are applicable to the question of jurisdiction in the instant case.

Application of these fundamental principles of law, as additional sources of jurisdiction for the subject military commission, is authorized by paragraph 3 of the precept which authorizes the Commission to try any and all cases which may fall into the proper jurisdiction of exceptional military courts....Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

The theoretic sources of jurisdiction of exceptional military courts in criminal cases, rests primarily upon two distinct but not conflicting bases. They can be briefly and simply expressed as follows: First, the criminal jurisdiction implicit in the rights and duties of the military occupying power over the territory occupied. Secondly, the criminal jurisdiction derivable from sovereign and quasi-sovereign powers and rights of the conqueror over territories which have no other sovereign. I will attempt to present to the commission some of the vast body of international law and authority on these two sources of jurisdiction and to indicate briefly how they are applicable in the subject case.

One of the fundamental doctrines of international law is that the military occupation of territory, whether it be enemy, neutral, allied, or one's own national territory, carries with it certain fundamental duties as well as rights and privileges in regard to the orderly administration of the occupied territory.

Article 43 of Hague Convention IV, reaffirms the basic obligation of the occupant to reestablish and assure public order and life - and pursuant to this provision the occupant may establish courts and punish violations of existing criminal law. Professor Mitchell Franklin of Tulane University Law School, in a notable article in the American Journal of International Law, titled Sources of International Law Relating to Sanction against War Criminals, in discussing Article 43 and powers of the occupant, states; on pg. 175, "Article 43 establishes three principles: (1) the occupying power may introduce his law of military government, in whole or in part, subject to the restrictions of general international law set out in Articles 43-56, Hague Convention IV. (2). The occupying power:

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retain "The laws in vigor in the country," in whole or in part. (3). The occupying power may perform acts of fulfillment or administration, or, perhaps, exercise the powers of a syndic in relation to the internal legal system. The power of punishment for prior violations of general international criminal law is thus within "the authority of the legal power" which has "in fact passed into the hands of the occupant."

The status of military occupation, inherently entails these aspects of essentially civil administration. The administration is commonly referred to as "military government", and its authority may be exercised in over field of governmental activity, executive, administrative, legislative, and judicial. Hyde volume 2, page 361.

Numerous authorities in the field of international law clearly establish the fact that for the administration of justice, the occupying power may establish military tribunals, and these military tribunals may act in the place of local criminal courts and administer local criminal law. I will cite merely a few of the authorities in this connection:

The Army JAG's school, text No. 11, titled the "Law of Belligerent Occupation" on page 52 specifically notes that when military necessity or the maintenance of public order and safety require such action, the occupant may substitute his own tribunal to administer local criminal law. Citation of authority for this statement is found in footnote 74 as follows: "Garner, Vol. 2, p. 87. Courts created by a military governor to administer the local criminal law depend for their existence on the laws of war and not on the constitution or legislation of the legitimate sovereign. United States v. Reiter, Fed. Cas. No. 16, 146; TM 37-250, p. 1."

Spaight in his authoritative text on War Rights on Land (1911), cites common law doctrine in the following statement: "Delicts and crimes against common law can usually be adequately dealt with by the local courts * * * But if the machinery of justice has been so dislocated by the events of the war as to be out of gear or non-operative -- if, for instance, the courts have been closed and the judges have fled or if the judges decline to sit, then the occupant is fully entitled, and indeed called upon, to establish special tribunals for trying offenses against common law. In 1900, Lord Roberts found it necessary to erect such courts in the Transvaal, to deal with offenses under the common or Statute Law of the Transvaal and magistrates were appointed to preside over such courts. (pg. 358.)

Similarly Cybichowski, in "Das Völkerrechtliche Okkupationsrecht", 18 Zeitschrift für Völkerrecht, pp. 295-322 (1934) states that the occupying power has authority under proper circumstances to establish exceptional military tribunals for the enforcement of local criminal law. Cybichowski states: "If the judges of occupied territory have left the territory or refused to serve the occupants must establish new courts * * * These render judgment according to the laws of occupied territory and should be regarded as foreign courts in relation to the courts of the occupant," (That is to say, they are to be regarded as local courts of the place which they are serving, and not as national courts of the occupant.)

It is clear that in the absence of local courts, the occupant has not only the right, but the clear obligation to establish new courts for the proper administration of justice. This is clearly the situation in the Marshall Islands Area, where as

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have already indicated, no Japanese judicial officials remain to administer justice. The local native officials were not empowered under Japanese law, and similarly under our existing laws of military government, are not vested with authority to exercise jurisdiction over major cases, such as murder, etc.

But even if local criminal judges and courts were available for trial of the criminal cases under local criminal law, the occupying power has the power and right to suspend proceedings in the local criminal court and direct that any case or cases be tried by a military tribunal. This can be done where prosecution of the case would otherwise be inimical to the interests of the occupant (FM 27-5, or 42d), or where competency of the local court to accord a fair trial is in doubt (Judge Advocate General School Text 11, op. cit, pg. 53.)

It should be noted that even when subjects of neutral powers were involved, where competency of local court to accord a fair trial was in doubt, it has been held that the occupant would be justified in referring such cases to tribunals created by him. Bentwich, in the British Yearbook of International Law, 1920-21, p. 143, notes that during the British Occupation of Palestine in World War I, the local criminal courts regularly tried all persons without regard to nationality; however for serious offenses, foreign subjects were tried either by a British magistrate or by a court with a majority of British judges.

The instant case, involving as it does the trial of a Japanese military officer for the heinous crime of murder alleged to have been committed against Marshallese natives, is clearly an instance where a fair trial for the defendant could not be expected from the inexperienced local native criminal courts. It would appear to be a case which falls clearly within the scope of the rule permitting the establishment of special military tribunals, even where there is available a qualified local court with jurisdiction to try similar crimes. Since international law permits trial before an exceptional military tribunal for crime against local law, even where local courts exist which would otherwise have jurisdiction over the crime, a fortiori, an exceptional military commission may be established to try such crimes against local law, where there is no local criminal court with jurisdiction over these crimes.

It is unnecessary to cite further authority regarding the right of the occupant to establish appropriate military courts to punish violations of existing criminal law. The concept is fundamental.

It is possible that counsel for the accused will now seek to contend that jurisdiction of the military courts established by the occupant is limited to crimes committed during the period of occupancy.

It should be noted that such contention was implicitly rejected in both the Charter of the International Tribunal, and in the SCAP Regulations. In the former Article 6(c) vests jurisdiction over crimes....namely murder....committed against any civilian population before or during the war. In the latter, jurisdiction over offenses includes in 2a (1) (c) murder....committed against any civilian population before or during the war. Under Section 2a(2) of the latter, it is stated that offenses need not have been committed after a particular date,....but in general should have been committed since....September 18, 1931. Thus both these documents prepared by eminent international jurists, appear to maintain the position that these tribunals have jurisdiction over offenses committed prior to the war period.

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From the standpoint of any realistic concept of justice, this approach is sound and essential to a vital administration of international or domestic law. Clearly any attempt to limit power of trial or punishment to crimes committed during the period of possession or occupancy, would render completely abortive any attempt to enforce international law or the laws and customs of war, for the vast majority of war crimes are perpetrated prior to occupancy by the new occupant and in territory still held by the forces of the war criminal.

The obviously false doctrine that power of the occupant is limited to crimes committed during occupancy, rests upon failure to understand the nature, function and duties of occupancy. Under international law the duty of the occupant includes the obligation to restore public order and life. Article 43 of the Fourth Hague Convention, reiterates this "common law" of nations stating "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety (life), while respecting, unless absolutely prevented, the laws in force in the country."

The just prosecution and punishment of persons who have committed crimes against local law, within the period immediately preceding occupancy, is clearly within the scope of the broad language of this article; particularly the language "all the measures in his power to restore, and ensure as far as possible public order and safety, etc." It is difficult to conceive of the existence of any public order and safety if known criminals, particularly murders, were permitted to remain at large, unpunished merely because their crime against local laws or murder, occurred in the period prior to military occupancy. To fail to prosecute such crimes would make the occupying power a shield for those who on the eve of defeat resorted to crimes of violence, lust, and plunder. Surely sound international jurisprudence neither requires nor tolerates such an anomaly. On the contrary, it must affirm the fact that failure of the occupying power to punish the criminal would itself constitute a serious violation of the requirements of international law, and specifically of this provision, Article 43 of the Hague Convention.

Mitchell Franklin, in his Article on Sanctions Against War Criminals (op. cit) briefly, and effectively discussed this provision stating: "Article 43 is a provision dealing with the duty of the military occupant to reestablish and assure public order and life. This obviously makes it possible for the occupant to employ the law of the occupied state in regard to criminal acts committed after the occupation. But it also seems to make it the duty of the occupant to punish violations of criminal law committed before the occupation, for that is an aspect of the reestablishment or restoration (retablir) and assurance or ensurance (assurer) of public order and public life." (174 on page 175, in discussing the "third principle" established by Article 43, states "(3) The occupying power may perform acts of fulfillment or administration, or, perhaps, exercise the powers of a syndic in relation to the internal legal system.

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The power of punishment for prior violations of general international criminal law is thus within 'the authority of the legal power' which has 'in fact passed into the hands of the occupant.' Hague Convention IV itself created the basis for punishing criminals under general international law when Article 43 was formulated and accepted. The only prerequisite for such punishment is occupation of the offending state under Article 42 and seizure of the persons who had violated general international law."

From the foregoing discussion, it is clear that jurisdiction over the offense and the accused in the instant case, is properly vested in this military commission and that sound international law concerning the rights and duties of the occupying military power requires this court to exercise jurisdiction in the instant case.

The fact that the particular territory occupied, and in which the crime occurred, is the Marshall Islands gives rise to certain special powers and obligations under international law, in addition to those of the military occupant. These powers are in some aspect broader than those of the military occupant, and pursuant to their exercise by the convening authority, this commission has derived additional sources of jurisdiction. To properly demonstrate and evaluate these additional sources of jurisdiction, it is necessary to consider the peculiar status of the Marshall Islands with regard to sovereignty.

In December of 1914, the Japanese took possession of Jaluit Atoll, Marshall Islands from the Germans and established a military government there.

After the surrender of Germany, Japan in 1920 "accepted" and administered the Marshalls, under a Class "C" Mandate from the League of Nations. In 1922, by a special agreement with Japan, the United States accepted the arrangement by which Japan exercised authority over the Class "C" mandates. Hackworth, Digest of International Law, Vol. 1. pg 125.)

The exact scope of the Class "C" mandate with regard to the traditional doctrines of sovereignty was never precisely defined. The Civil Affairs Handbook, East Caroline Islands, OPNAV P22-5, published by the Office of the Chief of Naval Operations, notes that "the colonial policy of the League of Nations, expressed in the mandate system represented a compromise between the conservative who favored outright imperialistic annexation of the territories and the liberals who wished them to be directly administered by the League." (Op. c pg. 61.)

It is clear that the native inhabitants of the Marshall Islands were not, and, similarly, cannot currently be considered able to exercise sovereignty over their own territory. The fundamental conditions in the Marshalls have not changed radically from the conditions prevailing at the time of the signing of the Treaty of Versailles.

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The conditions of the mandated colonies and territories, and the varying degrees of their inability to "stand by themselves under the strenuous conditions of the modern world" is clearly established by The Treaty of Versailles, part one article 22 of the Covenant of the League of Nations. The Class "C" Mandates were deemed so incapable of exercising any degree of independent sovereignty, that it was determined that they could "best be administered under the laws of the Mandatory as integral portions of its territory. . . ." The pertinent portions of Article 22 read as follows:

"To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

"The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

"The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances. . . .

"There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population."

In the charter laid down by the League of Nations for the government of the Islands mandated to Japan it was provided in Article 2 that "the Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Empire of Japan, and may apply the laws of the Empire of Japan to the territory, subject to such modifications as circumstances may require. The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate."

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Article 6 provided "The Mandatary shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4, and 5."

Article 7 provided "The consent of the Council of the League of Nations is required for any modification of the terms of the present Mandate."

From these historic documents it is clear that the native inhabitants of the Marshalls were not deemed capable of exercising sovereignty. The question therefore arises whether sovereignty over the Marshall Islands ever vested in Japan. Former acceptance by Japan of the administration of the territory as a class C Mandate under the League of Nations, clearly defeats any contention that she claimed full sovereignty at that time. Similarly the agreement of February 11, 1922 between Japan and the United States, with regard to Yap, evidence recognition by Japan of the fact that she was not the sovereign of the mandated territories.

Japan at first fulfilled at least nominally the requirements of the Mandate but questions arose with regard to the degree of fulfillment of certain of the obligations under the Mandate charter. When Japan announced that she would withdraw from the League of Nations the question of sovereignty of the mandated islands of International jurists, mostly American, pronounced the opinion "that if Japan withdrew she would forfeit her mandate, and the islands would revert to the League." Japanese jurists held the opposite opinion.

When Japan actually withdrew in March 1935, she kept control of the mandated territory and she continued to administer it in much the same way and to submit annual reports to the League through 1938. (OPNAV P22-5, op. cit. pg. 21). Thus further indicating that Japan did not publicly claim sovereignty over the mandated territory.

Proponents of Japanese sovereignty may contend that sovereignty was derived from the consent of the "Principal Allied and Associated Powers" in whose favor Germany by article 119 of the Versailles Treaty renounced "all her rights and titles over her overseas possessions". If this consent was the source of Japanese sovereignty, the basis of this sovereignty was destroyed at the time of the Cairo Conference November 1943, when the United States of America, China, and the United Kingdom stated it was "their purpose that 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."; thus revoking any prior consent to Japanese control. It would appear therefore that at the time of the commission of these crimes in 1945, Japan did not have sovereignty of the Marshall Islands.

It should be noted that Mr. Akimoto distinguished counsel for the defendant early in his argument on jurisdiction admits that Jaluit Atoll was "mandated to Japan by the League of Nations, and since then it has been under Japanese mandate."

It is unnecessary for this commission to make a determination whether sovereignty over the Marshall Islands was vested in Japan, because, by the Instrument of Surrender, signed September 2, 1945, Japan accepted the provisions of the Potsdam Declaration. The Potsdam Declaration, specifically provides in (8) "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 shall determine". The Marshall Islands have not been declared minor islands over which

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sovereignty of Japan should be extended. On the contrary it is a matter of history that the United States has expressed to the Security Council of the United Nations its own intention to exercise full control of these islands.

It is clear therefore on the basis of the Surrender Document that Japan is unable to claim sovereignty over the Marshall Islands, and therefore it cannot be contended that the defendant, Major Furuki, has the right to be tried by the courts of Japan, as sovereign of the Marshall Islands.

Argument by Mr. Suzuki based on the fact that we have restored in Japan the power of local courts to administer justice in criminal cases is fallacious and misleading. It disregards the fact that Japan no longer possesses any rights in the Marshall Islands, and that the jurisdiction granted to Japanese courts is limited to crimes committed within Japan proper and does not extend to crimes committed in former mandated islands over which Japan has specifically renounced claim to sovereignty. Further, the SCAP trials in Tokyo are obvious reminders of the fact that the jurisdiction given to local Japanese courts is limited.

There are no Japanese courts which possess any jurisdiction over the instant case. I do not believe it can be seriously contended by defense counsel that such courts could possess exclusive jurisdiction.

It has already been clearly established that there are no available native courts with jurisdiction over the instant offense, and in view of the historical background of the Marshall Islands and their inability at this time to "stand by themselves under the strenuous conditions of the modern world", it should be apparent that no power exists in the natives of the Marshall Islands to establish courts of exclusive jurisdiction of this offense. It should be noted that three Marshallese natives, including a local magistrate, are participating in this trial as observers in the proceedings of this commission.

In addition to the doctrine of military occupancy, under which we have already established the complete power of the United States as military occupant of the area to establish a military commission, acting as a local criminal court to try the instant case, there is a doctrine of international law, which can be applied to assert an additional source of authority in the United States for the creation of criminal courts. This doctrine permits an occupant prior to the culmination of a final treaty, to exercise sovereign rights with regard to territories occupied with the intention of not returning them to the former sovereign, and with the intention of exercising certain sovereign rights therein.

Under this theory jurisdiction is derived from the certain quasi-sovereign rights which exist in the United States Government even during the period prior to a final treaty.

Prior to the occupation of the Marshall Islands in August 1945, in the Cairo Conference and the Potsdam Declaration it was clearly stated by France, China, Great Britain, and the Union of Soviet Socialist Republics that Japan would be deprived of any claim of sovereignty over the formerly mandated islands. When the Marshall Islands were occupied in August 1945, a comprehensive system of military government was instituted by the United States. The intention of United States to exercise control over the Marshall Islands was enunciated numerous times prior to the 24th day of February 1947, the date of the convening of the instant commission. To cite one of the more recent occasions, I bring to the attention of the commission the statement recently made before the United Nations Security Council by the U.S. representative.

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tates Representative, claiming the right to exclusive custody of the strategic mandated islands of the Pacific including the Marianas and the Marshalls. Thus whatever sovereignty was possessed by Japan has been destroyed and the United States has exercised and openly affirmed the right to exercise even more extensive sovereign rights than those claimed by Japan, for the United States has publicly proclaimed its intention to use these islands as strategic defensive military fortifications.

The doctrine I have referred to with regard to the exercise of sovereign rights by an occupying nation during the period prior to formal treaty, is exemplified by the decisions of several national courts after World War I, which treated armistice occupations as the equivalent of annexation. These cases, applying the theory "that there is a difference between ordinary occupation of war and one done with the purpose of annexation." (Law of Belligerent Occupation, JAG text p. 11).

Thus in *GALATIOLA v. SENES*, Annual Digest 1919-22, Case No. 319, the court of Cassation of Rome, held, that for purposes of civil action for damages for failure to deliver merchandise, Trieste, in the period between the Armistice and the annexing it to the Kingdom of Italy, could not be regarded as foreign territory. The court said, "with the complete dissolution of the enemy army and the simultaneous dismemberment of the Austro-Hungarian Empire, the national integration (of Trieste into Italy) has been accomplished almost automatically and pari passu with the military occupation of the provinces.... It is absurd to think that in the interval between the armistice and the coming into force of the law of annexation, at a time when not only the sovereignty of Austria-Hungary over these provinces, but that of every State, had disappeared, the two provinces dismembered of a now destroyed organism have been able to live a separate political life outside the sovereignty of the Italian State which had become responsible for all its administration, justice, army and finance." (Italics supplied.)

Pursuant to this doctrine of quasi-sovereignty the United States would possess additional sovereign power and authority to create new local courts for the trial of crimes committed against existing laws.

There can be no contention that sovereignty remains in the Japanese Empire, therefore there can be no valid contention that trials of this defendant, should be held before a Japanese court. Under the theory of military occupancy, and under the theory of quasi-sovereignty, there is clear and irrefutable justification in international legal precedent and authority for the creation of a military commission not as a local court to punish the accused for crimes committed in violation of local law effective at the time of the commission of the offense.

It should be noted that this is not an instance of imposition of ex post facto law, as contended by Mr. Akimoto. We are alleging laws effective at the time of commission of the offense. As to Charge I, we cite the effective provision derived from the Japanese Criminal Code. As to Charge II, we refer to existing laws and customs of war, the "common law of nations", and it should be noted that the signature by Japan of the Hague Convention, clearly constituted a recognition of this provision as part of the common law of nations. It should also be noted that with reference to the Geneva Prisoner of War Convention, the Japanese Imperial Government during the course of the war, 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.

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Counsel for the defendant have also argued that international law cannot be applied to individuals. This argument has already been disposed of by reference to opinions of international jurists, to recent war crimes cases decided in European and Pacific areas, and by the *Ditmars and Boldt*, *Republique v De Longchamps*, and the *Saboteurs* cases already discussed briefly with reference to the application of international law in criminal prosecutions of individuals. The latter case recently decided by the United States Supreme Court, justifies brief additional comment. Glueck in his book *War Criminals, Their Prosecution and Punishment*, page 102, briefly comments on the *Saboteurs* case as follows:

"Thus the *Saboteurs* Case decision 'is impressive judicial testimony to the effect not only that the 'law of nations may, and oftentimes does, address its injunctions to individuals by attaching an internationally illegal quality to particular acts,' but that 'the law of war as a part of the law of nations is a part of the local law,' and 'also that its applicability by the courts in reference to penal matters need not await precise legislative appraisal or definition.'"

The contention that international law cannot be applied to the defendant because he is a member of the Imperial Japanese Army, and therefore entitled to protection for acts done under the cloak of sovereignty of his master, is similar specious and has been disposed of in the famous *Nuremberg* trials, by the International Military Tribunal, which punished the very heads of the state themselves.

Certain additional arguments by defense counsel with regard to jurisdiction merit brief discussion at this time. Defense Counsel Mr. Suzuki contended that Article 30 of the Hague Convention No. IV was inapplicable to Charge II, and he inferred that this provision relates to "foreign", and not "domestic" spies. In the first place it should be noted that his contention is based upon the assumption that the natives were nationals of Japan, and therefore not capable of being "foreign" spies. We cannot concede that the Marshallese were nationals of Japan. Eminent international and American jurists have denied any contention that Japan possessed sovereignty over the Marshall Islands. But regardless of this fact, it should be observed by the commission that defense counsel is superimposing his own definition of spies upon Article 30. He apparently has not noted that in Article 29 of the Hague Convention No. IV, a definition of spies is given which is clearly broad enough to include any spies. Article 29 reads in part: "A person can only be considered a spy when, acting clandestinely or on false pretences, 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." There is nothing in this definition which excludes spies who are nationals of the belligerent.

Commander Carlson in his lengthy argument on jurisdiction has discussed in part the application of the doctrine of sovereignty to jurisdiction of courts. In his effort to persuade the Commission that they are without jurisdiction in the instant case he relied very heavily on two cases, the *Fornage* case and the *Schooner* case.

With regard to the *Fornage* case (*Journal du Palais*, p. 299, 1873) it should be noted that it deals with the attempt by a French court to exercise jurisdiction over a crime committed in Switzerland. This case and dicta cited from it is completely irrelevant to the issues before this commission. In the *Fornage* case there was no occupancy of Switzerland, and the French court was not sitting in

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Switzerland nor purporting to act in the role of a local Swiss court. In the instant case there is military occupancy of the Marshall Islands, and this Commission is exercising the jurisdiction of a local court under the authority of the military occupant. In the Fornage case there was no instance of military occupancy, nor has defense counsel even cited any dicta with regard to the validity of jurisdiction based upon occupancy rights.

With regard to the Schooner case defense counsel states, and I quote, "evidently someone in the Judge Advocate General's Office did not realize that this case is in point with the facts of this present case. The Schooner Exchange vs McFaddon Case is exactly in point and no one can hold that there is any jurisdiction for this military commission to try the accused, Major Furuki after reading the Schooner Exchange vs McFaddon case."

It is not likely that either the Judge Advocate General or anyone familiar with international law would overlook the Schooner case for it is a leading case with regard to sovereignty and territorial jurisdiction. As a matter of fact, the Judge Advocate has read, and is very familiar with the case, and wishes to point out, that like the Fornage case on which the defense counsel has also relied so heavily, it is completely irrelevant, and the doctrines propounded therein are inapplicable to the instant case.

The Schooner case involved a civil action with regard to an armed vessel in the service of France which came into port for necessary repairs. The ship conducted herself in accordance with municipal and international law and the question presented was whether she could be libelled in the United States District court. In an atmosphere of international comity of sovereigns, United States Supreme Court determined that the libel on this vessel was to be dismissed. There was no assertion by the United States of sovereign rights or title to the vessel. Just as in the Fornage case, no question was presented to the court with regard to the rights of a military occupant to establish courts, nor the scope of jurisdiction of such courts. The language of the court cited by the defense counsel, like the decision of the court, is irrelevant to the issue of jurisdiction presented to this Commission.

The Judge Advocate has disposed of all the arguments of defense counsel, but with the permission of the Commission would like to deal with some remaining matters. It should be noted that the Commission is meeting in the Commander Marianas area, and that Jaluit Atoll, Marshall Islands, is a part of that area. If the Commission were not sitting in this area it might be contended that jurisdiction should be limited to offenses committed within the area in which the Commission is sitting. With regard to such argument, it would be necessary to point out to the Commission that with regard to war crimes trials, just as in piracy trials, the fundamental requirements of justice have not been defeated by hyper-technical construction of jurisdiction, and in such cases jurisdiction of the tribunal over offenses committed outside the "local" area in which offense was committed, has been sustained. In addition to such cases, the trial of Wolf Te (27 Howell's St. T. 615 (Dublin, 1798) and the T. E. Hogg case (G.O. 52 - Department of the Pacific 1865) illustrate other instances where trial by a military court outside the region of martial law or military government has been sustained. In the Hogg case, the accused during the period of the civil war were tried by Military Commission in San Francisco "a place quite outside the theatre of war" for the alleged offense of taking passage on a U. S. merchant vessel, at Panama

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James P. Kenny Lieut. USA

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(a foreign country) with the purpose of forcefully seizing it for the Southern Confederacy. The accused were sentenced to death, but subsequently this was commuted to imprisonment.

With regard to the instant case, the fact that Jaluit Atoll, Marshall Islands is within the military government area of Commander Marianas, obviates any objection to the jurisdiction of the commission on the contention that the offense was committed outside the area in which the Commission is sitting. The precept from Commander Marianas vests this jurisdiction in the Commission.

In view of the clear jurisdiction of the commission over the instant case, either either the concept of military occupation, or that of quasi-sovereignty, it is unnecessary for the judge advocate to refer to various other fundamental principles of law which sustain jurisdiction in this case. One fundamental doctrine, however, merits brief presentation to the commission. It is axiomatic that there can be no hiatus in the law. Since the Japanese courts are without jurisdiction and since local courts are without jurisdiction there remains authority in neither the Japanese government nor the Marshallese natives to establish courts with jurisdiction over the instant crime, and since the United States is and intends to remain in strategic occupancy of the Marshall Islands, either the United States through its military government possesses power to exercise jurisdiction over the offense and this offender, or there is created a hiatus in the law in that a crime has been committed but jurisdiction does not exist in any court to punish the offender.

Such a condition could not be tolerated in a vital system of effective international law.

To contend that the United States does not possess the authority to convene this court with jurisdiction over the subject offense and offender would be to contend that justice, as well as sovereignty, can be suspended in limbo, while the grow cold, witnesses die, evidence decays, interest lags, and the defendant either rots in prison awaiting trial or worse, is released upon society unpunished and unrepentant.

Justice is not blind nor can the defense seriously contend that justice can be so myopic that the fundamental necessities and realities of justice can be overlooked in the pursuit of specious and substance-negating technicalities. Justice is not impotent, and real or fancy technicalities cannot bind her. Justice was not impotent when piracy threatened the peace and security of the seas. All courts punished piracy regardless of previous restrictive doctrines of jurisdiction. All courts found that their legitimate jurisdiction extended to piracy committed on the high seas by any national on any ship, because the person guilty of such piracy has placed himself beyond the protection of any state. He is no longer a national but "hostis humani generis" and as such is justiciable by any state anywhere: (Grotius (1583-1645) De Jure Belli ac Pacis, vol. 2, cap. 20 Sec. 40. In re Pir Jure Gentium, (1934) A.C. 586, 589). The war criminal is not less justiciable. Crimes are more heinous, and his punishment must be as stern and as certain.

David Bolton,
Lieutenant, USN.

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James L. Kerry Lieut. USN

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PLEA TO JURISDICTION OF COMMISSION TO TRY MAJOR FURUKI DELIVERED BY
COMMANDER MARTIN E. CARLSON USNR AT GUAM, THURSDAY MARCH 6, 1947

In rebuttal to the reply which the judge advocate made to our plea to the jurisdiction of this Military Commission to try the accused for the alleged crime, we respectfully call the commission's attention to the definition of the term, "Jurisdiction of a Court" as found in Section 326 Naval Courts and Boards.

"The jurisdiction of a particular court is the legal power, right, or authority of such court to hear and determine cases legally referred to it and to judge sentences within prescribed limitations."

We did show by ruling cases at law the utter lack of jurisdiction of this Military Commission to try the accused. The judge advocate cite the case of Dithmar and Boldt as authority for jurisdiction in the present case. We say it is in no way authority for taking jurisdiction in this case because the case of Dithmar and Boldt is the case growing out of the machine gunning of the occupants of lifeboat from the steamer Llandoverly Castle, a ship Commissioned by the British government to carry wounded and sick Canadian soldiers home to Canada from the European theatre of war. On June 27, 1918 she was sunk by a torpedo from the German U-boat U-39, only 24 men survived.

Dithmar was the first officer of the watch and Boldt the second of the U-boat.

Was this case tried by a military commission of the United States. No! "Article 228 of the Treaty of Versailles of June 28, 1919, Germany agreed to hand over to the Allied and Associated Powers 'Persons accused of having committed an act in violation of the laws and customs of war,' for trial before military tribunals. It was afterwards agreed that the trial of accused persons should be before the Reichsgericht at Leipzig, and on May 7, 1920, a list of such persons was communicated to the German government. The prosecutions were instituted under the German Law of March 24, 1920, Reichsgesetzblatt, 1920, p.341 See British Part Paper, 1921 Cmd. 1450.

So the accused Dithmar and Boldt were tried in a German court. The Second Criminal senate of the Imperial Court of Justice, the Reichsgericht at Leipzig Germany at its public sitting July 16, 1921 found the accused guilty and sentenced them.

Certainly the judge advocate cannot seriously cite the Llandoverly Castle case as authority for this Military Commission to try Major Furuki for an alleged crime to have been committed on the Mandated island of Jaluit. Even if the sentence in that case was subject to criticism it is not legal grounds for giving this commission jurisdiction over a citizen of Japan for an alleged crime committed on sovereign Japanese territory.

The judge advocate disregards the law on jurisdiction and after a very lengthy discourse states that Japan never had sovereignty over any of the mandated islands and particularly not over Jaluit. The judge advocate asks us to disregard the law on jurisdiction and consider the facts.

We also accept that challenge. If ever a nation exercised sovereignty Japan did so over the Mandated Islands. Reports were sent on to the League of Nations regarding her mandate but no member of the League of Nations or the United States (which was not a member) was ever allowed on the Mandated islands after I believe the year 1930. It was about that time that Japan began to fortify those Mandated islands. Sovereignty? Who dared to question Japan in those days. The fact was that the Emperor of Japan was supreme in all the mandated islands. There was no question about it. In 1944 the civilian government of Jaluit was abolished and military law set up on Jaluit. So in 1945 Jaluit was ruled by the military.

Frederick Sherwood Dunn in his book the Protection of Nationals, on page 2, says: "The world happens at the moment to be organized for purposes of political control into sixty-odd independent geographical units called states or nations."

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James H. Kenny Lt. JG

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These nations are said to be "sovereign" by which is meant that they are presumably free to order their own affairs both internally and externally, and are not subordinate to any other political authority. For our purposes the most significant feature of this concept of sovereignty is the notion of territorial jurisdiction. The means that each nation exercises within its own geographical boundaries complete political control over everything that takes place within that territory; that it has the exclusive power to make and enforce the laws governing the relationship of all human beings in that territory. In the exercise of this power, each nation is presumably at liberty to adopt whatever form of government it chooses and to develop its own social, legal and economic systems.

Japan did all these things on Jaluit.

The Judge Advocate persists in interjecting into this case the charter provisions of the International Tribunal and the rulings of the Nuremberg trials. This has no bearing on this present case or are the charter provisions applicable to this Navy convened Military Commission. Such references are most prejudicial to the substantive rights of the accused in this case. The Judge Advocate would have the Commission believe that powers of this commission has the same powers as the International Tribunal. This is not true.

The judge advocate would also have the Commission believe that the procedure and the rulings made at the Nuremberg trials are accepted law. Let us hear what the Honorable Robert H. Jackson, Associate Justice of the United States Supreme Court, who was the Chief American prosecutor at the trial says about this. I quote from an article in the New York Times Saturday January 25, 1947.

"Robert H. Jackson, Associate Justice of the United States Supreme Court, declared in an address here yesterday that from the trial of the major Nazi leaders in Nuremberg may develop a system of international law that will establish the doctrine that wars of aggression are illegal and criminal."

You will note he says "may develop a system of international law."

We continue to quote:

"Justice Jackson who was chief American prosecutor at the trial, spoke at the annual meeting of New York State Bar Association.....He characterized the proceeding as an event of unsurpassed significance. "The organic act governing the trial rejected, and I hope permanently reversed, a trend in international law which declared all wars to be legal. It accepted instead, and I hope permanently established, the doctrine that wars of aggression are not merely illegal, but are criminal. It also rejected the idea that international law creates duties and obligations only upon States and followed the idea that it creates duties and liabilities for individuals who are in position to determine the policies of States....."

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James P. Henry *Sept. 15/47*

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you will again note he said "and I hope" "It accepted instead, and I hope permanently established, the doctrine that wars of aggression are not merely illegal but are criminal."

He again says, "I hope"

"It also rejected the idea that international law creates duties and obligations only upon States and followed the idea that it created duties and liabilities for individuals who are in position to determine the policies of States". "Duties and liabilities for individuals who are in a position to determine the policies of States." Can it be said that the accused in this case, Major Furuki, was in a position to determine the policies of Japan. The answer is emphatically "No." Major Furuki was only a subordinate officer on the very small atoll of Jaluit. He had to take orders from his superiors. Gentlemen of the Commission is there any doubt in your minds regarding the Nuremberg trial. That trial should not even be mentioned in this court.

The prosecution also base their argument on the fact that we are now occupying Jaluit and therefore have the right to try a Japanese citizen for an alleged crime committed on Jaluit in 1945 at which time Jaluit was under the absolute control of the armed forces of Japan.

We hold that neither United States law nor Japanese law permits the prosecution of a foreign subject for a crime violating individual rights of nationals if the crime was committed on foreign territory.

"We shall continue to rely on the law because we feel that Section 405 Naval Courts and Boards is correct. We Quote: "An objection on the ground of lack of jurisdiction involves a question as to the legal authority of the court, such as :
(c) That the accused is not subject to the court's jurisdiction.
(d) That the offense is not one cognizable by Naval Court Martial.

Even though the accused fail to make objection to the jurisdiction of a court if the court did for any reason lack jurisdiction, the defect is fatal and the findings and sentence of the court must be set aside. Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it."

It is not enough for the judge advocate to say the reason we have jurisdiction is because we have jurisdiction.

Respectfully,

MARTIN EMILIE CARLSON
Commander, U.S.N.R.

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James P. Henry, Lieut. J.S.M.

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REPLY OF THE JUDGE ADVOCATE TO THE FURTHER ARGUMENT BY THE DEFENSE RE JURISDICTION

delivered by

Lieutenant David Bolton, USN.

My response to defense counsel's further argument on jurisdiction will be very brief. Everything he has contended is fully disposed of in my reply delivered yesterday.

However, to clarify some rather apparent errors by defense counsel in interpretation of my reply, it will be necessary to briefly refer to their argument. Commander Carlson states that the Judge Advocate has cited the case of Dithmar and Boldt as authority for jurisdiction in the present case. Defense counsel is in error. The judge advocate cited the Dithmar and Boldt cases in answer to the erroneous argument by defense counsel that International Law cannot form the basis for the punishment of the individual wrongdoer. Commander Carlson himself argued that the prosecution must show by what authority the law of nations permits the trial of individuals and what punishment is provided for the violation of the laws and customs of war. The Dithmar and Boldt cases not only establish the application of the laws and customs of war in the punishment of the individual wrongdoer, but also clearly indicate that local tribunals apply international law, the law and customs of war in determining the criminality of an act.

Defense counsel has delivered a loquacious argument with regard to the nature of Japanese control in the mandated islands. He waxed eloquent when he said "Sovereignty? Who dared to question Japan in those days?"

Defense counsel was eloquent, but inaccurate. It is a matter of public record that in those days after 1935, numerous international jurists and legal authorities of the highest calibre not only questioned, but vigorously denied sovereignty of these islands by the Japanese Empire.

Commander Carlson also argues that, the control exercised by the Japanese over these islands subsequent to that period indicated sovereignty. This related argument, is no stronger than his previous one. The fact that a criminal possesses the temporary power, the physical force, to maintain control over stolen or appropriated property, does not signify that he thereby derives legal title. Similarly the contention that Japan could acquire legal title and sovereignty to the Mandated islands because she unlawfully and by force exercised control over them, is contrary to basic concepts of international justice. Since Japan's forceful isolation, fortification, occupation, and control of these islands was illegal, it could not confer any internationally legal title or sovereign rights, on the Japanese Empire.

It should particularly be noted that defense counsel neglects to mention the fact that since the period of surrender, Japan not only has no sovereignty over the ex-mandated islands, but that she has specifically and publicly renounced and ended all rights with regard to these islands. Therefore, it cannot be contended that Japan has territorial jurisdiction to establish courts to try offenses committed on these islands and it cannot be contended that the accused has the right to trial in a Japanese court.

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James P. Henry Lieut. USN

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The counsel for defense takes exception to the citation of various provisions of the charter of the International Military Tribunal. He contends that such citation is prejudicial to the rights of the accused. The provisions of the charter that have been referred to by the judge advocate, were cited for a very limited purpose. Time does not permit, nor does the importance of the contention merit, an exposition of the powers of this Commission as compared with the powers of the International Military Tribunal. In some aspects this Commission sitting as a local court has greater power than an International Military Tribunal. In other aspects it is conceivable that the powers be less. But to contend as defense counsel has that provisions of the charter "have no bearing" on this present case is a non-sequitor, and false.

The citation of such high authority as precedent and authority for the principles of law expressed in the charter is justifiable. Commander Carlson has argued that citation of this charter for this purpose is worthless. He implies that the charter, and the rulings and decisions of the Nuremberg trials are not law. Commander Carlson cannot seriously contend that the allied powers did not carefully deliberate, and employ their ablest international jurists for the preparation of the Charter for the International Military Tribunal. Nor can he contend that the Charter, or the rulings and decisions made by that International Military Tribunal composed of outstanding international jurists, does not require and justify the utmost confidence as the carefully considered opinion of the world's outstanding jurists and authorities on international law.

Counsel for the defense seeks to attack the dignity and validity of the proceedings of the International Military Tribunal by quoting from certain recent statements by Justice Jackson, particularly the statement that "from the trial of the Major Nazi leaders in Nuremberg may develop a system of international law that will establish the doctrine that wars of aggression are illegal and criminal". Counsel says that these Nuremberg trials have developed a system of international law, not in the sense of making new law, but in the sense of crystallizing existing international law, custom, and conscience into an effective system of criminal law. Counsel for defense seeks to stretch the meaning of the language of Justice Jackson beyond all recognition. Counsel neglects the fact that Justice Jackson is speaking of a system "that will establish the doctrine that wars of aggression are illegal and criminal". Counsel for defense seeks to imply that because Justice Jackson states that the Nuremberg trials "may develop a system of international law..", it follows that there is no international law and no power to punish the accused. The implication is false, and the reasoning confused. There is international law; the International Military Tribunals did punish the accused for their war crimes; and the proceedings of that tribunal are sound precedents in the field of international law.

The instant case is neither as complex nor as significant as the Nuremberg trials. We are not concerned with the doctrine of the illegality of aggressive wars, and therefore we are not concerned with the "duties and liabilities for individuals who are in a position to determine the policies of States". We are concerned as argued by defense counsel, with whether Major Furuki was in a position to determine the policies of Japan. With regard to the question of his guilt, it is not important whether he was a subordinate officer. It is completely irrelevant whether he was an officer at all. The question of guilt before this commission is a simple one. Did the accused murder the victims? If he killed these natives without legal justification his guilt is established regardless of whether he was a general, a major, a private, or a civilian.

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James L. Kenney *Lt. Col. USA*

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In closing I would like to respectfully refer the Commission to my reply yesterday, in which I discussed briefly two doctrines of international law under which jurisdiction of the commission in the instant case must be sustained. I referred to numerous authorities and precedents establishing the fact that for the purpose of establishing and maintaining peace, order and security for the people of the occupied area, the military occupant possesses not only the power, but also the duty to establish military courts in the area occupied. I also referred to the additional doctrine that where no other country has sovereignty over the area, the occupying country may exercise certain quasi-sovereign powers.

From these two distinct, but in no way conflicting principles of international law, it is apparent that this commission does have jurisdiction to try the accused for a crime committed in the occupied area. It is unnecessary for me to extend this reply to reference to other principles of international law which were briefly referred to in my earlier reply, as additional sources of authority for the exercise of jurisdiction in the instant case.

David Bolton,
Lieutenant, U. S. Navy.

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James P. Keary Lieut. USN

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OPENING STATEMENT OF THE JUDGE ADVOCATE IN THE CASE OF FURUKI, HIDESAKU, MAJOR,
IMPERIAL JAPANESE ARMY. DELIVERED BY LIEUTENANT DAVID BOLTON, UNITED STATES NAVY.

It is not the purpose of the judge advocate to enter into a lengthy opening statement with regard to the instant case. The case is simple, and the facts relatively clear. The judge advocate intends to establish that in a series of five separate incidents occurring in the period from approximately 23 May 1945 to 10 August 1945, the accused Major Furuki killed 13 Marshallese natives. Those killings were done without legal justification and without legal excuse. The technical requirements of both charges will be dealt with more fully in our closing argument. It should merely be noted here, that under Charge I, the accused is charged with murder, and the judge advocate will establish that the killings of the natives was done, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause. Similarly under Charge II these same killings are set forth in appropriate specifications as acts done in violation of the Laws and Customs of War. Under this charge the Judge Advocate will seek to prove that Major Furuki, wilfully, unlawfully, and without previous trial executed these natives for alleged acts as spies.

The fact that Charges I and II, arise out of the same acts and incidents does not in any manner render the Charges alternative or conflicting. The same acts give rise to several distinct crimes, and conviction can properly be had for violation of all crimes so violated. As illustrative of this basic rule of law, I need merely cite the language of Court Martial Order No. 11, 1930, page 5, which states "Recent court-martial cases published in Court Martial Orders indicate the fact that no definite precedent has been established which prohibits conviction on one or more charges merely because they appear to have been based on the same act or omission."

The five incidents which form the basis of the charges against the accused Major Furuki, are very similar, despite the fact that they occurred on different dates and different victims were involved. In each instance the Judge Advocate will seek to establish that the accused Major Furuki, proceeded with guards, to take the native victims to a certain coconut grove on Aineman Island, Jaluit Atoll, where he left the guards on the roadway to keep spectators and passerbys away, while he proceeded to take the native victims into the coconut grove. Major Furuki, then shot the natives, and called the guards in to assist in their burial.

The native guards involved in the incident of the first specification under Charges I and II, are believed to be dead. The guards involved in the incidents set forth in specifications 2, 3, 4, and 5 of Charges I and II, are available and will be called as witnesses by the judge advocate. Other witnesses for the judge advocate will testify as to admissions and confession by the accused. This evidence will establish the commission by the accused of all the offenses charged in specifications 1 through 5 of Charges I and II.

This in brief is the substance of the Judge Advocates cases.

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James P. Kenny Lieut. USN

DAVID BOLTON,
Lieutenant, USN,
Judge Advocate.

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Annex (for your information)

Ordinance Treating of the South Sea
Islands' Court Affairs
(The Imperial Ordinance No. 26)

Jan. 27, 1923

Article 1.

The cases relating to civil, criminal and non-contentious matters shall be tried in accordance with the following laws except as specially provided in other laws:

1. The Criminal Code.
2. The Code of Criminal Procedure
- (others omitted).

Additional Rule

This Ordinance shall come into force as from March 1, 1923.

(others omitted).

Articles 199 and 203 of the Criminal Code are enforced since March 1, 1923, in the South Sea Islands.

I hereby certify the above to be correct.

/s/ T. Sato
Tosaka Sato,
Chief of the Criminal Affairs
Bureau
Ministry of Justice
Imperial Japanese Government

Dated, December 6, 1944.

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James P. Kenny Capt. USN

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CRIMINAL CODE

Paragraph 26, Crime of Murder.

Article 199. 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.

Article 203. Attempted crimes of Article 199, Article 200, and the preceding article shall be punished.

I certify the above to be correct.

6 December 1946.

**Chief of the Criminal Affairs Bureau
Ministry of Justice
Imperial Japanese Government.**

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

**EUGENE E. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.**

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James A. Kenny Lieut. USN

0508

Carlson
Objection to Confession
(1)

ARGUMENT IN OBJECTION TO THE
ADMISSION OF THE STATEMENT OF
MAJOR FURUKI, HIDEAKU, IJA

STATEMENT IN EVIDENCE DELIVERED BY

COMMANDER MARTIN E. CARLSON, USNR

The accused, Major Furuki, objects to this document being offered into evidence. If it is offered as a confession we insist that the judge advocate affirmatively show that it was entirely voluntary on the part of the accused.

Section 174, Naval Courts and Boards, requires that it "be affirmatively shown that the confession was entirely voluntary on the part of the accused." Further on, in the same section, it is stated: "In some cases before courts-martial it appears that the accused has signed a paper confessing his guilt, stating in the paper that he confesses freely without hope of reward or fear of punishment, etc. Such statements are not conclusive that the confession was voluntary," and I repeat "such statements are not conclusive that the confession was voluntary." In accordance with section 734 of Naval Courts and Boards: "A person whose conduct is the subject of investigation is a defendant. . . . Any person, not a complainant or defendant, who has an interest in the subject matter of the inquiry may, within the discretion of the convening authority, be designed in the precept as an interested party."

Both the fifth and sixth amendments to the Constitution of the United States guarantees to all persons certain inalienable rights. The Sixth Amendment reads: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

In this particular case when this document was signed this accused had already been in custody for almost a year. The right to counsel was never offered to this accused until after the charges and specifications in the present case had been served upon him. The Fifth Amendment provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless

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James P. Kenney Lieut. USN

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Carlson
Objection to Confession
(ii)

on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

All these things have been set out in Section 734, Naval Courts and Boards, and the two officers before whom this was subscribed to on the third of December, 1946, officers of the United States naval service are charged with knowledge and should have knowledge both of the Fifth and Sixth Amendments of the Constitution of the United States and also of Section 734, Naval Courts and Boards. Those safeguards that are guaranteed by the Constitution and are set forth in Section 734, which is quoted herewith is applicable in this particular case because the rights of a defendant were never accorded Major Furuki.

"If the rights of a defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied the rights, will be held of no evidential effect. This is one of the most important rules to be observed." Inasmuch as this accused, Major Furuki, was not accorded the rights he was entitled to under the Constitution and the rights set forth in Section 734, Naval Courts and Boards, we object to this document being offered in evidence at this time.

Section 235, Naval Courts and Boards states: "The Constitution provides that no person shall be compelled to give any evidence against himself.

We maintain that Appendix D-14, Naval Courts and Boards, in no way permits or authorizes the abrogation of the fundamental rights guaranteed by the Constitution of the United States.

We further hold that SCAP rules cannot vitiate the Fifth Amendment or the Sixth Amendment of the Constitution of the United States of America.

The Geneva Prisoners of War Convention of 1929, Article 61 states: "No prisoner may be obliged to admit himself guilty of the act of which he is accused."

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James P. Keary *Sept. 0522*

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Carlson
Objection to Confession
(111)

The accused, Major Furuki, was never told he did not have to sign a confession or a statement admitting his guilt. He was never accorded the rights of a defendant or any of the rights guaranteed by the Constitution.

To admit this document into evidence will be most prejudicial to the rights of the accused. It will result in the accused being made to testify against himself. Because of the admission of this statement into evidence, the accused will be deprived of all Constitutional guarantees.

We object to this document being admitted into evidence.

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Defense Counsel.

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James P. Kerry *Lt. USN*

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OPENING STATEMENT FOR THE DEFENSE

Delivered by

COMMANDER MARTIN E. CARLSON, U. S. NAVAL RESERVE

COUNSEL FOR THE ACCUSED

The Defense will prove the accused innocent of the charge of murder and innocent of the charge of violation of the laws and customs of war.

We shall show by competent witnesses the war conditions on Jaluit particularly from about April to August 10, 1945. Witnesses will verify what has already been told on cross examination of the prosecution's witnesses. They will describe in detail how American planes bombed Jaluit continuously, not only with bombs, but with propaganda pamphlets and by loud speakers. Combatant ships such as destroyers and amphibious craft, the LCI's and such other craft came in so close to the island that everyone on Jaluit could hear the propaganda put out over the ship's public address system. Not only were the natives, but also the other Military personnel were urged to revolt, to assault and kill the guard and the Japanese officers, to destroy Japanese Military installations, and to sabotage the Japanese war effort on Jaluit.

The American ships sent natives ashore to aid and encourage the beleaguered peoples of Jaluit to revolt. Destroyers and particularly landing craft kidnapped some six hundred natives from the Jaluit Atoll.

We shall prove the fact that there was a proclamation issued by the Commanding Officer, Admiral Masuda, to all personnel on Jaluit, military, gunnery, and civilians, and a proclamation issued by the Civilian Government of Jaluit, to the effect that all functions of civilian government were taken over by the military commander and that all personnel particularly the civilians were under the command and subject to the orders of the Military Commander, Admiral Masuda.

We shall further show that because of American propaganda and the kidnapping tactics that many of the natives did commit crimes. Even after a warning proclamation issued by Admiral Masuda which he stated that since punishment would be inflicted upon all personnel who committed crimes, sabotaged the Japanese war effort, and thereby aided the Americans, many of the natives did commit crimes which were punishable by death.

Such incidents, committed in the face of the enemy, were thoroughly investigated by competent and qualified officers. Written reports were made to the Commanding Officer.

The Command responsibility of Admiral Masuda will be shown. His authority to order investigations and his authority to hold the trials which were held will be proved. We shall prove that the thirteen accused were afforded trial, that they were found guilty of crimes and sentenced accordingly. We shall show that trials held were conducted in the manner provided for Japanese Naval Courts Martial so far as the exigencies of the service permitted.

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James P. Kenny *Lieut. USN*

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We hold that the accused, Major Furuki, did not commit murder as he is charged. We also hold that he is not guilty of killing Lesohr, Kohri, Kozina, one whose name is unknown, Arden, Makai, Tiagrik, Chuta, Chonmehle, Mandala, Laperia, Mejkane, and Melein in violation of the laws and customs of war.

Respectfully,

Martin E. Carlson, Commander, U. S. N. R.

We hold that the accused, Major Furuki, did not commit murder as he is charged. We also hold that he is not guilty of killing Lesohr, Kohri, Kozina, one whose name is unknown, Arden, Makai, Tiagrik, Chuta, Chonmehle, Mandala, Laperia, Mejkane, and Melein in violation of the laws and customs of war.

Respectfully,

Martin E. Carlson, Commander, U. S. N. R.

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James P. Kennedy Lieut. USN

05 13

STATEMENT OF THE ACCUSED, FURUKI, HIDESAKU, FORMER CAPTAIN, IMPERIAL JAPANESE
ARMY

Original statement in Japanese appended to the original record.
Certified translation appended herewith marked "BB."

"AA"

05 14

STATEMENT

by FURUKI, Hidesaku
Major, IJA,
Ex-Jaluit Defense Garrison

1. By the order of Rear Admiral AHITAMA, the commanding officer of the 6th Naval Base Force, I was detached from the command of the 64th Naval Guard Unit which was on Wotje, was transferred to Jaluit, and then came under the command of Rear Admiral MASUDA, the commanding officer of the 62nd Naval Guard Unit. At that time, I was attached to the 2nd Battalion of the 1st South Seas Detachment, and was a battalion commander. But only a part of the Battalion, 200 men arrived at Jaluit. Together with the previously detached force which was under command of Captain INOUE and Captain KANEHATSU, the total members of my unit amounted to only about 700 men. About 200 men still remained on Wotje, about 300 on Maloelap, and 150 men died at Kwajalein on the way to the destination.

2. After the fall of the 6th Naval Base Force, the 62nd Garrison came under the direct command of the Commander in Chief of the 4th Fleet. But on this remote, isolated island of Jaluit, Rear Admiral MASUDA had in reality the absolute authority over all Army and Navy personnel, Gunsokus and Natives.

The condition of Jaluit, after the fall of Kwajalein in February 1944, may be compared to a seriously sick man who is suffering from starvation, from deprivation of his food by the enemy, and from fatal wounds on his hands, legs, eyes, and ears, but who is trying to seek food in order to live by shaking off the hands of the enemy which are torturing him day and night in order to kill him. The Americans, besides attacking the military power and installations of Jaluit which was isolated under their absolute command of sea and air, tried to destroy our self supporting system in order to make us starve and also to attack us by propaganda. They carried out these three methods most skillfully, systematically, intentionally, and continuously. Men began to die by starvation in October 1944 and such cases gradually increased. If there had been a slight mistake or delay in dealing with this situation, it was abundantly clear that Jaluit would instantly be wiped out by starvation. In the last half of 1944, there was established in succession under Rear Admiral MASUDA, the commanding officer of the Defense Garrison such agencies as the Self Supporting Committee, Special Police Squad, Transportation Section, Labor Administering Official, Defense Section, Battle Equipment Committee, Counter-propaganda Committee, etc. The establishment of these agencies was the result of struggles and endeavors on Jaluit in order to survive. Every person on Jaluit obeyed the order of Rear Admiral MASUDA: "In order that every person may live, you must all cooperate under my command regardless of whether you are Army or Navy personnel, Japanese or Native. No one is allowed to disobey my will". Every person continued his struggle to live under the firm command of Rear Admiral MASUDA.

3. In the following paragraphs, I shall relate the conditions at that time in more detailed manner.

In February 1944, Kwajalein fell, and Jaluit lost its base. Transportation to the other surrounding Islands and the rear was entirely cut off, and every man was determined to fight to the bitter end on this isolated island.

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James R. Henry Lieut. OSK

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After occupying Kwajalein, Majuro, Eniwetok, etc., in succession, the bombings and bombardments by American forces from air and sea became ever severe each day. Forty to fifty planes came several times a day regardless of the hour. Because of this attack, our food, armament and ammunition became scarce, and our buildings and establishments were completely destroyed. Communication to the 4th Fleet became very difficult.

Especially, after the fall of Saipan in July 1944, Jaluit became completely isolated, and any anticipated supply vanished. At this critical point, the shortage of food, together with lack of armament and ammunition meant the collapse of the defense of Jaluit.

It was at this time that Rear Admiral WASUDA established plans for self-support, and devised a scheme for defense in order to protect the plan. With a firm determination, he put it into practice. Cultivation of farming land, gathering of weeds, and other measures were carried out. But because of the infertile sandy soil and the systematic bombing of the farm land by the American planes, agricultural production could not possibly succeed.

4. Our only hopes were coconut toddy and copra gathered by the natives. The natives earnestly cooperated with the Japanese forces in this work. Rear Admiral WASUDA was always saying to the military personnel and gunsokus, "Natives are the benefactor of the Japanese forces so we must treat them well." However, no matter how hard the natives and Japanese military men might work, there was a limit in the amount of the production. It was impossible to gather enough food for 4000 military men, gunsokus and natives. Our ration was limited to one coconut and one sho (T.W. one sho equals to 3.812 pints) of coconut toddy a day. This was far from sufficient to maintain health. Moreover, houses were bombed over and over again and housing materials were completely destroyed so that even the poorest shelter from rain and dew could not be found. Our health conditions declined day by day. Any edible things such as leaves, grasses, and animals, including lizards were sought and eaten up. Malnutrition and disease were prevalent so that there was not a single man who was in good health. Even the most healthy person had to rest once while walking one hundred yards. But, on the other hand, because of the scarcity of men, our work inversely became greater so that each man had to undertake four or five duties.

Furthermore, boats were destroyed one after another by bombing, and the transportation of food from the outlying islands became so difficult that all members were just on the point of starvation and in a living hell. Crimes, especially food theft, occurred one after another. Rear Admiral WASUDA tried to check it by severe punishment and reinforcement of guard, but it was impossible to stop it.

5. The words "despair" and "misery" would be too weak and vague to express the conditions on Jaluit. Jaluit was filled with a savage and unquiet atmosphere. The dark dreadful shadow of death haunted Jaluit. The reason was that the moral, thinking power of even the officers declined and became distorted so that it really offered a problem to be deplored and dreaded.

I exerted every effort to calm down this savage and unquiet feeling which was then haunting Jaluit, and to give people hope and light. Finally, I reached the conclusion that it was only faith and belief that could save the situation. First of all, I endeavored to make my subordinates seek faith

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James P. Kenny Lt. Col. USN

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and belief from every possible aspect. But, after a long struggle, I had to find out that what they were seeking for most was neither faith nor belief, but the very food they were to eat for the day.

6. In September 1944 the bases of the Marshalls were attacked by the general starvation. Intelligence came in that in another island about 200 men died of starvation every month. And since October, I had received reports that every day one of my subordinates on Wotje and Maloelap starved to death. Every night I would dream of my subordinates dying while vainly seeking for food and calling my name. I could only pray for them. I was really grief stricken to find myself 300 kilometers away from them and without measures to save them. Now I realized that it was my mission from heaven to exert all my power in checking the scourge of starvation among military personnel, gunsokus and natives, my subordinates on Jaluit.

But my abdominal troubles became worse owing to eating spoiled food in the food shortage, and also exhausting fatigue tortured me in my physical and mental condition. Whenever I saw my completely exhausted body and mind, and whenever I saw ghost-like figures of people squirming around the ruins of Jaluit seeking for food, I thought not only once but often that to live on Jaluit was far more painful than to die. Now I desired the coming of the day when we could fight to the last man as gloriously as in the battles of Kwajalein and Tarawa.

It was the dauntless attitude of Rear Admiral MASUDA that gave us hope, light, and courage at this moment. I was spurred every day and night by the firm faith and resolution of Admiral MASUDA: "There shall be no man who dies of starvation from now on". By obeying the order of Rear Admiral MASUDA, I gained the courage to discharge my duty in which I had to exert myself for the sake of all the members on Jaluit.

7. Rear Admiral MASUDA used to repeat the following words several times every day: "It is beyond my power to do anything about the military personnel, gunsokus, and natives, who are killed in action by the enemy's bullet. But I can not forbear to have them die from starvation. If I rest for an instant or neglect my duties and delay or make an error in coping with the situation, starvation will attack Jaluit as it has done to the other bases. From this point, we must not let even a single military man, gunsoku or native desert". As he had stated the above, Rear Admiral MASUDA made strenuous efforts until the end of the war. Not to mention drawing up orders for the defense garrison but he studied and gave approval to even the smaller matters such as the disposition of military men and gunsokus, what clothes the guard should wear, even the usage of a sheet of galvanized iron.

When the war ended, approximately half of the men (about 2000) on the other bases of the Marshalls were dead from starvation. But on Jaluit this was limited to only 40 to 50 victims. This really was the result of the strenuous efforts of Rear Admiral MASUDA. At that time, Rear Admiral MASUDA was suffering in bed with high fever of 104 degrees, yet he requested various reports on the conditions of operations and self support. When I recall his tragic, heroic attitude, I do no other but shed tears.

It was the most fortunate thing for the military men and natives to have

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James P. Hanny *Lead. USN*

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had rear Admiral WASUDA as the commanding officer of the Jaluit Defense Garrison. All the military personnel, gunsokus, and natives had infinite confidence in and showed obedience to his resolute will and love which was enhanced by his deep religious feeling. Everyone was well aware how he loved the natives and how the natives respected him. Therefore, every action on Jaluit was done according to his will and order.

8. In such miserable conditions, the most unhappy thing for the Japanese forces was the desertion of the natives in accordance with the American "kidnapping" tactics of natives, especially their group desertion. I will cite the main cases of the desertion:

In the beginning of May 1945, about 600 natives from Medjai, Elizabeth MEJURIKU and Ai island deserted.

In July 30 from Jaluit, 150 from ai and 300 from Pingelap, Elizabeth NENGE, OOA and Jaluit,etc.

Besides these cases, constantly one or several natives deserted. These cases broke out when in arch 1945, eight natives from Hille sneaked in under the direction of the US Forces to propagandize desertion.

9. Rear Admiral WASUDA was deeply concerned over the desertion of the natives because it not only completely destroyed the defense of the island but also resulted in starvation for all the men on the island. He drew up many important counter measures, and especially on 6 May when the first incident of kidnapping occurred, he made the following proclamation:

"Natives, you are all subjects of the Japanese empire, so that you must cooperate with the Japanese forces. As long as you remain on this island, your lives and property shall be protected. But if you try to desert or give benefit to the enemy, you shall be severely punished."

At that time we had about 1300 Army and Navy men, and about 700 gunsokus. A considerable part of them was suffering from wounds and illness. Since the beginning of 1945, we had had only three 24mm machine guns and 10,000 rounds of ammunition as anti-aircraft weapons. Natives were the motive power of the life of the Japanese troops. Out of 2000 natives, 600 adult men and also every young and old man and woman were mobilized. They, together with 400 military men and gunsokus, took charge of food production. In such circumstances, it is very clear that the desertion of the natives would have stopped production and transportation of food, caused starvation of all members, informed the enemy of our distress and brought forth our defeat.

10. However, conditions grew worse and worse until unhappy events happened. That is:

- 1) The case of Echiharu, Leesohr, Kohri, Kosima, Arden, Wakui, Tiagrik and another native unknown who attempted to kill Petty Officer OKAWOTO Gunsoku MURAKA, plunder the boats, and desert on 13 May 1945.

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James A. Kenny *Leah CSK*

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- 2) The case of Chuta and Chonshole who attempted to kill the guard, steal military goods, and desert in the beginning of June 1945.
- 3) The case of Mandala and Laperia who attempted to kill the guard, steal military goods, and desert in the middle of July 1945.
- 4) The case of Melein and Wejkane who attempted to spy, kill the guard, steal military goods, and desert in the middle of July 1945.
- 5) There were also such cases as murder, attempted murder, stealing of arms, ships, and other military goods, desertion and spying, etc.

11. It was a very sorrowful thing that among our loving natives who cooperated well with the Japanese forces, some natives committed crimes and we had to punish them.

I think you have already heard from the investigators of these cases what these native criminals had done, what laws they had violated and how they had been punished. Rear Admiral MASUDA, with an attitude of utmost care and in the fairest way possible at that time, tried these natives.

12. In peace time, administrative and judicial affairs on Jaluit were directed by the South Seas Government and the local Court at Palau. But since February 1944, after the Central Pacific Ocean became a battlefield, the South Seas Governor came under the command of the Commander in Chief of Central Pacific Area by the direction of General Headquarters. The administrative and judicial authority of the South Seas Governor towards the natives was entirely invested in the Commander in Chief of the Central Pacific Area. The commanding officer of each base was ordered to have judicial and administrative authority over his responsible area.

Toward March 1944, the South Seas Governor dispatched the following order to the branch Governor of Jaluit Atoll:

"My authority over jurisdiction administration and all other affairs has been taken over by the Commander in Chief of the Central Pacific Area. Therefore, every branch Governor shall come under the command of the commanding officer of the district concerning the above matters."

Toward March 1944, there was a despatch from the Commander in Chief of the 4th Fleet to the commanding officer of the 62nd Garrison:

"The highest senior commanding officer of each base shall hereafter command all units and civilian governments of his area."

According to the above despatch, Rear Admiral MASUDA, commanding officer of the Jaluit Defense Garrison, gave the following orders:

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James P. Henry Lieut. USN

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"By the order of the 4th Fleet, I command all units, officials, civilians and natives on Jaluit from now on."

Jaluit branch Governor ordered as follows:

"By the order of the South Seas Governor, all officials, civilians and natives shall come under the command of the commanding officer of the Jaluit Defense Garrison."

At that time, Jaluit was a terrible battlefield. It was more serious than a place where martial law was enforced. Therefore, full governing authority was turned over to the highest commanding officer of the military forces. Thus, Rear Admiral MASUDA was the highest administrative and judicial authority as the highest commanding officer of the area.

13. Then Rear Admiral MASUDA, before dealing with the above mentioned case, appointed:

Lieutenant (junior grade) SAKUDA, Second Lieutenant KADOTA, Second Lieutenant IEKI, and Second Lieutenant MORIKAWA as investigators.

Me (Major FURUKI) as the Judge Advocate, and

Lieutenant Commander SHINTONE, Captain INOUE and himself (MASUDA) as judges.

At that time, the enemy's planes continued day and night bombing and strafing in the sky over Jaluit, and, on the outlying islands, our troops were firing against the enemy's ships which tried to kidnap natives. Because of these circumstances, all members at Enidj and the other outlying islands had to be in their battle stations. Rear Admiral MASUDA continued his restless efforts in commanding battle operations against the enemy's aircraft and ships, in reframing the self-support system after the desertion of natives in order to produce food for the day and in changing the positions and duties of the Defense Section after reframing self-support system. He said, "We are now in the face of Jaluit's most serious crisis. If we lose this, 'native kidnapping battle' we shall soon be attacked by starvation as on the other bases," and encouraged his men. Officers and soldiers, according to their assigned duties, were in their battle positions. I did my best as my ability and physical strength warranted as the chief of the Defense Section and as the chief of the Armament Committee. I exerted myself in discharging my duty, wishing that I could have been two people. Any man could not entirely be at ease or think calmly. It was also impossible to assemble many men at the same time in the same place.

In such a battle condition, it was quite impossible to hold a regular type of trial. Informal as it might be, examination and consultation under a special procedure was held by the above said members. Rear Admiral MASUDA ordered that we must try and judge as carefully and fairly as possible, so that the investigators, in their investigations, spent many days and much effort with the utmost carefulness and even at a risk. When investigators reported the results of their investigations, MASUDA listened to their reports in my presence. After the investigations were completed and the reports brought forward, MASUDA went with me to the place where the criminals were

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James P. Henry Lieut. USN

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confined and made careful investigations. After he was convinced of the corpus delicti by his investigation, he assembled SHINTOME, INOUE, and me at his office and the final trial was held. Rear Admiral stated first that he acknowledged the corpus delicti, ordered me to state my opinion and I did so. In each case, SHINTOME and INOUE delivered their statements. After listening to the statements of all the members, Rear Admiral considered the case for a few days, then again assembled us, announced his judgment and made a judgment paper. After that, he went with me to the place where the criminals were confined and announced the judgment directly to them.

This judgment was, of course, different in some parts from my opinion, but I could not say anything about this judgment. After the judgment, those who were adjudged not guilty were released and those who were sentenced to hard labor were put in servitude. I executed those who were sentenced to death by the order of Rear Admiral MASUDA, as was written on my statement presented to American legal officers. Concerning the trial and execution, I have a belief which has never changed since that time. I commanded the natives with love and faith, and I cannot express what agony I felt when I had to execute these beloved natives.

But the judgment of Rear Admiral MASUDA, who, in order to prevent the annihilation of the Japanese forces and in order to maintain the lives of all the natives, military men and gunzokus, sentenced according to the Japanese laws the natives who had committed offenses of treason against the Japanese Empire, was not a mistake. Though the procedure was a special type, I believe it was the fairest trial possible under the circumstances at that time.

As to the execution, the Rear Admiral ordered me to do it, and I could only obey it as an executioner. I faithfully carried out the duty as a Japanese official according to the law. This is my belief and I cannot deny I carried out a legal order before man and God. I received a legal order and carried it out. If I am to be punished it must be for carrying out orders not because I committed murder.

14. At the conference of the district commanders in January 1945, I addressed them concerning the method of commanding of the district commanders:

"You must not use power or flattery in commanding others. It is love and faith that moves the human heart. If you command natives with love and faith, they are sure to obey you willingly."

After the termination of the war in August 1945, I stated my opinion to Rear Admiral MASUDA at the conference of senior officers of Jaluit as follows:

"It is the most sorrowful thing that natives become foreigners after the American occupation of Jaluit. Natives cooperated so well with the Japanese forces during the war that we could sustain our lives with but few who starved. Those who starved were very numerous in the other bases. All members of the Jaluit Defense Garrison will never forget it. I believe that we must be thankful to the natives and wish for their happiness. I hope we shall take concrete measures

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James M. Kanny Lieut. ASK

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for them." Rear Admiral MANUDA agreed with my opinion and did several things for them.

It is my belief that men ought to be united with one another with love and faith and this is called humanity. I am convinced that God will recognize that all my deeds at Jaluit both in official and private matters did not violate my belief. My love and affection toward the natives and my desire for their happiness today is not at all different from that when I was on Jaluit. I shall never forget my thankfulness for the great efforts and contributions of the Jaluit natives toward the Japanese forces.

15. Lastly, I would like to tell about the condition of my family. I left my wife and a child of three months at Toyohashi and went to the front five years ago. As I have never heard of them for these three years, I cannot know how they are getting on. Though they might have taken refuge from air raids of Toyohashi, they have no money nor relatives. I feel as if my heart were breaking when I imagine that they are suffering from starvation, being at the mercy of cold miserable reality of life.

Your Honor, the President, I beg your kind consideration concerning what I have just mentioned.

FURUKI, Hidesaku
Ex-Major, IJA.

I certify the above, consisting of eight (8) typewritten pages, to be a true and complete translation of the original statement to the best of my ability.

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

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James P. Henry

"(S)"

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