OPENING ARGUMENT FOR THE PROSECUTION

delivered by

LIEUTENANT JAMES P. KENNY, USN.

If it please the commission:

The accused in Charge I is charged with the murder of thirteen Marshallese natives. Murder is defined as "the unlawful killing of a human being with malice aforethough without justifiable cause." Before conviction on any criminal charge, the prosecution must prove (1) the corpus delicti, (2) the corpus delicti was produced by a criminal agency, and (3) that the accused did the criminal act or set in motion the criminal agency.

Corpus delicti means "the body of the offense" or as has been more simply stated, the fact that the crime has been committed. That the corpus delicti has been established in this case is very evident. Wharton's Criminal Law, section 347, states that in order to establish the corpus delicti "on a charge of homicide, it is necessary to prove that the person alleged in the indictment to have been killed is, first actually dead, and second, that his death was caused or accomplished by violence or the direct criminal agency of some other human being." Both of these elements have been proved by the prosecution by the testimony of the Japanese guards who accompanied the accused and the victims to the site of the execution, heard the shots, and assisted in the burial of the bodies. Further verification is contained in the signed confession of the accused which is in evidence and the testimony of various defense witnesses, including the accused.

The second element of necessary proof was to show that the corpus delicti was produced by a criminal agency. On this point we have the testimony of the guards that they heard the gun shots and observed blood pouring from the heads of the victims shortly afterwards. We have the unrefuted confession of the accused to the effect that he shot the thirteen native victims.

The third and final element to be proved by the prosecution before a conviction can be had was that "the accused did the criminal act or set in motion the criminal agency." That the accused did the criminal act has been proven by both prosecution and defense witnesses and admitted by the accused in open court.

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

"CC (1)"

Konny
A4(ti)

The allegations in the various specifications as to the time and place of these killings has been proven by the testimony of the Japanese guards and the confession of the accused.

The usual technical terms of common law pleading of homicide are used in the specifications under both Charge I and Charge II. To allege that these killings were done 'wilfully, feloniously, with premeditation and malice aforethough' is merely to state that act of the accused was intentional. If the accused intended to kill these natives then he is guilty of the conduct implied in these legalistic terms. That the accused intended to kill the thirteen natives is apparent and in fact, the evidence shows that he, himself, made a farewell speech to the natives informing them of his intention to execute them.

The identity of the accused and his victims as alleged in the charges and specifications has been proved by ample evidence which is uncontradicted.

We now come to the only open question in this case and that is whether or not these killings were done "without justifiable cause" as alleged by the prosecution. Prosecution witnesses have testified that there was no trial and that the natives were executed after only an investigation and upon a review of the report that resulted from that investigation. The defense witnesses have admitted that there was no regular trial but have attempted to justify the execution on the basis of a 'special procedure'. Since this alleged special procedure consisted merely of the reading of an investigation report, the defense in turn proceeded to attempt to show that these investigations were fair and thorough. In rebuttal, the prosecution has shown that the only thoroughness was in the beatings administered to the native prisoners. The prosecution produced five of the natives who were taken prisoners at the same time and in connection with the same incidents as the victims mentioned in Specifications 3 and 5 of Charges I and II. From these natives, this commission was able to hear a first hand account of what actually took place on Imrodj and Aineman Islands. We learned about the novel lie dector--a pronged wire inserted into the nose--used by defense witness Morikawa. We heard of the use of baseball bats and iron rods on these natives during their questioning, the mistreatment of the victims Chuta and Chonmohle, and the woman Mejkane. It was evidence secured in this fashion that was contained in the reports that we are told were considered in the so called 'special procedure.'

The defense that has been offered to the charge of murder can

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

best be summarized as consisting of the following arguments: (1) We know that these natives were not given the trial to which they were entitled but we would like you to believe that a 'special procedure' was held for them; (2) If we fail to convince you that a 'special procedure' was held, then we want you to excuse Furuki for these murders because he was only acting on superior orders of Masuda; (3) If you neither believe that there was a special procedure nor believe that superior orders are a good defense, then we would like you to excuse these wrongs because there was a war going on and conditions being what they were on Jaluit, it was not unnatural for these murders to occur.

Let us first analyze this so called special procedure. We have heard some fantastic stories about three judges and a judge advocate getting together to decide the fate of the native victims. However, the record shows that the so called judges did not judge and the so called judge advocate only read an investigation report. One of the so called judges--Lieutenant Commander Shintome--called by the prosecution in rebuttal admitted that he never had been told he was a judge and in fact had not so acted. This gives the lie to the testimony of defense witnesses that Admiral Masuda had informed each one of his part in the special procedure and told Shintome that he was to be a judge. Unfortunately, for the defense, this witness was in Japan when this fantastic story about a 'special procedure' was dreamed up and could not be given the word as to the part he was to play in the act. The prosecution has always been convinced that there never was any special procedure and for that reason produced Shintome so that this commission might from his testimony realize that Inoue and Furuki lied about this matter.

The defense of superior orders will be discussed by Mr. Bolton in his closing argument. Suffice for me to say at this time that such a defense can in no way excuse culpability for the crime. This was so held in the famous American case of United States v. Jones, 3 Ward C. C. 209, where the court said, "We do not mean to go further than to say that the participation of the inferior officer in an act which he knows, or ought to know, to be illegal, will not be excused by the order of his superior." Gentlemen, Furuki is not one who ought to have known, but one who actually knew that in carrying out the orders of Admiral Masuda he was participating in an illegal act.

The last straw defense, as I have stated, is that these murders should be excused because there was a war going on. This, of course, is no legal justification for murder. But let us not forget who started this war. After hearing defense testimony about the merciless bombings of Jaluit by the American forces and the 'kidnaping' of natives, one might be inclined to forget that it was the Japanese who attacked Pearl Harbor on December 7, 1941. It was after that incident that the Japanese forces moved in on the peaceful inhabitants

CERTIFIED TO BE A TRUE COPY
James R. Keany Lieut. USN

of the Marshall Islands. Then, when the tide of war turned and the attacker became the def nder, these Japanese would like to charge the rules for their convenience. The defense in this case could well be likened to a housebreaker who after having broken into a home and suddenly finds the place surrounded by the police, decides that it would be well to suspend all laws temporarily so that he might murder the occupants and make his surroundings more comfortable.

There is an old saying that "dead men tell no tales." How the defense has made use of that truism. The entire defense has come out of the mouth of the dead Masuda supplemented by alleged communications which were conveniently destroyed by the Japanese just prior to their surrender to the American forces. Ordinarily such testimony would not be admissible in a court of law. However, under the wide latitude allowed by the special rules under which this commission functions it has been received in evidence. The fact that it has been admitted into evidence does not make it any more susceptible to belief. Particularly when the party relating the hearsay is the torturer Morikawa, or on Inoue who definitely has a selfish motive in trying to establish a defense for the accused, or Furuki himself who has admitted on the stand that he lied to the American authorities on a prior occasion. But even if these 'dead man's tales' or alleged dispatches were to be believed, is there anything in them that would justify murder on the part of the accused? Do they say anything or give any power to Admiral Masuda to order his right hand man, Furuki, to commit murder? They do not.

In Charge II it is alleged that the accused violated the laws and customs of war in that he executed the thirteen natives without previous trial. Testimony shows that Admiral Masuda stated that it was to be presumed that all the natives who attempted to desert to the enemy had the intention of carrying military information. We have testimony that Melein and Mejkane were definitely considered and accused of being spies. We therefore claim that the thirteen natives fall within the definition of a spy in Article 29 of the Fourth Hague Convention and were entitled to the protection given by Article 30 which states that "A spy taken in the act shall not be punished without previous trial."

In closing, gentlemen, let me remind you that these Japanese officers when questioned at Kwajalein in late 1945, admitted that no trial was held for the natives. There was no qualification of the word trial at that time. If these Japanese officers are to be

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

believed, then the story that they told shortly after the hostilities is the one to be accepted. Not one that has come to light for the first time after the serving of charges and specifications on the accused.

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

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

" cc(5)"

ARGUMENT FOR THE ACCUSED, FURUKI, HIDESAKU, DELIVERED ON 14 APRIL 1947, BY AKIMOTO YUICHIRO, TOKYO, JAPAN

Original argument appended to the original record.
Certified translation appended herewith marked "EE."

"DD"

ARGUMENT FOR THE ACCUSED, FURUKI, HIDESAKU, DELIVERED ON 14 APRIL 1947, BY AKIMOTO, YUICHIRO, TOKYO, JAPAN.

Gentlement of the Commission:

I would like to ask for a finding of "Not Guilty" for the accused, FURUKI, Hidesaku. The fact in this case is simply clear. There will be nothing to discuss about that, although the point of view of the parties of this case may differ from one other. But as to the legal understanding of this case, I hold an entirely different view from that of the prosecution, and am absolutely convinced of the innocence of the accused.

It may fairly be said that the interpretation of laws is the fundamental basis of everything in the solution of this problem.

However, the interpretation of laws ought to be based upon fact, not upon the abstract, fanciful theories of the law. The fact in this case is quite clear; there is nothing to argue about it.

But one says the fact is white, while another says that the same fact is black. It is really inconsistent and illogical. But we can not deny it in the actual procedure in this court. Where in the world does this inconsistent, illogical reality come from? I request the Commission to pay careful consideration to this matter.

Chapter 13 of 1st Corinthians reads: "When I was a child, I spake as a child, I understood as a child, I thought as a child: but when I became a man, I put away childish things. For now we see through a glass, darkly; but then face to face; now I know in part; but then shall I know even as also I am known. And now abideth faith, hope, charity, these three; but the greatest of these is charity." I heard this sacred phrase from Mr. Wells on March 23 at the church in this area with great emotion. The Chaplain said as follows: "Child has but little experience, knowledge, philosophy or consideration. But he is pure-minded; what he says or thinks is honest and frank. But when he becomes a man, he will see through a glass, darkly. I have many children as friends, but only one of them did not like me. I called the child and talked with him intimately, and I found that the reason why he did not like me was that I wore glasses. As I took away the glasses, he became close to me".

I was much moved when I heard this story together with the phrase in "1 Corinthians".

Among us there are various prejudices which come from the difference in race, manners, humanity, customs, tradition, language, etc. These are glasses. When we see through these various glasses, the same object may be seen in various ways such as white, black, red or blue. According to these different ways of living, there come forth different judicial systems, different interpretations or opinions about the law.

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

"EE 1"

When we judge whether a certain act is lawful or unlawful, it is wrong to consider only the external form of the act. When we decide whether the substance of the act is wrong, or, in other words whether it is anti-social or what the intention was, we must consider the time, the place, the circumstances and the subjective mind or belief of the man who did it, for the purpose of securing the actual truth. In order to attain this, we must put away the glasses of race, manners, customs, tradition, humanity, language, etc., which come from the different circumstances in each society, so that we can find the truth as an unencumbered man or a real human being.

However, it is very difficult to take away these glasses entirely. The difference of race, manners, customs, and humanity were founded in long tradition, and according to that, the way of thinking and observing of different societies is naturally different. Therefore, when we observe the acts of foreigners whose race, manners, customs and humanity are different from ours, we must carefully consider the differences; because prejudice might follow after these differences.

On this point, I would like to discuss the questioning of witnesses by the Judge Advocate. It seems to me that the Judge Advocate thought from the beginning that witnesses did not tell the truth. Especially, he brought forth a document which had no relation to this case, and, without mentioning what the document was, he cited a part of it and tried to give an impression that the witness had a habit of telling a lie. If he did so, he had a glass of prejudice that the witness always tells a lie.

Witnesses, after taking oaths solemnly in this sacred court, began their testimonies. If there are inconsistencies in their words spoken at different times, concerning different cases and under different circumstances, we must show, at what time, concerning what case, and under what circumstances these different words were spoken, and so consider the credibility of the testimonies solemnly given in this court.

The Judge Advocate dared not do this, and using expressions which gave use to bad impressions in every word of his phrases, abused the witnesses. It might be a skillful prosecution tactic on the part of the Judge Advocate. I am convinced that the Commission will not misunderstand the truth by his words, but it is dangerous, unfair court tactics which might cause misunderstandings, and it ought to be rejected in a criminal procedure which aims at the discovery of the truth.

The Judge Advocate questioned the witnesses INOUE and FURUKI, by citing a portion of their statements offered to an American investigator at Kwajalein concerning the American Aviator's Case. This case has no relation to the present one; besides these witnesses have no connection with that case. They made these statements only as reference. However, the prosecution pointed out the differences in their statements between before and after the death of Rear Admiral MASUDA, and, by accusing them, pressem them hard as to which of their statements

CERTIFIED TO BE A TRUE COPY
James A. Keagy Lieut. USN

were right. The witnesses replied that their statements after the death of MASUDA were right. This tactic of the prosecution was smart. Those who did not know the real circumstances of the case might misunderstand the fact that the witnesses changed their testimonies for the fact in the case, because the prosecution did not show to what case the document belonged. It is also because the prosecution cited only a tiny part of the statements so that no one could understand the main point of the statement.

As was expected, the paragraphs in the Navy News on April 5 misunderstood it saying: "FURUKI admitted changing his statement regarding the responsibility of the war crimes after Admiral MASUDA committed suicide. Thus he placed all the responsibility in the hands of the dead war criminal."

This was entirely a misunderstanding on the part of the Navy News. They did not know that the Judge Advocate cited the other case which had no relation to the present case. Also they did not know that the Judge Advocate cited only a part of the statements and did not show their main point. Thus the court tactics of the Judge Advocate was smart enough to make those who did not know the fact misunderstand it. He may have to be praised for his able tactics, but it is very dangerous for a criminal procedure which aims at the discovery of the truth. I am very sorry for it.

As was testified in this court by witnesses MORIKAWA, INOUE, and FURUKI, Rear Admiral MASUDA was questioned after the end of the war about the natives cases by Lieutenant Commander McKinson, captain of a U.S. destroyer and by U. S. legal officers. MASUDA stated plainly that he disposed of the offenses of natives who had violated the Japanese law according to the law, by his authority and after proper procedure. He also stated that it was his proper duty and he had nothing of which to be ashamed. Therefore, there was no change of testimony or statement of the witnesses in this case. I think the Commission will clearly admit what I have said, but as the Navy News misunderstood it, I have cited it particularly.

Obstacles of language are also an important glass. Mistranslation of only a word will cause a serious effect. Especially the constructions of Japanese and English are entirely different - upside down. The answers for negative questions are opposite, so that witnesses sometimes found it difficult to answer these questions - I think the Commission will have noticed it. Particularly, for double negative questions, I myself have often been at a loss what to answer.

As I stated above, in the trial, we must take away various misunderstandings, prejudicial glasses which come from the difference of race, language, humanity, manners and customs, and try to secure the real facts in the case.

At this point I would like to ask the Commission to pay careful consideration to the following. This is, irrespective of how the facts may appear on the surface, I would like the Commission to take note of the care given to the substance in the proceedings in this case.

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

"EE 3"

As I stated above, the fact in this case is clear. The problem is how to interpret it legally.

The first problem is whether this military court, an American court, has the jurisdiction over this case, and the second problem is whether the acts of the accused of this case are legally permissible, or, in other words, whether they legally constitute crimes.

Concerning the jurisdiction, I argued in detail in my preceding objection, so that I have made my claim to it and will not repeat it again. But, I would like to point out the inconsistencies in the opinion of the Judge Advocate in order to prove my assertion.

The Judge Advocate insisted that Japan lost her sovereignty over the Marshalls, the Japanese mandate, on account of her secession from the League of Nations, and therefore she had no sovereignty over Jaluit at that time. While saying this, he also stated that the Criminal Code of Japan was effective in the place as a local law, and applied Article 199 of the Code to this case.

Whereas, in the jurisdiction, he denied the Japanese sovereignty and insisted that America had the jurisdiction because it is now an American occupied territory. Of course, I do not deny the exercise of American jurisdiction over the cases in the territory after the occupation of the American forces.

However, this case happened in Japanese territory, and the natives, who were Japanese subjects, violated Japanese Laws, and the Japanese government punished them according to Japanese laws. The persons who carried it out were Japanese subjects. If we consider any aspect of this case - person, place and time - Japan alone has the jurisdiction over this case when this is a crime. Although Japan was defeated, she is still an independent nation. Japanese laws still exist and are effective. Japan has jurisdiction over any Japanese who is in any place in the world. But in reality, if the criminal is in a foreign country outside the sovereignty of Japan she can not exercise jurisdiction then and there. But it does not mean that she lost jurisdiction. If the country where the criminal lives has signed the Criminal Delivery Convention, it is the custom in international law that Japan can request that country to deliver the criminal.

There is no such law in any country of the world which admits the jurisdiction of a country over an offense of a foreigner in a foreign land only because the criminal is at present in that country.

The Judge Advocate stated that America has jurisdiction over the case of a foreigner in a foreign country before the place was occupied by America, only because the place is now an American territory. This opinion is not admissible in any respect whatsoever, because it affirms the above said illegality.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Besides, the Judge Advocate neglects the ex post facto principle. At present, in any civilized states of the world, the ex post facto principle is strictly observed in the application and the interpretation of laws.

The Judge Advocate made use of the ex post facto principle concerning the application of criminal law, and violated the principle concerning the law of criminal procedure. Of course, it is subject to argument as to whether the formation of a law of procedure which violates the ex post facto principle is good or not. But it concerns only whether the establishment of such a law is good, so that, in so far as such a law is not yet established, the ex post facto principle should be observed in the law of procedure. This is an established theory among the jurists of the world. The charges of this case clearly violate this theory. I firmly maintain that this court has no jurisdiction over this case.

Secondly, it is a most important point whether the acts of the accused of this case are legally permissible, or, in other words, whether they constitute crimes.

Then what acts did he do? Let us sum up the common points of the testimonies both of the witnesses and the accused.

The four natives named in Specification 1 of Charge I and II, Leschr, Kohri, Kozina and another person unknown, three natives named in Specification 2 of Charges I and II, Arden, Makui and Tiagrik, two natives named in Specification 3 of Charges I and II, Chuta and Chonmohle, two natives named in Specification 4 of Charges I and II, Mandala and Laperia, two natives named in Specification 5 of Charges I and II, Melein and Mejkane - it is evident that all these natives violated the Japanese Criminal Code, the Japanese Naval Criminal Code and other laws. As the offenses of these criminals and the laws applied for the offense were testified to in detail by witnesses and recorded, I will not state them one by one. They committed such crimes as "the crime of deserting to the enemy" of Article 76, Naval Criminal Code, "the crime of killing a guard in a group" of Article 65, Naval Criminal Code, "the crime of treason" of Articles 85 and 86, Criminal Code, "the crime of homicide" of Articles 199 and 203, Criminal Code, etc. For the treatment of these offenses, Rear Admiral M.SUDA, then the supreme commander of Jaluit Atoll, appointed Lt(jg) S.KUDA, 2nd Lt. K.DOTA, 2nd Lt. MORIKAWA and 2nd Lt. IEKI as investigators, Major FURUKI as Judge Advocate, and Lt. Comdr. SHINTOME, Capt. INOUE and himself as judges. When Rear Admiral M.SUDA appointed these members, he ordered, "These cases have a serious influence on the military forces. But as we are on a battle field of continuous activity, we can not apply a regular trial procedure to them. Therefore, I shall hold a trial of special procedure pursuant to my authority. Even you investigators must carefully and fairly investigate the case as if you were judges."

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

"EE 5"

The investigation of these crimes was carried out carefully and the investigators spent much time and effort.

Collecting evidence, questioning many witnesses or obtaining confessions from the criminals, they made full investigations. After that they wrote the report sheets on their investigation, and offered them to Rear Admiral MASUDA in the presence of Major FURUKI. MASUDA and FURUKI investigated the criminal suspects again according to the reports of investigation, and then MASUDA assembled Major FURUKI, Lt. Comdr. SHINTOME and Capt. INOUE and went through careful procedure. At this procedure, FURUKI stated his opinion as judge advocate and SHINTOME and INOUE also stated their opinions as judges. As president, MASUDA listened to these opinions, and after considering the case for a few days, he made a judgment paper. After showing the judgment paper before Lt. Comdr. SHINTOME, Major FURUKI and Capt. INOUE, he went with FURUKI to the place where the accused were confined, and announced the sentence to them, the accused.

There were differences between FURUKI's opinion and MASUDA's judgment concerning the sentences. According to FURUKI's opinion, the sentences of Kohri, Kozina, Tingrik, Chuta, Chonmohle, Mandele, Leporia and Mojkano were hard labor for 15 years, while the actual sentences were death.

On this point, Lt. SAKUDA answered to the question of the Commission by stating that the opinions of Major FURUKI had been lenient while the sentences of Rear Admiral MASUDA had been heavy. The witness NORIKAWA also testified in the same way. Capt. INOUE testified that the sentence of Rear Admiral MASUDA for the 13 natives had been all death while according to the opinion of FURUKI more than a half of them had been "hard labor" not "death", although he did not recall the exact number. FURUKI testified in detail concerning each name and the sentence. Therefore, summing up the above testimonies, I think, these facts are proved.

Concerning the above mentioned procedure, the Judge Advocate tried to give the Commission an impression that the witness had testified no trial had been held. As you have already heard, he cited a part of INOUE's testimony and questioned FURUKI about it. But it is the opinion of each witness, not the fact, as to whether the aforesaid procedure is a trial or not. The witness, Capt. INOUE did not deny whatsoever that it was a trial. He stated the same as the other witnesses that it had not been a regular trial procedure, but a trial by special kind of procedure. The questions which Judge Advocate cited are as follows:

Q. Was it at the time of the judgment or after the termination of the war when you thought that this procedure was a trial?
A. It was after the termination of the war.

Q. Then, you did not think at that time that it was a trial, do you?
A. I did not. I did not think at that time about whether it was a trial or not.

This is in the record. But the judge advocate did not intentionally read the last

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut USN

part of the answer, "I did not think at that time about whether it was a trial or not". But his words, "I did not think at that time about whether it was a trial or not" does not deny the fact that there was a trial. At that time, he was convinced that this special procedure was quite legal, so that he never thought about whether it was a trial or not. FURUKI and INOUE did not think at all that such a fact could cause trouble. Therefore they wrote it in their statement offered to an American legal officer long long days before they were accused. But it caused a serious problem after that, so that they had to think about whether it was a trial. I think you will recognize the meaning of his testimony when you read before and after it.

Lt. MORIKAWA testified that this procedure was a kind of trial. Navy News reported that it was only MORIKAWA who testified that there was a trial. But every witness testified that in substance this trial was conducted by special procedure. Lt. SAKUDA testified, "There was no such trial as in this court, but a special procedure was held." This means the same thing. It is not important whether it was a special trial or special procedure. The important question is what kind of procedure was held. Words or terms are quite out of the question. They only concern a way in which to express the fact. It is the opinion of each party about how to interpret the fact. I will state my opinion later. I request the Commission to pay careful consideration to what I have said.

Admiral MASUDA, according to the sentence, ordered Major FURUKI, the Judge Advocate, to carry out the execution of the natives named in the charges in this case. It is evident by the testimonies of each witness that Major FURUKI, by the order of Rear Admiral MASUDA, carried out the execution as his duty.

Summing up the testimonies of all the witnesses, the authority of Rear Admiral MASUDA, the supreme commander of Jaluit Atoll Base, to hold a trial of a special procedure is as follows:

After the fall of Kwajalein in February 1944, Jaluit was entirely isolated and the transportation to the other bases was cut off. Jaluit Atoll was entirely a battle field, and under intense attacks of enemy's crafts all men were in battle positions. In peace time, the area of Jaluit Atoll was administered by the South Seas Government at Palau, the Civil Court for the area was at Ponape, and the regular Military Court was at Truk. But the transportation between these islands and Jaluit was entirely cut off, and there was no court on Jaluit. To meet such circumstances, the Commander-in-Chief of the 4th Fleet gave an order to Rear Admiral MASUDA, the supreme commander for the area of Jaluit Atoll, in March or April 1944: "From now on, administrative and judicial affairs in the Jaluit Atoll area shall be exercised by the supreme commander of the base". This means that the dictatorship of the military government was vested in the supreme commander of the area by the reason that the area was already a battle field and

CERTIFIED TO BE A TRUE COPY
James F Kinney Lieut USN

was in more serious circumstances than a place where martial law was enforced. The witness, Rear Admiral ARIMA, testified that the area was in pressing circumstances and "henceforth Rear Admiral MASUDA, the supreme commander of the base, was vested with the authority for the military government and also for affairs of a very wide scope other than military and after that it was not necessary for him to ask directions from the commander-in-chief of the 4th Fleet".

Also the document prepared by the head of the Investigation Section, 2nd Demobilization Bureau, the Japanese Government, which we introduced as evidence says: "Jaluit was already a battle field, and was in more serious circumstances than the place where the martial law was enforced. Therefore, though martial law was not enforced in the area, it is admitted that the supreme commander of the base could exercise the same authority as the commanding officer under "martial law", and certified the statement. Putting this evidence together, there is no doubt that Rear Admiral MASUDA had the authority to exercise judicial power.

Even if we assume that there was no such order, the supreme commander of the base could have naturally dealt with the cases by his authority. The transportation to the other bases was entirely cut off, and it was a completely isolated battle field in the ocean. If there is no organization which exercises judicial authority, in such a place, who deals with the offenses committed there? If the American forces were in their place, the supreme commander of the base would have done it. It will be unnecessary to say that there is no other way of dealing with the offenses.

Then it is quite natural that Rear Admiral MASUDA dealt with these offenses by his authority.

I have stated the facts of this case as they were, according to the proper reason and evidences.

Do these facts violate the Japanese Criminal Code or the laws and customs of war as are alleged in Charges I and II? If these facts prove the guilt of the accused, I should say that the law does not help good people, but on the contrary harms them. I am convinced that the acts of the accused in this case do not constitute a crime. I would like to state the reasons as follows.

Let us observe the relation between the offenses committed by Lesohr, Kohri, Kozina, Arden, Mekui, Tiagrik, Chuta, Chonmohlo, Mandala, Laperia, Melein, Mejkane and another native unknown and the provisions of the Japanese Criminal Law and the Japanese Naval Criminal Law.

Article 81 of the Japanese Criminal Code reads: "Every person who by conspiring with a foreign power has caused hostilities to commence against the Empire, or who has joined an enemy power in taking hostile action against the Empire shall be condemned to death."

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

"EE 8"

Article 83 reads: "Every person, who has the purpose of benefiting an enemy power, has damaged (destroyed) or rendered unfit for use a fortress, camp, vessel, arms, ammunition, train, electric car, railroad, telegraph (or telephone) lines, or other place or thing for military (or naval) use shall be condemned to death or punishment with penal servitude for life."

Article 85 reads: "Every person who has acted as a spy for an enemy power, or has aided a spy for an enemy power shall be condemned to death or punished with penal servitude for life or not less than five years. The same (punishment) applies to every person who has disclosed a military (or naval) secret to an enemy power."

Article 86 reads: "Every person who by methods other than those of the preceding five articles has given an enemy power any advantage or has injured the interests of the Empire shall be punished with limited penal servitude for not less than two years."

Article 87 reads: "Attempts of the crimes in the preceding six articles shall be punished."

Article 199 reads: "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 reads: "Attempts at crimes in Art. 199 and 200, and the preceding Article shall be punished."

Article 54 reads: "When a single act results in several crimes or when the means or result of committing a crime constitutes another crime, sentence of the gravest punishment shall be given."

Article 1 reads: "This law shall be applied to every person who commits crimes in the Japanese Empire."

Article 2 reads: "This law shall be applied to any person who commits the following crimes outside the empire:...3) The crimes of Art. 81 to 89...."

Article 23 of the Naval Criminal Law reads: "Those who have done the following action for the benefit of the enemy shall be condemned to death: 1) To destroy or make impossible the use of ships, arms, ammunition, and the places, buildings and other things used by the Navy.....5) to allow the lack of arms, ammunitions, provisions, clothings and the other munitions....."

Article 24 reads: "Those who have given naval facilities to the enemy or injured the Japanese Navy with ways other than those stated in the foregoing two articles shall be condemned to death, or life term or above five years' imprisonment."

CERTIFIED TO BE A TRUE COPY
James F Kenny Lieut. USN

"EE 9"

Article 64 reads: "One who, resorting to arms or weapons, violates or threatens the guard shall be condemned as follows: 1) In the face of the enemy, life or above five years' imprisonment or confinement....."

Article 65 reads: "Those who, forming a clique, commit the crime in the preceding article shall be condemned as follows: 1) In the face of the enemy, the ringleader to death or life imprisonment or confinement, and others to life or above seven years' servitude or confinement."....

Article 70 reads: "The attempted crime of Art. 58 to 61, 61-3, and 62 to 68 shall be punished."

Article 76 reads: "Those who desert to the enemy shall be condemned to death, or life imprisonment or confinement."

Article 77 reads: "The attempted crimes of Art. 73 Item 1. Art. 74 Item 2 and the preceding article shall be punished."

Article 79 reads: "Those who burn down arms, ammunitions, provisions, clothings or other goods for naval use piled up outdoors, shall be condemned to such penalties as follows: 1) Commited in war time, to death or life imprisonment."....

Article 82 reads: "Those who destroy the things named in Art. 78, or railways, telegraph-wires, or passages on land and sea for Naval war use, or make them unusable, shall be condemned to life or above two years' imprisonment."

Article 84 reads: "The attempted crimes of Art. 78 to 82 shall be punished."

Article 2 reads: "This law shall also be applied to those who commit the crimes mentioned below, though they may not be naval officers or sailors: 1) The crimes of Art. 62 to 65 and those attempted crimes..... 3) The crimes of Art. 78 to 85....."

Article 4 reads: "The naval officers and sailors who commit crimes of Naval Criminal Law or of the other laws or ordinances in the occupied territories of the Japanese Forces are treated as those who commit them inside the territory of Japan. The above clause shall also be applied to the Japanese, foreigners who have followed the navy, and captives, though they may not be naval officers or sailors."

The 13 natives named in Charges I and II of this case, were the Japanese subjects. They were ringleaders, who, forming a clique, did or tried to kill the Japanese guards, cause a deprivation of munitions, desert to the enemy, or commit treason against the Japanese Empire. All of their crimes were of evil nature, and violated the above cited Japanese Criminal Law and the Japanese Naval Criminal

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

"EE 10"

Code. Besides, Lesohr, Kohri, Kozino, Arden, Makui, Tiegrik, etc., were flagrant criminals who tried to kill P.O. OKAMOTO and Gunzoku OKAMURA or to strike them by oars, but were captured by them after hand-to-hand fighting. Besides, the crimes of these natives were all boldly and flagrantly committed in the face of the enemy. If the U. S. forces were in place of the Japanese forces, they would as severely punish them as the Japanese forces did. It can not be denied that any military force in the world would punish these crimes severely in the face of the enemy. Still more was it natural for the Japanese forces at Jaluit Atoll who were then suffering under unexplicable pressing circumstances to condemn these criminals to death.

Major FURUKI was a benevolent person in nature. Although he stated his opinio as to the death sentence of Lesohr, Arden, Makui, Molein, and another native unknown, who were most felonious, he recommended hard labor for the other eight natives namely Kohri, Kozino, Tiegrik, Chuta, Chonmohlo, Mandela, Laporia, Mejkano, because he felt sorry that they should be considered deserving of the death sentence. However, his opinion as the judge advocate was not accepted, and Admiral MASUDA, the president, sentenced all the above natives to death. As a judge advocate, he could only state his opinion and could not do anything about the verdict. It is simply natural according to the provisions of law that he could not do anything concerning the verdict. At any rate for the above mentioned reasons, the punishments of these natives were carried out according to the laws and there was no illegality or ultra vires. I am convinced that the Commission will admit this.

Next, let us consider whether this trial by special procedure was proper or not. As each witness testified, they were not the regular procedure. They were undoubtedly trials of special procedure in order to meet pressing conditions on the battle field in the face of the enemy.

At that time, the area of Jaluit Atoll was in the condition of being a more serious battle field than a place where martial law was enforced. Therefore a place which was in substantially much more serious a situation than a place under martial law regardless of whether martial law was formally proclaimed or not.

Primarily martial law is enforced in a place other than a battle field in such a case as when the place is under a dire and emergency condition as a battle field. In such a case, the authority of each civilian government is limited or stopped, and the military government is enforced by the supreme military commander of the district. Each country of the world will have such stipulations of the Martial Law, so that I will not cite the articles of the Martial Law of Japan.

CERTIFIED TO BE A TRUE COPY
James F. Keady Lieut. USN

At that time, Jaluit was isolated under the seige of the enemy, its transportation to other bases being cut off. It was in such pressing circumstances that the supreme commander of the base had no way but to enforce military government. If the U.S. forces were in their place, there would not be any other way of meeting the circumstances. Surely not. Then we must refer to martial law before considering how to enforce military government. Of course it is unnecessary to be restricted by only the provisions of martial law. It is an important problem to decide what the best way was in this case and if there were any proper way other than this. Then what measures had to be taken in this case?

As reference, I shall cite the provisions of martial law.

Article 2 of martial law reads: "There are two types of area under martial law: one a war area and another a besieged area. 1) A war area is a place marked out to be guarded in case of war or emergency. 2) A besieged area is a place marked out to be guarded in case of seige or attack of an enemy or other emergencies." At that time Jaluit Atoll was in more serious circumstances than the "Besieged area" mentioned in the above article.

Article 6 of the same law reads: "The following officers are empowered to enforce martial law: an army commander, division commander, brigade commander, Chindai Eisho or fortress commander, garrison or detachment commander, or commander-in-chief of a fleet, fleet commander, naval station commander, or specially appointed commander." Not to speak of the commander-in-chief of the 4th Fleet, but also Rear Admiral NISUDA, a garrison commander, had the authority to enforce martial law of his own accord. Besides, as the witnesses have testified, the above said order of the Commander-in-chief of the 4th Fleet substantially proclaimed martial law.

Article 10 reads: "In the besieged area, administrative and judicial affairs shall be under the charge of the authority of the commanding officer of the district....."

Article 12 reads: "If there is no court in the besieged area or communications are cut off from the court which exercises jurisdiction over the area, all civil and criminal cases shall be tried in military courts." At that time, there was no court on Jaluit. In peace time, the court which exercises jurisdiction over Jaluit was the local court of Ponape. As the witnesses testified, transportation was entirely cut off to the military court of Truk.

Article 13 reads: "In a besieged area, no appeals for retrial are allowed in a trial by a military court." Therefore, it is the principle that no appeals are permitted. This is also provided in the Naval Court Martial Law, articles 420 and 421 do not include the special court martial in the isolated area.

Article 8 of the Naval Court Martial Law reads: "Courts martial are organized as follows:...6.) Isolated Court Martial. 7.) Temporary Court Martial."

Article 9 of the same law reads: "....an Isolated Court Martial is established specially in a district surrounded by enemy when a declaration of martial law is made. A temporary court martial, in a case of necessity during war and naval operations, shall specially be established in a naval unit."

Article 10 reads: "...In the specially established Court Martial, the commanding officer of the unit or district where the said court martial is established shall be the president."

Article 17 reads: "A temporary court martial shall have jurisdiction over the following cases: 1.) In the case of the accused who is under the command or supervision of the commanding officer of the unit where a court martial is established. 2.) The case of the accused defined in article 1-3 who committed a crime either inside or outside the jurisdiction of the court....."

According to the above provisions, the trial procedure with which the accused FURUKI was concerned belongs to the temporary court martial, a kind of specially established court martial.

Concerning the members of the court martial, article 31 reads: "In a court martial, judges, navy legal officers, and navy police shall be appointed." Article 32 reads: "Judges shall be appointed among naval officers....." Article 33: ".....In a special court martial, the commanding officer or a direct superior may appoint judges among his subordinate admirals in case of emergency."

Concerning the organizati n of the court, Article 50 states: "In a special court martial, the commanding officer may appoint naval officers or officials ranking with officers as judges in place of legal officers."

It was quite proper that, according to the above provisions, MASUDA, SHINTOME and INOUE were appointed as judges and, since there was no legal officer on Jaluit, FURUKI was appointed as the judge advocate in place of the legal officers.

In the provisions of judicial procedure in "Naval Court Martial Law", the defense is stipulated in article 87 to 92 incl. Article 87 reads: "The accused may select a counsel for his defense at any time after the charges are preferred against him....." But article 93 provides: "Provisions of the preceding six articles shall not be applied to a special court martial."

Therefore, it is proper and legal that no defense counsel was present in the trials of a special procedure in which the accused FURUKI participated.

Concerning trial, article 96 of the Naval Court Martial Law states: "The consultation of judges shall not be held public. Consultation of judges shall be held and settled by the president. Its proceedings and the opinions of judges shall be kept in secret." Article 97 states: "The judge advocate shall state his opinion previous to those of all the judicial members....."

CERTIFIED TO BE A TRUE COPY
Jerome M. Kenney Lieut. USN

Article 98 states: "The decision of the court shall be determined by a majority." As is stipulated in the aforesaid articles it was quite proper that the examinations and consultations by special procedure in which the accused FURUKI participated were not held in public.

Rear Admiral MASUDA, the president, held and settled the consultations of the judges, and the opinions of the judges were kept secret. FURUKI, in his duty as judge advocate, could only state his opinion, so that he could not know the result of what he stated. Therefore he had no responsibility for the result of the trial. Concerning the consultation, it is not clear, whether the verdict was decided by the majority vote, or whether the three judges each had different views and MASUDA decided the verdict according to these different views. But, putting together the testimonies of all witnesses, it is evident that the decision of MASUDA and the opinion of FURUKI clearly differed. But at any rate as FURUKI was the judge advocate, he could not participate in the consultation. Admiral MASUDA could not decide the judgment then and there, and he cleared the consultation saying that he would consider the case further, and then took the report and left the consultation. After a few days, he determined the sentence. He again assembled the two judges and FURUKI, the judge advocate, and announced the sentence. Regarding this point, each witness testified in the same way. Therefore, it is rational to suppose that the opinions of the three judges did not coincide, and MASUDA, the president, decided the sentence by his own decision.

Concerning this point also, we can clearly insist that the judgment was a proper one.

As to the argument, article 100 of the Naval Court Martial Law states: "The decision of the court shall be made after oral argument is made, except when there is any special stipulation contrary to it. A ruling in an open trial shall be given after listening to the statements of the parties. In any other cases, it may be given without these statements, except when there is a special stipulation contrary to it..."

Article 102 states: "The announcement of court decision shall be given by declaration in an open court, otherwise by sending a copy from the tenor of the trial proceedings unless there is a special stipulation contrary to it." Article 260 states: "If it is necessary, a witness may be questioned either at a designated place other than the military court, or at his domicile." Article 265 states: "An examining judge shall have the same authority as the court martial or the president when he examines witnesses." Article 267 states: "A judge advocate may omit the oath of the witness, when he examines him." Article 369 states: "The case which concerns a sentence of death, life or more than one years' imprisonment or confinement shall not be tried without defense counsel, except when the sentence is announced in open court." Article 372 states: "The provisions of the preceding three articles (TN- Art. 369, 370 and 371) shall not be applied in the specially established court martial."

CERTIFIED TO BE A TRUE COPY

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

According to the aforesaid stipulations, the parties to a trial, as a principle, make their statement in the court. But it is admissible by law that in some cases they make them outside the court as provided in article 100. Also, according to articles 260 and 265, witnesses may be questioned outside the court even without taking oaths. I have already stated that the stipulations concerning defense counsel are not applicable in a specially established court martial. This is clear in the provisions of articles 369 and 372, and article 372 states that even in such a case which concerns the sentence of oath, defense counsel is unnecessary. Then in the procedure in which the accused FURUKI participated, the only party to the trial are the accused.

In that trial procedure, the accused were not present at the court to make their own statement. The testimony of each witness coincided in regard to this point, so that we admit it.

So the defense does not deny that this was evidently in violation in this point of the principles of trial. But this is the only point that is different from the regular procedure. However, each witness has testified in the same way that the president, MASUDA, and the judge advocate, FURUKI, went to the place where the accused were confined, listened to their statement and also announced the sentence there.

In fact, a very careful judgment was made, a mere formality was wanting. Is that the reason why he was alleged to have committed murder or to have violated the laws of warfare? Practically speaking, can a very careless procedure be deemed a complete trial if only it is complete in form? Of course, compared with a complete trial such as this one, it might have many faults. But, at that time, 2000 Japanese soldiers were hopelessly isolated on a solitary island of the ocean under rains of shots and shells. They resolved to fight to the last man and were in position themselves in the skirmish lines. Still they carried out the best trial they could. Having no sufficient shelters from air raids, was it possible to hold a trial comparable to one in peace time? If these natives, whom committed the crime of desertion, were present at the court while the trial was in session, they might be able to escape during the confusion of air raids. If they could desert, they would give information about the Japanese forces to the enemy and would cause the defeat of the Japanese forces. Even if they could not escape, it is certain from the testimonies of the witnesses that during the judgment, any man at the trial, not only the natives, but also the senior officers were in a dangerous position as regards air raids. Isn't it legally admissible in such a condition to simplify the procedure? Yes, it is admissible.

Article 37 of the Japanese Criminal Law states: "Unavoidable acts done in order to avert present danger to life, liberty, or property of oneself or another person are not punishable, provided the injury occasioned by such acts does not extend in degree the injury endeavored to be averted. According to circumstances, however, punishment may be migigated or remitted for acts exceeding such limits.

CERTIFIED TO BE A TRUE COPY
James A. Henry Lieut. USNR

Article 642 of the "Wharton's Criminal Law, vol. 1" states: "Art. 642 Sacrifice of another's life, excusable when necessary to save one's own. The canon law, which lies at the basis of our jurisprudence in this respect, excuses the sacrifice of the life of another, and when the two are reduced to such extremities that one or the other must die....."

This is called "Notstand" or "Etat de nécessté", and this is provided not only in the Criminal Law of Japan, but also in any criminal laws of any of the civilized countries of the world. I think, of course, America has the same provision.

What could be avoided in this case was the destruction of the lives and properties of 4000 military personnel, gunzoku and natives which greatly concerned the rise or decline of Japan. What was lost was nothing but the statements of the accused in the court. As I stated, under the necessary circumstances, it could not be helped. Even if there is no such provision as Art. 37, it is quite natural from the reason of the law that the aforesaid act is permissible under such necessary circumstances. Still more, article 37 clearly shows that it is legally admissible. Therefore, it is unnecessary to say that the aforesaid simplified trial procedure is proper and legal.

Then, according to the sentence legally announced in this specially established court martial, Rear Admiral MASUDA ordered Major FURUKI, the judge advocate, to execute these natives. According to this legal order, without any suspicion, FURUKI, Hidesaku, after fulfilling his duty as judge advocate, carried out the execution. The testimony of each witness agreed in this.

I have just explained, according to the testimonies of witnesses and evidence, the fact of the natives' case for which FURUKI, Hidesaku, the defendant of this case was allegedly accused. I have also explained my legal opinion about it, citing the stipulations of the Japanese Criminal Code, Japanese Naval Criminal Code, Naval Court Martial Law and Martial Law.

Next, I would like to explain my legal opinion about the responsibility of FURUKI, Hidesaku. The most important thing is the limit of FURUKI's responsibility. FURUKI has two responsibilities; one the responsibility as a judge advocate who participated in the trial, another that as an executioner who carried out executions. These two were done by the same person. But it is a gross mistake to think by that reason that these two responsibilities have any relation.

The act of the accused as judge advocate and his act as executioner has no connection at all. By casual connection was completely broken by the interposition of the independent responsibility of the judges who consulted and the verdict of judgment independently.

CERTIFIED TO BE A TRUE COPY
James F. Kenney
Lieut. USN

"EE 16"

We must not forget that the relation of these two acts is entirely broken by the acts of other persons, namely the trial and the judgment, in which FURUKI, the judge advocate, could not take part. I hope the Commission will take notice of this point.

First of all, I would like to explain the responsibility of the judge advocate who participated in the trial.

The duty of the judge advocate is provided in Chapter 6 of the Naval Court Martial Law, article 67 of which states: "The judge advocate shall be subject to the commanding officer and shall have the duty of investigation and prosecution." Article 70 states: "In the specially established court martial or in a naval port court martial, the commanding officer may appoint a naval officer or an official ranking with an officer as a judge advocate."

As provided above, the duty of the judge advocate is to investigate crimes and to indict them when he finds them to be criminals. In more detail, he searches out the crimes, investigates them, and after he indicts them, he explains to the judges the reason for their indictment and states his opinion. That is the duty of a judge advocate.

To try the accused, to find whether they are guilty or not, or to determine the punishment or the terms of the punishment are the duties of judges, and the judge advocate can not take part in them. There is no exception to this rule, in any judicial system of the world. This court is also based upon this rule.

Article 95 of the Naval Court Martial Law states: "A trial shall be done by the consultation of a certain number of judges." Article 96 states: "The consultation of judges shall not be held public. The consultation of judges shall be held and settled by the president. Its proceedings and the opinions of judges shall be kept in secret. As is clearly provided, a distinction is made between the duty of a judge and that of a judge advocate, and they can not intervene in the duty of another. In the aforesaid trial of special procedure, the defendant FURUKI was the judge advocate, Rear Admiral MASUDA, Lt.Comdr. SHINTOME and Capt. INOUE were the judges, and MASUDA was the presiding member. This is evident by the testimonies of the witnesses.

Then, is there any illegality or unlawfulness in the acts of FURUKI? There is none whatsoever from the point of view both in fact and in law. Let us consider the investigation. By the lead of the judge advocate, each investigator, though he was in a severe field of battle, consumed many days and much effort in his dangerous situation in collecting many witnesses and evidence in order to fulfill a careful investigation, and then a complete report of his investigation. FURUKI, the judge advocate made his own investigation further, and finished his investigation with utmost care. Then he indicted them and stated his last opinion as a judge advocate, and his duty was over.

CERTIFIED TO BE A TRUE COPY
Jane P Kenny Lieut. USN

The judge advocate asked the witness in this court whether the investigators administered the oaths to their witnesses. But in the Japanese trial procedure, it is the principle that an oath is unnecessary for the questioning of a witness by the investigator or by the judge advocate whether in a civil court or in a court martil. (Art. 267 of the Naval Court Martial Law.) And, as also stated in the same Naval Court Martial Law, the consultation of the judges is settled by the president and it is not held in public, but is kept secret.

The aforesaid trial by special procedure is legal as I have mentioned. But even if we assume that there is a mistake in the procedure, it is the responsibility of the judges and not the judge advocate. A trial is to be done by human beings, as that is natural that there is often a mistake. That is the reason why there are three hierarchic judiciare in the trials of civilized constitutional states, so that, if there is a mistake in the procedure in a normal trial, the accused is allowed to complain or recomplain, and if t ere is a misteke in the substence of the trial, he is allowed to appeal or re-appeal, except in the specially established court martial such as this one.

As an extreme example, there are not a few instances in all countries of the world that an innocent accused was sentenced to death by the mistake in verdict. Did the judges of the trial take responsibility for that? Were there any cases in the history of the judicial system of the world that these judges were indicted to have committed murder? I have never heard of such cases. It is entirely another thing if they constitute crimes from the administrative point of view. But anyhow it is the responsibility of the judges. There is no reason for the judge advocate to be responsible for the mistake of the verdict in any trial. I think even the judge advocate in this court who indicted this case would not think that, so far as the aforesaid trial procedure is concerned, the accused FURUKI had no responsibility for it. Still more, there is no illegality or mistake in the acts of FURUKI as a judge advocate, as I stated before. Concerning this it is unnecessary to cite the theory of intent for the non-existance of the crime of article 35 of the Japanese Criminal Code which provides the rule of non-existance of the crime. I am convinced that there is no objection to the fact that the acts of FURUKI are fair, legal and right.

Concerning the execution of the sentence, article 501 of chapter 5 "Execution" of the Naval Court Martial Law states: "Execution of the sentence shall be supervised by the judge advocate of the court martial which tried the case or by the judge advocate of the court martial to which the examining judge of the case belong."

According to this stipulation, Rear Admiral MISUDA, who announced the sentence, ordered FURUKI, the judge advocate, to carry out the execution according to the sentence. FURUKI, as the duty of judge advocate, faithfully carried out this proper order of the execution. He testified that he had no suspicion about its lawfulness nor malice aforethought, and he carried it out as his proper duty based upon the law. I think that the commission will have admitted the truth of his testimony.

Each witness has unanimously testified that FURUKI had been convinced without any suspicion at all as to the order of execution according to the sentence which had been legal and proper. Not only FURUKI himself or the people concerned with the case, but also an in the Japanese military forces are convinced so.

As was testified by INOUE, MORIKAWA, and FURUKI, after the end of the war, Rear Admiral MISUDA was questioned by Commander MacKinson, a captain of an American destroyer, concerning the case of the execution of the natives. They testified that MISUDA said at that time that he executed these natives, the Japanese subjects, who violated the Japanese laws, after the proper procedure of the Japanese forces by the Japanese laws and that he was not ashamed of it before man and God. As we can see from these self-confident words of Rear Admiral MISUDA, he was convinced that it was absolutely legal. Still more were his subordinates. Could they doubt its legality? Of course not. Especially FURUKI could not, because he, as I stated before, completely carried out his duty of the judge advocate without any unlawfulness or mistake.

However, charge I alleges that he committed murder, and charge II alleges he violated the laws and customs of war. Upon what reasons are they based? I can not help saying that it is a surprising gamble.

Besides the judge advocate has not yet proved the corpus delicti. If he assumes that the act of the executioner in carrying out his official duty by the order is guilty, he must prove either the giver of the order had no authority to do so, the order was false or the giver of the order made use of his subordinate with an intent to commit a crime. Besides, he must also prove in any of these cases that the receiver of the order dared to carry it out knowing that it was unlawful. He must prove it. However he made no reference to these matters. It is really a very incomprehensible indictment. That is the reason why I call it a surprising gamble.

Specifications 1, 2, 3, 4, and 5 of Charge I of this case state that the accused did, wilfully, feloniously, with premeditation and malice aforethought, kill, and cause to be killed the natives, and that he violated Article 199 of the Japanese Criminal Code. The same specifications of Charge II state that the accused did, wilfully, unlawfully, punish and cause to be punished by killing the natives, and that he violated the laws and customs of war. But in any acts of the accused which I have stated before, I can not admit these charges. I am convinced that these charges make a serious mistake.

As I stated before, Rear Admiral MISUDA, the commanding officer of the unit in which the trials of a special procedure were held, issued after the sentence the proper orders for the executions according to the stipulation of article 501 of the Naval Court Martial Law. Therefore, these orders were legal both in their form and substance. And it was the duty of FURUKI as the judge advocate, stipulated in Naval Court Martial Law, to receive the orders and to carry out the executions. The form and substance of these orders were entirely legal. FURUKI, the judge advocate could not refuse them.

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

Then has the executioner any right to consider whether there is a mistake in the substance of the sentence which is the foundation of the order? No, he has none at all. The higher courts alone have the right to do it. It is enough for the executioner to know only whether the order of the execution is issued by a legal method. He has no other responsibility in considering the order. Besides, Rear Admiral MASUDA, who issued the order of execution was the president of the trial of the special procedure who announced the sentence, and also the supreme commander of the unit. And the order concerned the execution of the sentence of the trial. The accused FURUKI believed that this order was absolutely legal, and carried it out as his duty provided in the law. Is there any illegality, unlawfulness or mistake in this act? No one can find it from any point of view.

Generally, the substance of the crime depends upon whether it is an anti-social act. It goes without saying that whether it is anti-social or not, ought to be decided by the general moral standards of the society at that time. Can we recognize any anti-social acts in what FURUKI did? Of course we can not.

Besides a crime is an unlawful act. Even if the act, in outside appearance violates criminal law, the act is sometimes legally admissible or enforced as a duty on account of a certain reason. In such a case the act is not a crime.

In Chapter 7 "non-existence of crimes" of the Japanese Criminal Code, articles 35 to 38 inclusive provide for it.

Now, I shall cite the opinions of MOTOJI, Shinkuma, the president of the Supreme Court of Japan, and MAKINO, Eiichi, the professor of the Imperial University according to their works.

In page 340 to 347 of "Theories of the Japanese Criminal Law", MOTOJI states as follows:

"Chapter 2 Acts Done in Accordance with Laws and Ordinances or in Pursuance of a Legitimate Business (or Occupation).

"Article 35: "Acts done in accordance with laws and ordinances or in pursuance of a legitimate business (or occupation) are not punishable'.

"Acts done in accordance with laws and ordinances are, of course, not unlawful acts, because they are based upon laws and ordinances. We must understand also that "acts done in pursuance of a legitimate business (or occupation) are not punishable' means that the acts are not unlawful."

"'Acts done in accordance with laws and ordinances' means the acts which, according to the provisions of laws and ordinances, are admitted to be naturally the right or duty (including official right and official duty). 'Acts done in pursuance of a legitimate business' means acts which form such business as is

CERTIFIED TO BE A TRUE COPY
Jane Hyung Kim

admitted to be proper from the point of view of law and the customs of people in general. Acts in pursuance of an official duty belong to the former, operations done by a doctor and so forth, belong to the latter.

"Acts done in accordance with laws and ordinances means all acts which are based upon laws. Not only the rightful acts in accordance with the civil law or business law, but also the authorized acts such as capturing flagrant criminals in accordance with the Laws of Criminal Procedure, acts of using weapons of specific officials, etc., are all belonging tothis category. So called "laws and regulations" do not only mean the provisions of laws and ordinances but also includes logical sequences which can be reasoned from the spirit of the laws and ordinances. By this meaning, emergency defense (or justifiable defense) may be considered as a kind of act originally based upon laws and ordinances. The provision of article 36 of the criminal law does nothing but to clear up its terms and scope. There is no doubt that an act in pursuance of duty legally requested so to be done is an act based upon laws and ordinances.

"It is impossible to enumerate and explain the acts done in accordance with laws and ordinances. I shall make a brief explanation concerning one or two important problems, and what I am going to state are acts done as official duty. (1) According to the laws and ordinances, the acts of officials done as their official duty are their right as well as their duty. Some of these acts are directly based upon laws and regulations. For instance, in case of arresting flagrant criminals according to the provisions of the Law of the Criminal Procedure, in case of carrying out the orders of immediate superiors (such as the execution of a death sentence, arrest of a non-flagrant criminal by written order), etc. However, the following are unlawful acts: Carrying out the execution without the order of an immediate superior when he must receive the order before doing so, arresting non-flagrant criminals without written order, etc.
(2) However, when the order is an unlawful one either in form or in substance can the acts of the lower officials done according to the order be lawful or unlawful? The answer can not be decided before the determination of the scope of the relation between the order and its obedience in line of official duty... I think that the subordinate officials may judge the form of the order of the superior but they have no authority to judge its substance. Subordinate officials may judge the following: Whether the order issued by the superior is inside the scope of the authority of the superior; whether the order is not inconsistent with the provisions of the laws and ordinances, whether the order is inside the scope of his official duty. When all these can be answered in the affirmative he can not refuse the execution of the order even if the order is unlawful in its substance.
(3) If the opinions of the superior and the subordinate official as to whether the order concerns the official duty differ, the subordinate official must naturally obey the interpretation of the superior. But no one has any official right to commit a crime, and any superior can not have any official right to commit a crime by making use of his subordinates. Therefore, the subordinate official, if he recognizes that the giver of the order has a criminal intent and is trying to make use of him for committing a crime, can refuse to obey the order

CERTIFIED TO BE A TRUE COPY
James W. Henry Lieut. USN

(4) Generally, in order that an act of an official can be an act in the line of duty, it is necessary that the official has the intent to exercise his official duty and right, and it is also necessary that the aim of the act abstractly belongs within the scope of official right and duty. For instance, a judge, according to his free conviction, announced the finding of "guilty", and the execution of the punishment was carried out according to that. But after the retrial, the verdict was "not guilty". In such a case, it is not permissible to say that the foregoing trial is not an act in pursuance of an official duty....."

Professor MAKINO, Eiichi, in his work "Theories on the Japanese Criminal Code, states (pp 149-153):

"6. Acts done in accordance with laws and ordinances: If a certain kind of act is stipulated in the laws and ordinances to be the right or the duty, these acts will never constitute a crime. (Art. 35 Japanese Criminal Code). For instance: If the acts are done within the scope of the right or duty, they never constitute crimes. (1) Pursuance of official duty. There are two cases of pursuing official duty: one, in which it is by the order of a superior, another, as his own right. In both cases they never constitute crimes. (2) Acts of disciplinary punishment by a person in parental authority (acts in accordance with Art. 822 of the Civil Law). (3) Acts of nursing a mentally deranged person (Art. 1 Insane nursing law) (4) Acts of arresting flagrant criminals (Article 125 of the Law of Criminal Procedure), etc...These acts are not crimes.

"7. Legitimate acts: Even if not formally stipulated in the laws and ordinances to be the right or the duty, the acts which are not inconsistent with the general spirit of the laws and ordinances, customs of logical sequences, and which do not violate the social order or the popular morals, are not unlawful. If we understand that the acts in accordance with the laws and ordinances are not formally unlawful, we may understand that the legitimate acts are not substantially unlawful.

"As to this point, the Criminal Code stipulated only about the acts in pursuance of a legitimate business. (Art. 35 of the Criminal Code). However, it is not only the acts in pursuance of a legitimate business that are not unlawful, but also any acts which are substantially legitimate are also lawful. In other words, besides the acts in pursuance of a legitimate business, acts which are customarily admitted to be legitimate or any other acts which do not violate the social order or popular morals, are also lawful and can never be crimes."

The above cited theories of Dr. MAKINO and Dr. MOTOJI are entirely the same. But concerning this point, not only the theories of the two, but also any other theories or judicial precedents in Japan are entirely the same, and there are none to the contrary. As I have no record book of judicial precedents now, I can not show them. But I can maintain that there is no judicial precedent which is contrary to this theory.

CERTIFIED TO BE A TRUE COPY
James P. Henry Lieut. USNR

I believe, not only in the statute laws of Japan or Germany but also in the case laws of England or United States, this theory is equally admitted and there is nothing to the contrary.

Section 640 of Wharton's Criminal Law states: "Section 640. Killing under mandate of law justifiable. The execution of malefactors, by the person whose office obliges him, in the performance of public justice, to put those to death who have forfeited their lives bythe laws and verdict of their country, is an act of necessity, where the law requires it. But the act must be under the immediate precept of the law, or else it is not justifiable; and, therefore, wantonly to kill the greatest of malefactors without specific warrant would be murder. And a subaltern can only justify killing another on the ground of orders from his superior in cases where the orders were lawful. As we have seen, a warrant that is without authority is no defense; though it is otherwise when the defects are merely formal."

The order to carry out executions given to FURUKI, the accused in this case, was based upon the sentence of the specially established court martial, as I mentioned before. The giver of the order was Rear Admiral M'SUDA., the immediate superior of FURUKI, and the convener of the court martial. Besides, M'SUDA had the official duty of president who settled the consultation of the court martial and announced the sentence. FURUKI had the official duty of judge advocate in the procedure, and the execution of the death sentence was also his official duty. It is clearly stipulated in articles 96 and 501 of the Naval Court Martial Law. Rear Admiral M'SUDA had the legitimate authority to give the orders, and FURUKI was the legitimate receiver of the order. So, it was FURUKI's duty stipulated in the law to carry it out, and it is also an act in pursuance of a legitimate official duty.

The order was, without any doubts, legitimate both in its form and substance. And, I have already mentioned, FURUKI was absolutely convinced that the order was lawful, and he had no suspicion about it whatsoever. Therefore, according to the provision of article 35 of the Japanese Criminal Code, the act of FURUKI is no crime at all. I strongly maintain that the specifications of Charges I and II which allege him to have violated article 199 of the Japanese Criminal Code and the laws and customs of war are not proper ones and that the accused ought to be not guilty under both Charges.

Although I think that my assertion of not guilty of the accused for the specifications of Charges I and II is sufficiently clear, I would like to state my opinion further for Charge II which alleges that the accused violated the laws and customs of war.

The judge advocate pointed out that the laws and customs of war written in Charge II are based upon Hague Convention No. IV of 13 January 1907 which embodies regulations respecting the laws and customs of war on land.

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

"EE 23"

Chapter 2 Spy of the same convention:

Article 29 states: "A person can only be considered a spy when, acting clandestinely or false pretence, he obtains or endeavors to obtain information in the zone of a belligerent, with the intention of communicating it to the hostile party. Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army of a territory."

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

The definition of spy is clearly shown in these articles. According to the stipulations, the acts of 13 natives written in Specifications 3 to 5 inclusive, of Charge II do not admit them to be spies.

The reasons why they were punished are not that they were spies, but that they committed such crimes in violation of the Japanese Criminal Code and the Japanese Naval Criminal Code as: crimes relating to external war, crimes of destroying military goods, crimes of homicide, crimes of deserting to the enemy - these purely domestic crimes. Testimonies of the witnesses coincide as to this point. The term of spy happened to be used, but the term is used as the term in domestic crimes. Therefore it is clear that they were not punished by the reason that they violated the laws of warfare.

Of course, they are also not spies caught in the very act as stipulated in article 30 of the Hague Convention 1907.

Therefore, Charge II which alleges this case as a violation of the laws and customs of war is wide of the mark and does not hit it at all.

The spirit of this "Rules of Land Warfare" is to strictly limit or restrict the scope of punishing spies, because a belligerent is apt to punish his enemy and neutral persons heavily by widely interpreting the acts of spies on account of hostilities. They are not stipulations which anticipate the crimes of persons who violated their domestic laws. This is the case in which natives, the subjects of Japan, were punished for the reason that they violated their domestic law. Therefore, Charge II of this case, which alleges that the accused violated the laws and customs of war is entirely nonsense.

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

If we assume that the laws and customs of war are applicable, it is unlawful to punish the accused, because there is no provision for punishment in international law. When he ought to be punished on any account, there is no other way but to apply domestic criminal laws for his punishment. But, according to article 35 of the Japanese Criminal Law, the acts of the accused do not constitute a crime. When we see the paragraph of Wharton's Criminal Law, we find that, even in the case laws of England and United States, his acts are legally permissible as a matter of course.

Concerning the punishment, article 54 of the Japanese Criminal Code states "When a single act results in several crimes or when the means or result of committing a crime constitutes another crime, sentence of the gravest punishment shall be given."

This provision means that if a certain act violates several articles, the gravest punishment among them must be applied, and that the act must be punished as a single crime.

However, what the accused had done was one act not two different acts. In spite of that, the prosecution alleges by the two charges that the accused committed two different crimes. Execution of the death sentence by FURUKI was an act on official duty lawfully in accordance with the laws and ordinances. Therefore, article 35 of the Japanese Criminal Code is applicable to this case, and what he did is not a crime whatsoever.

As I argued in detail above, the act of the accused of this case does not constitute a crime from any point of view. I maintain with absolute confidence that Specifications, 1, 2, 3, 4, and 5 of Charge I and Specifications 1, 2, 3, 4 and 5 of Charge II are not proved and the accused is not guilty of each of the charges and specifications.

Lastly, I would like to add a few words concerning the testimony of SHINTOME, Sanjiro, the witness of the prosecution.

We failed to summon SHINTOME, Sanjiro, as a witness for the defense, but we are thankful to the prosecution for taking him into the court.

The recollections of the witness are not clear and his testimony is vague, so that it is difficult to believe his testimony as it was. But in his testimony the following are certain.

1. FURUKI, Hideseku supervised the investigation of the natives' cases, and after completing the investigation, he stated his opinion at the deliberation according to the investigation.

2. At the deliberation Rear Admiral MISUDA, Captain INOUE, Lt. Comdr. SHINTOME and Major FURUKI were present.

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

3. Rear Admiral MASUDA stated that he would condemn those natives to death according to the laws. But SHINTOME stated, "It is pitiable to punish them by death because they had cooperated with the Japanese forces as well. Also it it disadvantageous to lose even one native at the time of food crisis. In order to fight out this war, it is rather necessary to make them work for food production than to condemn them to death. For those reasons I hope that they will not be condemned to death." The opinion of Major FURUKI was the same as his. But Rear Admiral MASUDA firmly stated, "When we punish a crime according to the laws, it is improper to consider the laws in connection with other circumstances. If we do it in such a way, military discipline will be entirely destroyed. Though it be pitiable for the natives, we can not help punishing them by the laws." SHINTOME felt sorry for it, but he could not help it.

According to this, if any other expressions are used, it is quite clear what the positions of MASUDA, SHINTOME and FURUKI were and what they did. Not only is the testimony of SHINTOME not inconsistent with the testimonies of other witnesses, but also it supports them. Therefore, the fact and my opinion concerning this case which I stated before have been confirmed again by them.

I would like to state again:

The procedures of the specially established court martial which they carried out have in fact some faults compared with the regular procedure. Especially, many faults can be counted if you compare it with such a complete court as this one. But the important thing is not the form but the substance. It depends upon how carefully the case is dealt with. I believe that you can admit that it was the best procedure they could carry out in the pressing battle field of the time. This is admitted by the principle of necessity as stipulated in article 37 of the Japanese Criminal Code.

The procedure of trial differs in each country according to the difference of the judicial system, the degree of civilization, manners and customs.

In an American trial, the judges know nothing about the case whatsoever when they go into it for the first time, and, according to the facts intro-duced by the judge advocates and defense counsel, they make the judgment. A a principle, the verdict is decided by the vote of the judges. While in the common trials of Japan, judges play a dictatorial role in the court. Before the trial, the investigation of the crime is made mostly by the police and judge advocate, and the duty of the judge advocate at the trial is to indict the crime and state his opinion - that is all. At the court, the examination of the crime is chiefly by the president. The judgment is made by his free conviction - that is the conviction is made as the president likes and no one can intervene in it. Of course, there are three judges at the local court or the court of appeal, five at the supreme court, and one of the judges is the president, others are juries. If the opinions of these juries do not agree, a consultatinn is held. The judgment is not made by vote as in the American system, but by the decision of the president. In the procedure of Rear Admiral MASUDA, I think he applied this usual trial system. I request that you will have full consideration as to this point.

"EE 26"

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

0555

As I stated before, the two acts of FURUKI: 1. participation in the trial as a judge advocate, 2. The execution of death sentence as an executioner, are legally and entirely broken. His duty as the judge advocate are composed of his acts from the beginning of the investigation till the indictment, and they are completely legal acts without any unlawfulness or mistake from the point of view of both law and fact. Concerning the execution of the sentence, the order of execution is lawful in form and in substance, the method of the order is lawful, and therefore it is completely an act on official duty in accordance with the laws and ordinances. If there might be some mistakes in the court procedure, the responsibility for the mistake lies upon the president of the court, and only the higher court has the authority to judge it. As I stated before, the judge advocate or the executioner can not be concerned with it anyway. Therefore, there is no reason that FURUKI must take the responsibility for it.

Lastly, I would like to request your consideration for the character of the accused, FURUKI, Hidesaku. I think you will have closely perceived his character during this trial.

He was a pious man, he was in contact with his men and natives with love and faith, so that everyone was moved by his benevolence. His subordinates loved him as if he had been their father, and not a few of them were willing to sacrifice their lives if it served him. However, he did not mind doing a thankless job if it served his men. Although he is now in the stockade, he is anxious about his men day and night. His affection toward the natives were clearly shown in his testimony. No one of the native witnesses of the prosecution spoke ill of him.

As you have heard in his statement, he left his wife and a child of 3 months old at home and went to the front. They have had no chance to meet again during these seven years. His wife and son lost their house because of an air raid, and, living in the house of other people and bearing the hardships of the life, they are looking forward to his return of this man who is their husband and their father. I can not but shed tears when I see the misfortunes of this ex-military men.

Members of the commission, I beg you as the defense counsel for the accused and also as a Japanese, that you will have careful consideration for what I have just said, that you will find him not guilty and that you will give him a chance to work again for the people of society.

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

AKIMOTO, Yuichiro.

"EE 27"

CLOSING ARGUMENT IN BEHALF OF THE ACCUSED, FURUKI HIDESAKU, DELIVERED BY DEFENSE COUNSEL, SUZUKI, SAIZO

Original argument appended to the original record.
Certified translation appended herewith marked "GG."

"FF"

Suzuki
GG(1)

CLOSING ARGUMENT
IN BEHALF OF THE ACCUSED, FURUKI, HIDESAKU,
delivered by
DEFENSE COUNSEL SUZUKI, SAIZO

President and members of the commission:

Since the trial of the present case commenced at the beginning of March, approximately thirty-one days of hearing have been held and today the opportunity to deliver the arguments of the defense has come. I must express my deepest respect to you all in granting us such a long session in the carefuly deliberation on one defendant.

The executions of Jaluit natives for which the accused FURUKI is charged in this case were originally not of a nature to be prosecuted as crimes before this court and to be tried in order to reach a finding of guilty or not guilty on them as an ordinary criminal case or war crimes case. This case should not have been recorded in the legal proceedings of this court, but it should have been recorded merely as a legal execution of native criminals together with the name of Rear Admiral MASUDA, Nisuke in the last page of Jaluit's battle history, which undoubtedly will become in the future important data in the military history of the war. This is the starting point in my argument in behalf of the accused and as you shall note will constitute my conclusion.

In Charge I the accused, Furuki, is charged with murder and each specification thereof alleges that FURUKI, Hidesaku, then a major, I.J.A., attached to the Second Battalion, First South Seas Detachment of the Imperial Japanese Armed Forces, and while so serving as the commanding officer of the Second Battalion, at Jaluit, Atoll, did during the present war wilfully, feloniously, with premeditation and malice aforethought and without justifiable cause, kill unarmed natives of the Marshall Islands, this in violation of the crime of murder provided in article 199 of the Japanese Criminal Law.

In charge II the accused, FURUKI, is charged with the crime of violating the Laws and Customs of War, and each specification thereof alleges that the accused, FURUKI, while serving as the C.O. of the Second Battalion, First South Seas Detachment of the I.J.A. at Jaluit Atoll, did during this present war on Jaluit Atoll, wilfully, unlawfully and without previous trial punish and cause to be punished as spies by killing native inhabitant of

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

the Marshall Islands, this in violation of the laws and customs of war.

Before going into the detailed and concrete argument as to whether he is guilty as to each specification of both charges, I would like to clarify the legal relation between the Empire of Japan and Jaluit Atoll, Marshall Islands and its native inhabitants, at the time this case occurred.

The former German Pacific Islands lying north of the Equator including Jaluit Atoll were occupied by the Japanese Navy during World War I, and as a result of the Allied Conference held in London in the year 1919, the area was mandated to the Japanese Empire. And in December, 1920, the Empire of Japan formally accepted the Class C Mandate from the League of Nations. Thereafter, as stipulated in Article 22 of the League of Nations Covenant and Article 2 of the Mandate for Japan, the Japanese Empire possess full power of legislation and administration over the territory and as an integral portion of the Empire came to rule it in accordance with the laws of Japan. In the charter, 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."

Now, what was the nature of the rights Japan had over these mandated territories? I shall explain this, in accordance to the theory of OKADA, Ryoichi, a Japanese scholar on International Law.

Based upon the rights provided in Article 109 of the Versailles Treaty, the principal Allied and Associated Powers divided the former German overseas territories between the victorious countries. Some were given possession as outright annexation while others were granted under the title of mandated territories of the League of Nations. On July,8, 1919, concerning the territories subject to mandatory administration, the Mandate Commission appointed by the principal Allied and Associated Powers met in London and decided upon the contents of the various mandates which were later proposed to the so-called mandatories which were Japan, France, Belgium, England, and its dominions and were also proposed to the League of Nations. After the approval of the former and confirmation by the latter had been

CERTIFIED TO BE A TRUE COPY
James A. Kenny Lieut. USN

given the Class "C" Mandate was formally set forth in December 7, 1920, and Class "B" Mandate in July. 20, 1922.

Both Class "B" and "C" Mandates acknowledged that the so-called mandated territory and that it should be administered as an integral portion of its territory in accordance with the domestic law, subject to some administrative limitation only in the interest of the natives of the territory and peoples and countires of the League of Nations other than the Mandatory. It was provided that the Mandatory should make an annual report to the Council of the League of Nations, with regard to its administration and also that the consent of the Council of the League of Nations was required for any modification of the terms of the present mandate.

Therefore, among the various countries that received the distribution of former German colonies after the numerous conferences of the principal Allied and Associated Powers which were held during May 7, 1919 to September 5, Portugal was given the territory "together with complete sovereignty" and Japan, France, England and its dominions which received distribution of the territories under the title of the so-called mandated territories. They should be construed as having received distribution of these areas as territories. The only difference lying between the two types was that in the so-called mandated territories certain obligations were required. This obligation meant that the Mandatory had to adopt certain administrative measures in the interest of the natives and other countries of the League, and in exercising these measures the Mandatory was to receive to a certain extent the supervision of the League of Nations. This so-called mandate was a mutual agreement with the League of Nations that the above administrative measures would be followed under the supervision of the League of Nations. The fact that the substantial contents of the mandate was decided by the principal Allied and Assocated Powers and also they forget that it formally became effective after the approval of the Empire on the one hand and the confirmation by the League of Nations on the other hand, I believe proves the composition of the mandate.

Next, we shall see citizenship of what country these natives living on the Japanese Mandated South Sea Islands, including Jaluit, had: It was proper for these natives, who no longer came under the sovereignty of Germany in accordance with Article 199 of the Versailles Treaty, to lose their German citizenship. Then the question arises whether they acquired the citizenship of the Mandatory, namely Japan.

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

This point is not made clear in the articles of the Mandate to Japan. Article 22 of the League of Nations Covenant also evades a straightforward answer and merely provides that the Mandatory shall exercise "duties as tutelage" for the native inhabitants. In case of "Class "B" and Class "C" mandates concerning former German colonies and also judging from the contents of the mandate, the "duties as tutelage" means that the mandatory exercises legislative, judiciary and administrative powers and governs directly. By no means is it construed to recognize international personality in the natives of the mandated territory as a whole and that the mandatory leads and assists them. But rather, it may be understood as having given them the status of being subject to the sovereignty of Japan as an integral portion of the people. of Japan, when judged from the nature of rights exercised by the Empire of Japan over the mandated territories. Therefore, from the view of applying war-time International Law, these territories, I believe, should be treated as quasi-territory of Japan and the natives as quasi-subjects of Japan. This principle has been hitherto recognized in the Class "C" mandates.

In March, 1922, the Military Government which had hitherto exercised power was abolished, and the South Sea Government Organization was enacted in accordance with Imperial Ordinance No.107, issued in the year 1922. In April 1, 1922, the South Sea Island Government Office was established in Palau and the Chief of the Office exercised administration over all the South Sea Islands. Branch offices were established in various important places within the territory which the Chief also administered. Accordingly, the Jaluit Branch office of the South SeaGovernment was set up in Jaluit and administrative affairs concerning Japanese civilians and native inhabitants in Jaluit were handled. Judicial affairs were handled by the South Sea Government Court which was immediately attached to the Chief of the South Sea Government. There was a higher court in Palau. Jaluit had no court so it came under the jurisdiction of the South Seas Local Court located in Ponape.

II

Secondly, I shall explain the relation between the Martial Law of Japan, a statute law, and Jaluit Atoll. Prior to the presentation of the defense's case, the accused requested the commission to take judicial notice of the Japanese Naval Criminal Code, Court Martial Law, and the "Martial Law" of Japan. But our request in regard to Martial Law was not granted. The Martial Law of Japan is absolutely of the same nature

CERTIFIED TO BE A TRUE COPY
James M Kenney Lieut. USN

as the Naval Criminal Law and Naval Court Martial Law is an existing law. It is the basic law for proclaiming Martial Law and in which is provided such matters pertaining thereto, such as when martial law is proclaimed, who has authority to do so, and with what authority the C. O. of a district under such circumstances is empowered. It is difficult to understand why judicial notice was not taken of the martial law which is a law actually in force. This Martial Law was "enacted by the form of DAJOKAN FUKOKU (Prime Minister's Proclamation)" and this was literally translated into English as Prime Minister's Proclamation, so I believe it was misunderstood as being a temporary proclamation of Martial Law instead of a statute law. I would like to take this opportunity to explain a little further concerning the form of Japanese statute law.

When this law called Martial Law was enacted in the year 1882, Japan did not have as yet the parlimentary (Diet) system, so all laws were enacted and promulgated under the form of the above mentioned FUKOKU (Proclamation) of DAJOKAN (Highest Government Official corresponding to the present Prime Minister). Later in 1889, the Constitution of Japan was enacted and promulgated. Thus, a system was established where all laws, as a principle, were sanctioned and promulgated by the Emperor after obtaining the approval of the Diet. There was an exception, however, that, in accordance with Article 76 of the above mentioned constitution, statute laws prior to the enforcement of the constitution would retain their validity as effective law, so long as they did not conflict with the provisions of the constitution. This law called Martial Law enacted and promulgated under the form of DAJOKAN FUKOKU (Prime Minister's Proclamation)has in accordance with Article 76 of the above mentioned constitution the same validity and characteristic as a law enacted and approved by the Diet, and therefore it was an effective existing law, at the time this case occurred on Jaluit and in 1941, this law called Martial Law was enforced in the territory of the South Sea Island which had been mandated to Japan. (Matters concerning Martial Law and Requisitions in the South Sea Island, issued December 13, 1941, Imperial Ordinance No. 1919). Therefore, this law called martial law was effective on Jaluit Atoll at the time this case occurred. As to this point, I request your special consideration.

III

The judge advocate in his opening statement has stated that the case is simple and the facts comparitively clear. Many witnesses for the prosecution have been summoned. But, from what can be gathered from the testimonies of these witnesses, the prosecution has completely

CERTIFIED TO BE A TRUE COPY
Jesse P. Kenny Lieut. USN

failed to prove the corpus delicti of the crimes alleged in Chares I and II. One fact that became most clear from the testimonies of these witnesses was that the cases alleged in Charges I and II were entirely idential. In no ways have the facts been explicity proved, that the accused, FURUKI, did unlawfully without justifiable cause kill the thirteen natives whose names appear in the specifications. Quite to the contrary, the facts reveal that all of these natives killed, were criminals given a decision of a death sentence and the accused FURUKI who had been given an order as executioner to execute the sentence, had merely shot and killed them. However, it can be assumed from the testimonies of the witnesses for the prosecution, SUGAHARA, AKIZUKI, TANAKA and UTSUNOMIYA that FURUKI shot and killed a total of nine natives: three Jaluit natives in the middle of June 1945, two Jaluit natives in the middle of June 1945, two Jaluit natives in the end of July 1945, two natives in August 1945. All took place in the coconut grove in Aineman Island, Jaluit Atoll. I say assume because they did not see the accused FURUKI in the actual act of shooting an killing these nine natives. They merely saw the corpses when they buried the bodies at the place with FURUKI, immediately after the shooting. And what the names of the natives were, the witnesses did not testify. Witness UTSUNOMIYA alone identified the two natives he buried as being a man and a woman and that it was only after the end of the war that he had learned from FURUKI that the man was Melein and the woman Mejkane. Therefore, it can be concluded from the testimonies of these witnesses that the facts brought out do not immediately prove that the natives whose corpses were buried by the witnesses were the same natives mentioned in each of the specifications of the charges in the present case. Likewise, the testimony of SAKUDA and KADOTA, both witnesses for the prosecution only proved the following facts: The thirteen natives whom the accused FURUKI has been alleged to have unlawfully killed, namely Lesohr, Kohri, Kozina, and one whose name is unknown, Arden, Makui, Tiagrik, Chuta, Chonmohle, Mandala, Laperia, Mejkane and Melein, all had committed crimes and were sentenced to death by Admiral Masuda then the C.O. of Jaluit Atoll,. SAKUDA and KADOTA only testified that they heard the accused FURUKI say he had executed the thirteen natives who were sentenced to death. It was not revealed in that testimony that they had actually witnessed the shooting and killing. Therefore, the only evidence produced by the prosecution to prove directly that the accused FURUKI actually did kill these thirteen natives, was the accused's own statement submitted to an American judiciary officer on December 3, 1946. According to this statement the accused FURUKI admits that he had shot and killed the thirteen natives, but he states in the very beginning of this statement, "I, according to the orders of Admiral MASUDA, C.O.

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

"GG(6)"

of Jaluit Defense Garrison, in the year 1945 executed the native criminals who were sentenced to death by him." We must not overlook the fact that he contends here that the shooting and killing of the natives was an execution of the decisionof the death penalty and that the execution of death sentence is one phase of execution of law. Even if death of another is incurred by this act, the act is not unlawful, and does not constitute a crime. Therefore, this statement of the accused, FURUKI, in no way offers any evidence that he had criminal intent to commit murder. On the contrary, this statement denies this criminal intent. This statement may prove that FURUKI shot and killed thirteen Jaluit natives of the instant case, but it does not prove murder. Rather, it serves as one piece of evidence to prove the non-constitution of the crime murder.

Furthermore, the prosecution has failed to prove that the thirteen Jaluit natives, shot and killed by the accused FURUKI in theinstant case, were spies or were shot and killed as spies. The testimonies of SAKUDA and KADOTA both witnesses for the prosecution also have not established the fact that these Jaluit natives shot and killed in the instant case, acted as spies, to say nothing of the fact that they were captured by the Japanese armed forces in the actual act of spying. Witness KADOTA testified that Mejkane received orders from Melein to gather intelligence on the Japanese armed forces in the outlying islands, but there was no definite testimony as to whether Mejkane spied or not. It has not been proved that Melein and Mejkane had been executed as spies of the hostile power. On the contrary, it has been proved that the thirteen natives had been punished as criminals of Japan, violating the domestic laws such as the Japanese Naval Criminal Code, the Japanese Criminal Code, etc., It is worthy to note also that the prosecution attempted to deny theact of spying on the part of Mejkane.

Thus the prosecution has failed to prove the corpus delicti of the crimes alleged in each of the specifications of Charge I and each of the specifications of Charge II. Therefore, the accused should be acquitted on the ground that both charges and each of the specifications therein served against the accused have not been sufficiently proved.

IV

At first the judge advocate commented in his opening statement, we see FURUKI occupying the chair of the accused, as a murderer of thirteen innocent Marshallese. But in course of the examination of the commission , the figure of a murderer gradually fades away. Finally, the real and original features of FURUKI are revived; that is, he had according to Admiral MASUDA's orders carried out the execution of the native criminals

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

who had been sentenced to death by the Special Court Martial in which Admiral Masuda, the C. O. of Jaluit personally presided as President. When we sum up all the testimony and evidence submitted before this commission, I am convinced that this conclusion is correct, and I firmly believe that this was the truth of the actual happening.

Now let us contemplate the subject of the death of Admiral MASUDA and the truth of the instant case. After the end of the war Admiral Masuda committed suicide on Jaluit. I believe this event was most unfortunate for the accused FURUKI. If Admiral Masuda were alive now, FURUKI's position would have been clearer. As Admiral Masuda is not alive, all of his acts have been regarded intentionally or unwittingly as FURUKI's act. Moreover, what's further unfortunate is the possibility of FURUKI being prejudiced by some perhaps believing that Furuki is shifting the blame for his disadvantage to Admiral Masuda and evading his responsibility; and since Masuda no longer lives, to be looked upon with suspicion that FURUKI and his subordinates are wilfully fabricating facts that will be beneficial to him. To Furuki, this is most incredible and vexatious. FURUKI is a man who may take the responsibilities of others, but never places them on another person, and I believe he wouldn't dream of doing this. To think of placing the blame on Admiral Masuda who he still deeply respects, is entirely out of the question. On the morning of the first day of the trial, he showed me a poem which he had written. Theidea of the poem was that FURUKI respected Admiral Masuda like a father and that the Admiral was always beside him and encouraging him.

The judge advocate presented an investigation document which had absolutely no relation to this instant case, and read portions of it in which FURUKI changed his statement before and after the death of Admiral Masuda. The judge advocate by using this tactic tried to impress the Commission with the fact that the accused FURUKI in this instant case had changed his statement. But FURUKI and all those who were related to this case, were firmly convinced that the present native case had been dealt with under Admiral Masuda's legitimate authority and proper procedure, and that there was nothing whatsoever about whether to feel guilty. Even if the question should rise, it was a purely domestic issue and they did not dream or think that it would be tried in a foreign court as a war crime. Therefore, there was no need for FURUKI to evade his responsibilities or to lie or fabricate anything to lighten it. For instance, it appears that the Judge Advocate was prejudiced and thought that Masuda's judgment papers concerning the native criminal were something fabricated afterward. If the judgment papers did not exist at that time and were thought out to make it appear as if they actually existed, I should think it would have been a little more apt. Its

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

form would not be as it was in which the upper half of the sheet judgment paper and botton half for opinion paper. We can imgine the paper shortage situation in the ruings of Jaluit. There are no provisions concerning the form of HANKETSU (judgment) in the Japanese Criminal Procedure Law of Japanese Court Martial Law. Therefore, the form which FURUKI wrote and illustrated before this commission is not null and void as a judgment paper.

At this point someone may raise the question: The form of Admiral Masuda's judgment paper may be illegal, but the HANKETSU (judgment) is null and void and illegal when there was no formal process for making these judgment papers and when the procedure was illegal. When the death sentence is carried out on the basis of such a null and void or illegal HANKETSU (decision), the execution is unlawful. It is not justified. When the death sentence is carried out it constitutes murder. And in this instant case, there has been no definite showing that the proceedings taken up till sentence was pronounced did comply with the regular procedure provided in the Japanese Criminal Law. So they would say.

In making my response to this shrewd question, I shall not resort to technicality of law. I shall quietly say: In discussing a criminal responsibility of a person, it is most dangerous to make an abstract study of it by cutting his act off from all social relationship and from the society in which he is put. The advanced theory and principle of criminal law will not allow this. Whenever there is a discussion on crime and punishment the advanced theory on criminal law is always cautious about compelling super-human morality and because it was not observed hesitates to condemn him with punishment. I would then acquaint him with the great throughts of Spinoza, "The acts of man, we should not scorn, nor sorrow for, nor curse, but understand." To understand is to forgive.

The execution of the thirteen natives in the instant case was Furuki's final tragedy encountered in Jaluit. Furuki had loved the natives very much and it was a great misfortune for him to have to leave the island after shooting and killing the natives even if they were criminals.

I shall reveal the theoretical part of my argument later. Prior to that, it is highly necessary to fully find out under what circumstances on Jaluit and how these incidents in the instant case occurred.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Suzuki
GG(10)

After the occupation of the Gilbert Islands by the American forces in November, 1943, the Marshall Islands became the front line of battle. Under the ceaseless intense bombing of the American planes, each base force strengthened its naval garrison while reinforcement by army troops from Manchuria and Japan poured in. Just at this time, the Second Battalion of the First South Seas Detachment, commanded by the accused, Major Furuki was sent as reinforcement to the Marshalls. His was one of the many army units that came under the command of the Fourth Fleet.

The second battalion under the command of the accused, Major Furuki, had been attached to the Sixty-fourth Naval Garrison on Wotje. On receiving orders to move to Jaluit, Furuki took with him a part of his battalion, consisting of about 200 men and left Wotje for Jaluit by way of Kwajalein. After a difficult voyage needling through the American air supremacy, on January 18, 1944, they finally landed on Jaluit. There, FURUKI's unit was attached to the Sixty-second Naval Garrison and came under the command of Rear Admiral MASUDA, Nisuke, commanding officer of the Garrison. It should be noticed that the ship which brought FURUKI and his men was the last ship which Jaluit was to see.

In the beginning of February, 1944, about fifteen days after FURUKI's arrival, Kwajalein fell into the hands of the Americans. The headquarters of the Japanese Forces in the Marshalls, including the Sixty-second Garrison was situated on that island. This meant the loss of a base for Jaluit. Moreover, this caused all Japanese forces stationed in the Marshalls to be abandoned in remote isolation in the strictest sense of the word.

After the fall of Kwajalein, about March of 1944, a dispatch from the Commander in Chief of the Fourth Fleet was sent out to Jaluit Atoll which was already resigned its fate of annihilation. This dispatch was caught by the Naval radio receiving station at Jaluit. The dispatch read, "Hereafter each base C. O. shall have command over all military units and Government offices."

At a glance, this dispatch seemed very simple. But to those who were fully aware of the battle conditions of the Marshalls at that time, this simple dispatch had a deep and complicated meaning. This dispatch on one hand enlarged and empowered the authority of the supreme C. O., Admiral MASUDA, to that of a despotic administrator, and on the other hand it meant that Jaluit was put in a situation comparable to the destiny of a child who having already losts its father now was now pronounced to be abandaoned by its mother. It was

CERTIFIED TO BE A TRUE COPY
James A. Kenny Lieut. USN

for the officers and men a heartless ultimatum saying "Hereafter, all reinforcement or supply is impossible, so continue the battle and support yourself." It was a declaration to abandon Jaluit as a strategic base of operation, but no words were found in it to allow them to surrender to the enemy. Subdued under the complete power of the Americans, Jaluit was abandoned like an orphan and still it was not allowed to surrender but was compelled to fight till the last man. In this inconsistent circumstances, we find the tragic cause of the instant case in which the accused FURUKI is being tried today. If the traditional spirit of the Japanese Military Forces had allowed the Commanding Officer to surrender after a reasonable consideration of the circumstances were made, then perhaps these native incidents, this execution of natives, would not have occurred, and FURUKI would not have been facing this commission as an accused.

As soon as C. O. Admiral MASUDA received this dispatch from the C[illegible] Commander in Chief of the Fourth Fleet he gathered all the C. O.'s of the various military units on Jaluit (there were at that time about eighteen different units) and the head of the Jaluit branch of the South Sea Government. He ordered the Jaluit Defense Garrison to be organized which included all people on Jaluit Atoll, military personnel, Gunzoku, civilians and natives. He himself assumed the position of its Commander. He then declared at this conference that hereafter he possessed and would exercise absolute authority of administration over all persons and property on Jaluit Atoll. The organization of Jaluit Defense Garrison! This was the general mobilization structure which the Japanese Armed Forces on Jaluit adopted and they had no alternative but to adopt it under the siege of the enemy, when all hopes were lost for reinforcement and supply, when surrender was not allowed and when fate was to fight till the last man was dead.

Now a question arises. Was this sort of organization formed on other bases of Marshall where the same dispatch had been received received from the Commander in Chief of the Fourth Fleet. I would like to reserve my response on this point to a latter part of my argument. It is merely necessary for me to state here that MASUDA did by forming this Defense Garrison and delivering his statement most truthfully grasp and faithfully exercise the substance of the dispatch from the Fourth Fleet after reflecting upon the battle conditions of Jaluit. Here Admiral Masuda shows his sharp, deep thinking mind, his superb organizing ability, and his disposition as a despotic commanding officer. I would like to ask the members of the commission to take special note of this point. It is utterly

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

impossible to understand the true capacity of FURUKI's responsibility without consulting the nature of MASUDA as Commanding Officer. On all of the other bases of Marshall Islands practically all of the natives deserted and more than 40% of the men died of starvation. In spite of this, Jaluit which was only eight square kilometers and exposed under the most intense bombing and bombardment unprecedented in the history of war, suffered only 2% loss in men by starvation and at the time the war came to an end half of the natives out of 2,000 still remained on the island. This fact is, in a sense a miracle. And on the other hand, doesn't this eloquently explain the reliability on the despot Admiral MASUDA as C.O. who had such superior organizing ability?

All of the officers and men on Jaluit were determined to fight to the bitter end, and waited impatiently day after day for the American attack; but the American forces by-passed them, and in the middle of June, 1944, commenced landing operations against Saipan, which they soon occupied.

In these Nimitz Operations, upon occupying Saipan, after the last Japanese resistance in the Marianas, instantly pressed upon Palau. The tide of the vigorous fighting had by now passed toward the west and the little island of Jaluit in the Marshalls was left behind the fronts of the Americans. In this stepping stone operation of the Americans, a landing attack was not planned against Jaluit because it had already lost its strategic value, and instead ... annihilation by bombing and bombardment was conducted. The intensity of bombing and bombardment which Jaluit underwent is beyond adequate words to describe. Witness INOUE, Fumio vividly explained the disasterous situation and gave the following figures: number of attacking planes, 8,100; total ton of bombs dropped, 5,000. Under this severe bombing and bombardment, Jaluit Atoll, and particularly Emidj Island, where the Japanese forces were stationed, was reduced to ruins. The topographical features of the island were converted into one big pile of sand; every single coconut tree, barracks, warehouses and buildings were completely destroyed. Every day officers and men had to dig holes in the said in which to sleep when possible. They gathered together the pieces of sheet metal and built a small hut to shelter them from the squalls. Moreover the fierce attack of the Americans destroyed the guns in the island; it deprived the men of clothing, shoes and blankets.

It is only natural that food soon became scarce on this ruined island. The ration was cut 20% then 30%, and finally to half of the regular ration. To make things worse, supplies from the rear to Jaluit could not be anticipated. After the fall of Kwajalein, Rear

CERTIFIED TO BE A TRUE COPY
James P Keany Lieut. USN

Admiral Masuda organized the Jaluit Defense Garrison composed of all the army and navy personnel, Gunzokus and natives. Admiral Masuda, who was well versed in planning and possessed rare ability in organizing showed great concerning toward the food problems. From the time Kwajalein fell, he began to study and did everything possible in regard to the problem. But there was no hope of producing agricultural products in the sandy soil of Jaluit which rose only one to two meters above sea level.

On about July, 1944, "the self supporting committee" was established in the headquarters of the Jaluit Defense Garrison. While fighting continued against the heavy attack of the Americans, now a serious battle to survive, to obtain food had to be commenced simultaneously. Everyone did everything within his power to increase the food production by even the slightest amount. But the topography of the island and the intense attack by the Americans hampered from within and without the success of such self-support measures. Food production was not increased in the least. The reserve food had finally come to the end. Dark clouds overshadowed the future of the Garrison. Besides lacking good air-raid shelters to protect their lives, now the gruesome fear of starvation was pursuing the men who could not predict whether they would live tomorrow or not.

At this crucial moment, when starvation was creeping upon men, a food gifted from Heaven appeared before them. It was called "Chagaro," a native toddy. "Chagaro" is a syrup which filtrates from the section where the flower of the coconut is cut before it blooms. When it was distributed as food the officers and men rejoiced in spite of themselves. Thus, the men of Jaluit found this new food, and launched measures of self-support which sought to provide one copra and one "sho" of Chagaro per person a day.

Thus, they had found this new food called "Chagaro"; but the other natural resources such as copra, fish, wild edible grass and sweet potatoes which they had figured would grow, did not yield as was first planned. Moreover, the production of "Chagaro" depended largely upon the weather, transportation and containers, and because of these bottlenecks, the supply was far from sufficient. On the other hand, minute by minute, starvation was setting upon them. Low and depressed, officers and men staggered weakly around. Suffering from malnutrition, the number of men increased who appeared more or less like skeletons donning garments of human skin. Their condition was so weak that a rest was needed in walking a short distance of 100 meters.

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

Besides struggling against agony to subsist on the other hand the tide of war took a completely unfavorable change for the Japanese forces. Every stronghold in the South Pacific had fallen into the hands of the enemy, and now the brunt of attack pointed toward Jaluit. Annihilation was only a matter of time. The Americans attack from Majuro and Kwajalein, only 200 kilometers away, seemed never to cease. So severe was the attack, that it seemed this small island, which was only eight square kilometers, would completely submerge into the ocean. Wherever you may have gone on this island, you could not miss seeing numerous large bomb holes filled with ocean water eventually forming a pond.

All this time, not even once was supply brought in from the rear, and contact with the outside was completely suspended. Inch by inch life was being chiseled away by the menace of starvation and bombing. Caught in such circumstances, the officers and men were seized by a most unbearable feeling of despair. What gave these men in despair courage and hope? It was none other than Admiral MASUDA. Nisuke, C. O. of the Jaluit Defense Garrison standing firmly amidst this hardship. He was a man of high intellect, unsurpassed ability in organizing, and resolute will power. The officers and men called him "The Sun of Jaluit." All men united around Admiral MASUDA like a child hugging to its mother's breast in a storm. Resigning everything into his absolute command, they were determined to pull through this miserable situation on Emidj comparable to a living hell.

On obtaining this heaven sent gifted Chagaro or coconut toddy, the men saw a guiding light in the battle against starvation, but it was soon to be dimmed by dark clouds. This was the American progapanda tactics seeking to destroy Jaluit from within--propaganda tactics to encourage native desertion to the American forces. It was known that without the natives who gathered copra, produced coconut toddy and transported food from the outlying island to Emidj, self-support was impossible. Natives were absolutely essential for the subsistence of Jaluit. Stimulated by the incident in which native spies from Mille sneaked into Jaluit on March, 1945, the Defense section was established in the headquarters of the Jaluit Defense Section. FURUKI was assigned as the head of this section and he studied counter measures concerning guarding the Island. But guarding of the out-lying islands was a difficult task, because there were no guns to repel the approach of the American LCI's and no boats were available to make contact with the outlying islands. On May 6 and 7, 1945, an American Destroyer and several LCI's approached the shores of Jaluit and on this occasion about 500 natives deserted to the American vessels. This loss of $\frac{1}{4}$ of the total natives endangered the subsistence of Jaluit. At this critical moment

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

a proclamation was announced to the natives stating that hereafter desertion, and acts done for the benefit of the enemy shall be severely punished. At this time on Emidj, rats, wild grass and every edible thing were thoroughly eaten up. At this time a number of noncommissioned officers in total despair and impatience committed suicide.

In the middle of May, 1945, a report came to the headquarters that Echibaru, a native of Imrodj Island, after struggling with the head of detachment unit on Imrodj, petty officer Okamoto, aboard a canoe in an attempt to strangle him, had been thrown overboard and disappeared. Admiral Masuda was gravely concerned with the incident and ordered KADOTA and SAKUDA as investigators to conduct a thorough investigation. In the daytime, it was most difficult for them to go to the outlying island because of the airplanes. Great hardship accompanied the investigation. As a result, the whole plot was disclosed. Lesohr, Kohri, Kozina, one unknown, Arden, Makui, and Tingrik were found to be leaders and had attempted to kill the guard, plunder military vessels and carry out large scale desertion of the natives.

In order to hold a trial for the seven ringleaders, Admiral MASUDA ordered FURUKI to act as Judge Advocate. Admiral MASUDA personally presided as President. He ordered Lieutenant Commander SHINTOME (then the hightest ranking naval officer next to MASUDA) and Captain Inoue (then ranking army officer next to FURUKI) both to act as judges in the trial.

As regard the procedure of the trial, there was no suitable air raid shelter to enable them to calmly conduct the consultation so the failure to comply with the Court Martial Law could not be avoided. As to interrogation of the accused natives, FURUKI and MASUDA personally went to the Second Ammunition Dump where they were confined and questioned them. After confirming the facts set forth in the investigator's reports, by way of questioning the accused natives, MASUDA summoned SHINTOME, INOUE, and FURUKI to his office. First of all he had FURUKI express his opinion. INOUE and SHINTOME stated their opinion concerning FURUKI's statement. Two days later, MASUDA wrote down his judgment on the upper half of FURUKI's opinion paper and pronounced the sentence. The sentence was more severe than what FURUKI expressed in his opinion. Lesohr, Kohri, Kozina, one unknown, Arden, Makui, and Tingrik were given the maximum sentence. FURUKI, according to orders, shot and killed them. This is the actual fact of the case alleged in specification 1 and specification 2 of Charges I and II.

CERTIFIED TO BE A TRUE COPY
James F Kenny Lieut. USN

The cases alleged in specifications 3, 4, and 5 of Charges I and II are approximately of the same content and the process of examination and consultation of the crimes are quite identical.

The judge advocate questioned witness MORIKAWA in such a way as to give an impression that the investigators exercised violence and brutality in questioning the witnesses and suspects. MORIKAWA definitely denied this. In rebuttal, the Judge Advocate summoned as witnesses Saburo, Levitikos, Obetto, Emos and Ente and others who all were said to have been investigated in the incidents of the instant case and endeavored to prove such acts of violence and brutality. But the attempt of the Judge Advocate completely failed. Ichiro testified he sneezed when MORIKAWA stuck the pronged wire into his nose. The damage was only to that extent. He did not testify that he was beaten by MORIKAWA. Levitikos testified that he saw Morikawa beating Mejkane through the hole in the wall of the adjoining room. Obetto who was in the same place with Levitikos testified he saw Morikawa beat Mejkane from the entrance leading to the room in which he, Levitikos, was and therefore, he gave inconsistent testimony. This proves that that these testimonies were fabricated.

Except for Saburo into whose nose a pronged wire was stuck to the extent that he merely sneezed, all the other witnesses were not victims of mistreatment. They only said that they saw the others mistreated. Even these testimonies concerning what they saw were filled with inconsistence and are open to question. It was as if they had taken the stand in behalf of the defense to testify that they had not been mistreated.

The prosecution further hurriedly summoned SHINTOME from Japan on the last day of their rebuttal, and brought him to the court. They tried to establish by his testimony that there had not been a trial and that SHINTOME had not been the judge. But it was not successful. When he took the stand he could not bear to look at FURUKI. It was impossible for him to do so. His testimonies did not touch the essential point of the issue and he seemed to be endeavoring to prove that he had no concern with the case. He was restless and uneasy all the time, and brought forth such inconsistent testimony as follows:

Although he was next to MASUDA in rank among the high ranking officers of navy unit on Jaluit, he testified that he did not know that the natives had been executed. He also testified when he happened to enter the room

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

of commanding officer Masuda, FURUKI with some documents was explaining to MASUDA something about the natives. At that moment, Rear Admiral Masuda said that the natives had to be executed. And he, although he was not asked to state his opinion by MASUDA (he used this phrase many times and stressed that he was never requested to state his opinion), he stated that he requested MASUDA to give up the execution, because it was so pitiful to execute natives who worked hard for the production of food in co-operation with the Japanese Forces. He testified that he stated his opinion of his own accord, and after finishing his testimony, he added his long statement concerning the conversation between him and MASUDA and although he advised him not to execute the natives, MASUDA stated he could not help it in order to maintain military discipline and the dignity of the military forces. But the contents of his statement were not a mere talk as he had stated but rather that of the consultation as judges. By the contents of his statement he revealed himself to have been a judge. I think that the commission also knows that there are two types of persons in any country or race: one who calmly takes the responsibilities of other people, and the other who tries to put his responsibility on the other people.

Next we must make the following points clear.

Had Masuda, then a supreme commander of the Jaluit Base, the authority to establish court martial on Jaluit?

Concerning the classification of the court martial, Article 8 of the Naval Court Martial Law provides as follows:

"Court Martials are organized as follows:
1. Higher Court Martial.
2. Tokyo Court Martial.
3. Naval Station Court Martial.
4. Naval Port Court Martial.
5. Fleet Court Martial.
6. Isolated Court Martial.
7. Temporary Court Martial."

Article 9 of the same law provides: "An Isolated Court Martial is established especially in a district surrounded by an enemy when a declaration of martial law is made. A Temporary Court Martial, in a case of necessity during war and naval operation shall be specially established in a naval unit."

CERTIFIED TO BE A TRUE COPY
James J Kenny Lieut. USN

These two are so called specially established court martials.

Article 10 provides: "A specially established court martial makes the Commandant of the unit of district where the said court martial is established its president."

According to the above provisions, it is clear that MASUDA had the authority to establish the so-called specially established court martial on Jaluit for the trial of the Native criminals regardless of whether Martial Law is proclaimed and enforced there. Therefore, the authority to hold the trial which MASUDA exercised is lawful.

Next, let us consider whether or not the court martial specially established by MASUDA on Jaluit had the jurisdiction over the natives and their offenses of this case.

As I stated at the beginning of my argument, the natives of Jaluit were subject to the Japanese sovereignity and were under the jurisdiction of the court of the South Seas Government of Japan.

In the peace time, normal offenseswere under the jurisdiction of the court on Palau, the offenses in violation of military criminal laws were under the jurisdiction of the standing court martial on Truk. When a native, who was not a gunzoku but was engaged in the military work, committed a normal crime, he was to be court martialed according to the stipulation of Article 1, paragraph 3 of the Naval Court Martial Law. Article 6 of the Naval Court Martial Law admits the special jurisdiction in time of war or emergency as follows: "A Court Martial, at the time of military operation, if necessary, in order to safeguard the Navy, may exercise power of jurisdiction over crimes of persons other than mentioned in Article 1."

Therefore, not only the crimes against military laws, such as the crime of deserting to the enemy, attempt of killing and assaulting the guard which are committed by the natives of this case, but also any other crimes, if it is necessary for the maintenance of the public peace in in case of war, clearly come under the jurisdiction of the court martial

Therefore, there is no room for dispute in that the court martial specially established on Jaluit by MASUDA had a legal jurisdiction over the natives of this case and their offenses.

Trial procedure.

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

At the specially established court martial the accused are not permitted to desire counsel for their defense (Article 93 of the Naval Court Martial Law). A Legal Officer is also unnecessary (Article 50). Besides, the trial is not open to the public (Article 419). Therefore, it is not unlawful that there were no defense counsel nor legal officer at the trial or natives and that the trial was not held to the public.

No appeals are allowed in the specially established court martial. Concerning the court martial specially established in the besieged area, Article 13 of the Martial Law stipulates: "In a besieged area, no appeals for retrial are allowed in a trial by a military court."

Article 420 states: "Appeals are allowed for the sentence of Tokyo Court Martial, Naval Station Court Martial and Naval Port Court Martial." And appeals are not permitted for the sentence of the specially established court martial.

Although it is necessary to receive the order from the Naval Minister to carry out the execution of death sentence, (Article 504), it is unnecessary to do so for the sentence of the specially established court martial. In such a case the commanding officer of the court martial orders the execution.

Therefore, in this case, it is lawful that Rear Admiral Masuda, the commanding officer of the specially established court martial, ordered FURUKI after the announcement of the sentence to carry out the execution.

Article 363 of Naval Court Martial Law provides: "Investigation on the fixed date (day of the trial) shall be done in court, the court shall be opened with judges, Judge Advocates, and recorders present."

Furthermore, Article 365 stipulates "When the accused does not appear in court at the fixed date (day of trial), unless otherwise provided the court may not be opened.

Were trials held with the accused present, in the instant case? A court does not necessarily in any way have to be held in a specific place. It is acknowledged that MASUDA accompanied by FURUKI went to the place where the natives were confined and directly questioned the accused. No facts were revealed that at this time INOUE and SHINTOME, both judges, also accompanied them. However , according to Article 387 of Naval Court Martial Law which reads: "The President shall interrogate and investigate the evidence of the accused."

Therefore, this questioning even when only done by MASUDA alone,

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

who was President is, not in any way, illegal. Summing this up, the regular procedures provided in the Naval Court Martial Law were not carried out, but it may be observed that procedures that were exercised, complied with the spirit of the provisions of this law. Now is it not possible to consider it in this manner, that a trial was held but the procedures adopted were slightly different from the regular procedure as provided in Court Martial Law, and not that there was no trials held and the judgment was made under a special procedure which was not a trial. From the battle conditions of that time, couldn't we consider this as an unavoidable procedure. A conception of a trial is very vague. In the Japanese Criminal Law there is a special procedure called "simplified procedure." This is a system in which the accused is not present but a fine is declared merely based upon the indictment of the prosecutor. Even if a court was not held, there is no difference in a trial being a trial. Trial is an act to decide under a certain procedure a finding of guilty or not guilty, in a certain crime. It cannot be concluded that a trial was not held because the American type of court was not held. Even if there were a defect in the procedure of an agency which had legitimate jurisdiction over a certain crime, when it gave out a decision, I believe we could not say that no trial whatsoever was held.

There can be no question that a certain procedure was held between the time MASUDA ordered the investigation until the judgment papers were formulated. Whether this is called a trial or not, rests entirely upon the interpretation of the word trial. And we consider it as a trial.

What we should interpret at present is not whether we call this procedure trial or not, but whether from the point of view of Criminal Law, particularly Japanese Criminal Law, FURUKI, who acted as judge advocate in this procedure and who executed the death sentences ordered by MASUDA, is responsible or not; the question whether this act constitutes a crime that violates Article 199 of the Japanese Criminal Law.

Article 35 of the Japanese Criminal Code provides: "Acts done in accordance with laws and ordinances or in pursuance of a legitimate business (or occupation) are not punishable." This article implies that when law provides that a certain act is a right or an obligation then that act is not a crime. For example the carrying out official business falls into this category. The execution of official business is classified into (1) that done by superior order and (2) that under one's rights, but neither constitutes a crime. For instance, Article

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

199 of Japanese Criminal Code provides "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." When we only read this article the impression might be that when a person kills another person whatever the case might be it constitutes murder. For example it would be misleading to think even when an executioner executes the death penalty and kills another person that his act would constitute a crime of murder. But, this execution of the death penalty is carrying out official business; therefore, according to Article 35 of the said Code it is an act in accordance with laws and ordinances and not punishable. Why do not acts in pursuant of official business constitute crimes? The answer is because unlawfulness does not exist in the act.

V

With the permission of the commission I would now like to explain the system of Japanese Criminal Law. The case law system is not adopted in Japan but as a rule the statute law principle has been used. Therefore, the Japanese Criminal Code is a statute law. But the cases of the Supreme Court have been given considerable weight and significance and have influenced the interpretation of the acticles of the Criminal Law. The Japanese Criminal Code is divided into Book I, General Provisions and Book II, Crimes. In Book II, entitled Crimes, the types of crimes are abstractly set forth and the maximum and minimum punishment or penalty imposed when the provisions are violated are set down. In Chapter 7 of Book I, General Provisions, articles which stipulate the conditions of non-constitution of crime and mitigation of punishment are set forth. What is non-constitution of crime? The form of act first comes under each specific article provided in Book II, Crimes, but when it is not unlawful and/or when the responsibility is not recognized then in either case or both, it does not constitute a crime. In the Japanese Criminal Code, Article 35, concerning acts done in accordance with laws and ordinances or in pursuance of a legitimate business (or occupation),. Article 36 , concerning self-defense, Article 37, concerning flagrant necessity, are cases in which crime is not constituted because the act is not unlawful.

Furthermore, Article 38, paragraph 1 provides: "Except as otherwise provided by special provisions oflaw, acts done without criminal intent are not punishable." Which means there is no responsibility when there is not criminal intent or malice; also, except when there are special provisions of law provided that acts done by accident are

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

punishable even if criminal intent and malice do not exist. Article 38 paragraph 2 provides for "mistake of facts" and paragraph 2 for "mistake or ignorance of law." A great part of the theory and principle of Criminal Law lies in how the above-mentioned 4 articles are interpreted, and most of the judicial cases are related to the interpretation of the 4 articles mentioned.

Thus, if we were to define crime from this system of Criminal Law it would read, crime is an act in which there is responsibility and unlawfulness corresponding to each specific provision in Book II entitled Crime. Therefore, for example, acts violating Article 199 do not merely mean acts which caused any persons death but only acts of killing for which there is unlawfulness and responsibility. When a executioner executes a death penalty and kills a person, it is an act in accordance with law mentioned in Article 35; and it is not unlawful. Therefore, it does not constitute a crime. When a person kills another person accidentally, it is an act "without criminal intent" provided in Article 38 paragraph 2 and because there is no provision to punish mistakes, such an act is completely without responsibility, hence it does not constitute a crime.

The defense holds that the accused is not guilty because his acts were done in pursuance of official duty. As I have stated above, the court martial specially established by MASUDA in the instant case is a lawful one. Therefore, the members of the court martial on Jaluit were carrying out their official duty. FURUKI, the accused, was ordered to carry out his duty of judge advocate by MASUDA who convened the court martial. FURUKI was legitimately appointed and his duties as judge advocate was an exercise of official business. He only stated his opinion as the judge advocate concerning the punishment. He had no concern with the verdict of the judges. After the judgment paper was made, MASUDA ordered FURUKI to carry out the execution of the death sentence. Then, MASUDA, in the capacity of President of the specially established court martial, ordered the execution of sentence, and it was quite natural that FURUKI was ordered to carry out the execution because he was the judge advocate. It is the duty of judge advocate to take charge of the execution of the sentence. As I have stated before, it is also lawful that the execution was ordered as soon as the pronouncement of sentence without allowing appeal or permission of the Navy Minister. The sentence was made also with proper jurisdiction over the offenses of the natives. Therefore, the judgment was also proper. Even though there were defects in the court procedure until the announcement of sentence, the sentence was no in any way invalid. It is a valid

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

sentence in form. Therefore, the acts in execution of the sentence are definitely the acts in pursuance of official duty. Therefore: the acts do not constitute crimes according to the Article 35 of the Japanese Criminal Code. I think in the cases of American law the same interpretation is made.

For instance, Wharton's Criminal Law states as follows: (Wharton's Criminal Law, Volume I, Section 529).

"and if there be no jurisdiction in the court by whom the warrant is issued, the offense is murder, even though the officers charged honestly believed in the validity of the warrant, though it is otherwise when the warrant is irregular from some merely formal defects."

Generally, the word trial is a very vague and ambiguous word. The impression which the American and English people receive from this word "trial" may considerably differ from that of the Japanese people. Moreover, there is a great difference between the American trial procedure and the Japanese. We must not confuse "trial" with "court." As a matter of fact, in Section 3 of Chapter 1 of the Naval Court Martial Law the word "trial" is construed as the consultation of the judges. In Article 95 of the said law provides "Trial is done by the consultation of a fixed number of judges." It does not mean to hold a law court and investigate. Therefore, even though we insist that there was a trial concerning these native criminals, a person with a different conception of trial will contend that there was not and will contend that the act of the accused is not in accordance with law or ordinance or in execution of law, because there was no trial.

Granting that there was no trial, I would then rebut by the theory that there was no criminal or malice intent to violate Article 199 of the Japanese Criminal Code. It would not be difficult to prove the innocence of the accused FURUKI by resorting to the theory of Japanese Criminal Law and cases and explaining the instant case. But I regret that when I asked the accused FURUKI when he took the witness stand the question "When Masuda told you that under the present pressing battle situatinn a regular procedure of Court Martial cannot be held, so by his authority he would conduct a trial of the native criminals under special procedure, at that time did you think that a trial by such a procedure was illegal"; this question was objected to and sustained by the commission. Because of this objection, I was not able to probe into the mental state of the accused at that time. What

CERTIFIED TO BE A TRUE COPY
James F. Kenney Lieut. USN

did the accused think about this procedure? By believing the words of his senior officer, MASUDA, was there a mistake or defect in acknowledging the illegality of the procedure? Did he think this simplified procedure could not be helped under the actual condition on Jaluit at that time? Thus, we were not able to learn the state of mind of the accused.

At this time I would like you to take special note of the following. The statement which the accused submitted to an American judiciary officer has been introduced into evidence by the judge advocate as the accused's admission or confession. The statement is dated December 3, 1946. The accused states in his statement that he was ordered by the C. O. of the Jaluit Defense Garrison, Admiral MASUDA, to execute the death sentence pronounced by him concerning the native criminal. By this order he had shot and killed the natives in this case. This statement was written prior to our talk with the accused.

This act of shooting and killing does not constitute a crime because it was an act of executing the death decision. As I have reiterated before, this statement of the accused stating that the shooting and killing was an act in executing the death judgment shows that the accused did not have a criminal intent of murder. It is a denial of criminal intent or malice of murder. Therefore, this statement stating that the accused shot and killed as an act of executing the death judgment, should not be taken as an evidence of murder. Homicide as an act of executing the death judgment is, as I have explained before, an act in accordance with law and ordinance or in pursuant of legitimate occupation (or business) in the Japanese Criminal Law. Such homicide is not illegal. It is a justifiable act. It does not constitute murder. Therefore, in order for an act in execution of a death judgment to become an act of murder, it must be proved that he knew the death judgment was illegal and invalid and he had intended to use the death judgment and killed a person.

If I should speak from the view of theory of criminal intent in Japanese Criminal Law, what we should note is, even if the death judgment had been illegal, if the executioner, the accused in this case, was not aware of its illegality, the we cannot acknowledge that he had criminal intent. It is not allowed to force the acknowledgment of criminal intent from the accused by saying that he should have known it was illegal. Then, in spite of the fact that he could have known about whether the judgment was illegal or not, if he had taken due caution and he did not know because he was careless, in this case it is only negligence. According to Article 38, this does not become criminal intent. Concerning this point, the Judge Advocate has on one hand submitted this statement as the accused's confession but has not presented any evidence whatsoever to prove the existence of criminal intent of murder. I would

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

like your special attention on this point.

However, I request you to pay attention to the following:

Such terms as "judgment paper" or "execution of sentence" are the ones which have a connection with the trial. Such words as "sentence was announced", "death sentence was announced" or "the sentence was executed" will naturally remind us of the existence of the trial behind the words. As I have pointed out before, the term "trial" is a vague one. Those who are not familiar with the law will think that the trial means the one in an open court. If such people say that there was no trial, it is not the evidence that there was not a trial in fact. When the trial systems of two countries differ from each other, it is not admissible to judge the existence of the trial of another country by the conception of the trial of one country or by common sense.

I shall add a few words. One thing for which I felt very sorry was that the Judge Advocate stated in his opening argument with slanderous expressions as "the special procedure which is nothing but a fantastic story of the defense." Such an adjectival phrase is never used in the Japanese court. If he thinks that the witnesses are liars or fantastic, he must show it by facts or by evidence. But he never has shown the fact and only debated by using adjectives and blamed his rival. It is inadmissible to do in such a way in a criminal court.

Also in Japan, discussions concerning the theory of criminal intnet are extensive and profound.

After all, the progress of the theory of criminal law is an attempt to try to understand practically and scientifically human nature and the limitation of human ability. I am fully convinced that the accused is not guilty. Frankly speaking, I do not want to assume the attitude of arguing by reason to settle this issue. But this does not mean I am claiming his innocence because of the war conditions, as the judge advocate stated in his opening statement.

I shall now read Article 17 and 18 of the Naval Criminal Code (the same provisions are found in the Army Criminal Code)

"Article 17. The action which has been done in order to quell the people who used violence, or to keep the naval discipline in face of the enemy or when the ship is in danger, shall not be punished.

"When the action was beyond moderation, the punishment for it shall be able to be taken after the extenuating circumstances are taken

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

"GG(25)"

into consideration, and it may be roduced or exempted.

"Article 18. The previous article shall also be applied to actions proscribed as crimes in the Naval Criminal Law or other laws or ordinances."

This means, for example, if killing of a person is unavoidably committed in the face of enemy in order to maintain military discipline, it will not be punished as murder.

This provision was not added to the Naval Criminal Code, after FURUKI was accused. Nor, am I convinced that the accused is not guilty by applying this provision. What I want you to note is that, even under such conditions as Article 17, a killing of person is not punished. Conditions on Jaluit at that time were not as easy to describe by the terms "in the face of the enemny and in order to maintain military discipline." They were much more serious. FURUKI and the men of Jaluit did not go to Jaluit in order to commit robbery as the Judge Advocate expressed it. He was sent to a solitary island in the South Seas far away from Japan, and was living there for about two years without any supply or help from his fatherland just as if he had been living in a living hell. Theliving conditions of the military men on Jaluit at that time was just as I have stated before. I hope you will well understand that, even in such conditions, the utmost careful attention was paid for dealing with the offenses of natives. I have already shown to you Articles 17 and 18 of the Naval Criminal Code as provisions on which to base an acquittal of the accused. I maintain that the first charge in not proved, therefore he is not guilty.

I shall state my opinion about Charge II.

I think it was a mistake or a serious misinterpretation of Article 30 of The Hague Convention to have initialed the case of Marshallese natives as a war crime, especially as the violation of Article 30 of The Hague Convention.

It is clear without a doubt that "a spy" provided in Article 30 of The Hague Convention means the spy of a hostile or neutral power. It is simply natural that, if a person spies against his own country, the country may naturally punish the spy who is its citizen in its own court according to the sovereignity of the country. It is also natural in all the civilized countries of today to punish a criminal with previous trial. It is unnecessary to protect their right to trial by taking the trouble of citing Article 30 of The Hague Convention.

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

"GG(25)"

I have already stated the relation between thenatives of the Marshalls at the time of this case and the sovereignity of the Japanese Empire. Natives of the Marshall Islands who were in the mandated territory of the Japanese Empire were subjected to the soveregnity and the judicial authority of the Japanese Empire. Therefore, if these natives acted as spies against the Japanese Empire for the beneift of foreign country, it was natural that these natives, regardless of whether or not they were caught in the act, had to be tried in the Japanese Court or had to be tried before they were punished as spies. Therefore, even if they are punished without previous trial, it will not cause an international problem. It is only a domestic problem. It can not by any means be considered as the violation of Article 30 of The Hague Convention.

The judge advocate, in his opening argument, stated that according to the testimony, MASUDA had said that natives who had deserted to the enemy would have given our information to the enemy. But a spy as defined in Article 29 of The Hague Convention is of narrower range than the spy provided in the domestic law of every country. A spy in The Hague Convention means a person who obtains or endeavors to obtain informatinn in the zone of the belligerent. To divulge to the enemy information which he happened to know is not spying as stipulated in Article 29 of The Hague Convention. Considering these points, I cannot help thinking that the prosecution misunderstood the provisions concerning the spy in Articles 29 and 30 of The Hague Convention.

There may be an interpretation which admits that Article 30 of The Hague Convention is applicable to the natives in the Japanese mandate. Even when such an interpretation is admissible, the act of FURUKI does in no way violate the laws and customs of war, because these natives were executed with previous trial as I have stated. "Trial" in Article 30 of The Hague Convention has a very broad meaning. It is the today's interpretation of the international law that it is proper to try a spy in military court of the country which arrested the spy or in any court of the country which arrested the spy or in any court which the country may determine.

In conclusion, I reiterate that the accused is not guilty for this charge under the following reasons:

1. It is not proved that the executed natives were spies under the definition of that and stipulated in Article 29 of The Hague Convention.

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

"GG(26)"

2. Those who were executed were the natives of the Marshall Islands who were at that time in the Japanese mandate, had the same status as Japanese and were under the sovereignity and the judicial power of Japan. Therefore, Article 30 of The Hague Convention which limits the punishment of the spy of other nation as a war crime, cannot be applicable to the natives of Marshall Islands of this case.

3 . The natives of this case were put on trial in the wide sense of the word.

The accused FURUKI's mind today is peaceful and clear as a mirror, The accused will not evade what responsibilities that he should shoulder. He does not fear anything. I believe it is only the dishonor of having been convicted of murdering the natives that he most fears. In closing my argument, I request your righteous judgment and request you to find the accused not guilty.

SUZUKI, Saizo

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

Carlson
HH(1)

FINAL ARGUMENT FOR THE DEFENSE

of

MAJOR FURUKI, HIDESAKU, IMPERIAL JAPANESE ARMY

delivered by

COMMANDER MARTIN E. CARLSON, USNR

at Guam, Marianas Islands

on April 16, 1947.

Gentlemen of the Commission:

This present case is an application of international law as regards the jurisdiction of nationals. This case should decide whether one nation can try a citizen of another nation for an alleged crime committed in violation of the criminal code of that other nation within the territorial jurisdiction, and upon the sovereign soil of that other nation.

The accused, Major Furuki, Hidesaku, is an officer of the Imperial Japanese Army. The people of the United States of America charge him with murder of certain native inhabitants of the Marshall Islands on the atoll of Jaluit.

Jaluit was mandated to Japan by the Treaty of Versailles on June 28, 1919, and in accordance with the terms of the mandate reported to the League of Nations. The United States of America was not even a member of the League of Nations. Jaluit was not American soil. It was clearly part of the Japanese Empire in 1945, legally and as a matter of fact. It was decided to bring charges against Major Furuki on February 24, 1947, and try him before this military commission on March 1, 1947. This was and is error.

The protection of citizens abroad is a legal subject. The protection of Major Furuki, Imperial Japanese, Army, is a legal matter. It must be decided by Constitutional and International Law. The founders of the government of the United States of America in the preamble of the Constitution said: "We the people of the United States, in order to form a more perfect Union, establish justice, ... and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of

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

"HH(1)"

America." By article three, the judicial power of the United States was vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. Courts of the United States are therefore independent of the executive and legislative branches of the United States Government. Section D-13, Appendix D, of Naval Courts and Boards states that "These exceptional military courts derive. . . . their sanction from the laws of war. . ." This military commission is however, both judge and jury. You must determine the law, arrive at the facts in the case, and apply the ruling law to the facts and thereby reach a finding.

Since March 1, 1947, you have listened to evidence most all of which you decided was relevant to the issue. Are you still of the same opinion as you were when you decided that you had jurisdiction to try Major Furuki, Imperial Japanese Army?

We most respectfully call your attention to the evidence which has been introduced and which proves that Major Furuki, the accused, is a citizen of Japan; that the acts alleged took place on Jaluit Atoll in the year 1945; that Jaluit was mandated to Japan by the Treaty of Versailles in 1919; and occupied since that date by Japan; that in 1945, Jaluit was a besieged area to the extent that martial law was to all intents and purposes the law in effect on Jaluit, during the year 1945 (all civilian government was abolished and the functions of civilian government taken over by the military); that civilians on Jaluit were amenable to the military law and that the natives of Jaluit had as a matter of fact all the responsibilities of Japanese citizens in a besieged area and were by proclamation duly published guaranteed the rights of Japanese citizens particularly as to the protection of life and property. Several witness testified as to this proclamation.

This proclamation also stated that anyone on Jaluit who did not comply with and obey the orders of the military commander would be severely punished. This clearly proves that martial law was in effect on Jaluit in the year 1945.

An argument cannot be made a vehicle of getting evidence before the court. It is not evidence.

The Japanese Martial Law statute was not admitted into evidence but Rear Admiral Arima, defense witness, testified in answer to Q. 17 on the 18th day: "The gist of it was that the senior commanding officer of each Marshall base shall command it." Admiral Arima was testifying regarding the order sent out by the commanding officer, Fourth Fleet to the commanding officers of the Marshall Bases.

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

"HH(2)"

Carlson
HH(iii)

In reply to Q. 24 on the 19th day, Admiral Arima answered: "24.Q. Do you know martial law?" "A. I do." Q. 31 to Admiral Arima was: "In your capacity as chief of staff, Fourth Fleet, do you know whether martial law was in effect on Jaluit in 1945?" Answer: "In 1945, I was not in Truk, therefore, I do not know." "40. Q. In your capacity as a Japanese Naval officer and particularly as chief of staff, Fourth Fleet, do you know whether Jaluit was a besieged area in 1945?" Admiral Arima answered this question as follows: "As a Japanese Naval officer this was common knowledge."

Admiral Arima was not the only witness that testified along these lines. All witnesses testified that Jaluit was a besieged area in 1945.

The Japanese Martial Law statute has not been admitted into evidence and this argument is in no way evidence or is it the purpose of this argument to in any way to get the Japanese Martial Law statute in evidence.

The commission carefully considered whether or not to admit this Japanese Martial Law Statute into evidence but decided not to do so.

We have only to look at the Japanese Martial Law statute however and we see that martial law although not proclaimed was the law by which Jaluit was being administered during all those months when American fofces used Jaluit as a "sitting duck" target for bombings b y planes and ships. In Japan on August 5, 1882, Dajokan (prime minister) issued a proclamation Number 36.

Article 1 of this proclamation reads: "Martial law is a law to maintain order of the whole country or a district by military forces in case of war or emergency."

Article 2. "There are two types of area under martial law: one war area and another besieged area. (1) War area is a place marked out to be guarded in case of war or emergency. (2) Besieged area is a place marked out to be guarded in case of siege or attack of enemy of other emergencies."

Article 6. "Following officers are empowered to enforce martial law: army commander, division commander, brigade commander, fortress commander, garrison or detachment commander, or commander-in-chief of fleet, fleet commander, naval station commander, or specially appointed commander."

"HH(3)"

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

Carlson
HH(iv)

Article 7. "When martial law is proclaimed it shall be reported to the 'Dajokan' (prime minister) together with the situation and reason for it. But it shall be reported separately to the Chief of the district which the area belongs."

Article 9. "In a battle area, authority concerning administrative and judicial affairs related only to military affairs shall be intrusted to the commanding officer of the area. Therefore, when martial law is proclaimed or declared, district governor, district court official, and judge advocate shall immediately come under the command of the commanding officer of the area."

Article 10. "In the besieged area, administrative and judicial affairs shall be under the charge of the authority of the commanding officer of the district. Therefore, district governor, district court officials, and judge advocate, in case of proclamation or announcement of martial law, shall immediately come under the command of the commanding officer."

Article 11. "In a besieged area, civil cases related to military affairs and persons who have committed the following crimes shall be tried in a military court.

Part II Criminal Law.
Chapter 2. Crimes relating to national affairs.
Part III Book 1.
Chapter 1. Crimes of manslaughter and murder.
Chapter 2. Crimes of wounding and battery.
Chapter 7. Crimes of intimidation.
Book 2.
Chapter 2. Crimes of robbery.
Chapter 8. Crimes relating to intimidation.
Chapter 9. Crimes of overturning vessels.
Chapter 10. Crimes of destroying building, properties, and mistreating animals and vegetables."

Article 12. "If there is no court in the besieged area or communications are cut off from the court which exercises jurisdiction over the area, all civil or criminal cases shall be tried in military courts."

Article 13. "No appeals for retrial are allowed in a trial by a military court in a besieged area."

What else could the words "severely punished" mean than that civilians were to be punished in accordance with the provisions of martial law.

"HH(4)"

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

Carlson
HH(v)

We have proved and it is common knowledge that Jaluit was a besieged area in 1945.

The Japanese have a Naval Court Martial Law and a Naval Criminal Law. Both these laws were applicable to citizens in as for as none of the provisions were invalidated by the provisions of martial law. And it is no answer to say, "But Martial Law was not proclaimed on Jaluit." Any reasonable prudent man will arrive at only one conclusion as he considers the facts in the case of Jaluit in 1945 and that is that martial law was in effect at Jaluit.

This argument is not evidence.

The Martial Law Statute was not admitted into evidence.

Neither were the Penal Regulations of the Combined Fleet admitted into evidence. Available witnesses could not or were not allowed to give their opinion as to whether these Penal Regulations were in effect on Jaluit in 1945. Remember,therefore, that these Penal Regulations are not in evidence.

Let us however look at the Penal Regulations of the Combined Fleet, 20 December 1941 (Secret Ordinance of the Combined Fleet, No. 69) (Commander-in-Chief of the Combined Fleet).

Article 1. "This regulation shall be applied to the people other than Japanese subject in the occupied territory of the Imperial Japanese Navy."

Article 2. "Any person who commits the following acts shall be punished by military forces.

(1) hostilities against the Japanese forces.
(2) breaking of public peace of Japanese forces or disturbance of military operation committed by those other than military personnel.
(3) disturbance of tranquility of the occupied area or mischievousness against the benefits of the Japanese forces other than in the above two paragraphs. Incitement, aid, preparation, plot, or attempt of the above mentioned acts shall be punished. . ."

Article 5. "Punishment by the military forces will be classified as follows:

(1) death.

"HH(5)"

CERTIFIED TO BE A TRUE COPY
James P. Keady Lieut. USN

Article 6. "The execution of death sentence shall be carried out by shooting."

"Additional Rule: These regulations shall be enforced from 8 December 1941."

Can any reasonable man say that these regulations were not applicable and in full force and effect on Jaluit in 1945.

We could not get these Penal Regulations into evidence in the way we tried to do so because of the objections of the judge advocate. Under the circumstances there is no one avaiable who can really testify that he knows of his own knowledge that these Penal Regulations were in effect on Jaluit. The only one who could really have spoken with authority was Admiral Masuda and he is dead.

The accused is an Army officer and although his opinion could well have been heard on this subject, questions regarding this were put to the accused as a witness on the 22nd day with questions 152 and 153 but the judge advocate objected to the questions and all other questions pertaining to these Penal Regulations and it was therefore impossible to get the Penal Regulations into evidence. They are not evidence in this case. Yet, the accused, Major Furuki, Imperial Japanese Army, is charged with a crime in violation of effective law especially article 199 of Criminal Code of Japan. Since the accused is charged with a violation of Japanese isn't it relevant and material to know and must not the commission know what Japanese law is if they are to judge fairly? If the commission does not know Japanese law well they cannot decide from the facts if certain Japanese law were the law on Jaluit.

The accused, Major Furuki, Imperial Japanese Army, is charged with murder of thirteen native inhabitants of the Marshall Islands. In my plea to the jurisdiction I cited the Raymond Fornage case. From this case I quote:

"The right to punish has no foundation except the right of sovereignty which expires at the frontier. . . . But the law cannot give to the Frenchtribunals 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. . . When a crime has been committed outside of the territory by a foreigner the culprit is not subjected by that

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

act of the French law; the French tribunals have no jurisdiction over him; the 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."

The facts in the Fornage case are analagous to the facts in this present case,

This case of Furuki was referred to this Military Commission by the Commander Marianas Area on February 24, 1947, reference Serial 3786, file reference A16-2/FF12 over 13-JDM-ro.

The case of Fornage was referred to a court of assizes by a judgment of the chamber of indictments but the court of cassation or Supreme Court of France at Paris in 1873 said: "Courts of assizes, 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 extent beyond the limits of the territory, that except in the cases specified by Article 7 of the Code of Criminal Procedure, the provisions 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. . . . Annul, etc."

Our own Supreme Court in 1824 in the case of Appolton, 9 Wharton 362 held: "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its osn jurisdiction."

We said the Furuki case was analogous to the Fornage case, yet it is also different. In the Furuki case, the accused, Major Furuki, is charged with killing thirteen persons, native inhabitants of the Marshall Islands in violation of effective law, especially article 199 of the Criminal Code of Japan which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitute for life or not less than three years."

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

"HH(7)"

Carlson
HH(viii)

My associates, Mr. Akimoto, Yuichiro, and Mr. Suzuki, Saizo, have both shown that there is neither jurisdiction to try Major Furuki nor is the crime alleged in Charge I in violation of effective law especially Article 199 of the Criminal Code of Japan.

Section D-13, Appendix D, Naval Courts and Boards, states "These exceptional military courts unlike the court-martial, derive their sanction from the laws of war and not from the enactments of Congress." Our question then is, What are the laws of war that give sanction to this court to try the accused, Major Furuki, for an offense said to be in violation of the Article 199 of the Criminal Code of Japan and second for the same identical offense but described under Charge II as punishing as spies by killing native inhabitants of the Marshall Islands, "this in violation of the laws and customs of war."

We objected to all specifications under Charge II because the specific laws and customs of war were not set forth verbatim as required by section 27, Naval Courts and Boards. We are still not sure what the laws and customs of war are that the accused Major Furuki violated when he was ordered by the Atoll Commander, Admiral Masuda, to carry out his duties as a judge advocate and to execute by shooting the native inhabitants guilty of criminal acts in the face of the enemy.

Section 333, Naval Courts and Boards, states that "under the laws or war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial." Article 45, Prisoners of War, Geneva (Prisoners of War) Convention of 27 July 1929 reads as follows: "Prisoners of war shall be subject to the laws; regulations, and orders in force in the armies of the detaining power." /Reference to section 333 NC&B is apparant misquote/

We hold, however, that this does not give this commission jurisdiction to try a Japanese national for an alleged crime committed on Japanese sovereign soil against native inhabitants of this same area over which Japan ruled supreme, and during a war, and at a time when the island atoll of Jaluit was a besieged area. It certainly can confer no jurisdiction on this Commission to try the accused, Major Furuki, for a violation of a Japanese Law, Article 199 of the Criminal Code of Japan.

Under Charge II it is alleged that the native inhabitants were punished as spies. The judge advocate has failed to prove that any of the thirteen victims were spies.

CERTIFIED TO BE A TRUE COPY
James R Kenny Lieut. USN

"HH(8)"

Carlson
hh(ix)

Section 154 Naval Courts and Boards states: "Burden of proof. The law presumes every man innocent of crime. The prosecution has in each case the burden of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of not guilty , every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof never shifts to the accused. It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi."

This is so fundamental that it seems unnecessary to remind the commission. However, since it was alleged that the victims were punished as spies, then it must be proved by the accused. Chapter 2, Laws and Customs of War on Land, Hague Convention IV of 1907, Annex to the Convention, Chapter II, Spies, Article 29 reads:

"A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party." Since the prosecution alleged that Major Furuki punished the natives as spies, the prosecution must prove that allegation.

The commission is reminded that Article 4, United States Navy Regulations, 1920, provides: "The punishment of death, or such other punishment as a court-martial may adjudge may be inflicted on any person in the naval service:"

(1) Who makes or attempts to make, or unites with any mutiny or mutinous assembly, or being witness to or present at any mutiny, does not do his utmost to suppress it; or knowing of any mutinous assembly, or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;
(2) Or disobeys the lawful orders of his superior officer;
(3) Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;
(4) Or gives any intelligence to, or holds or entertains any intercourse with an enemy or rebel without leave from the President, the Secretary of the Navy, the Commander in Chief of the fleet, the commander of the squadron, or in case of a vessel acting singly, fromhis commanding officer;

"HH(9)"

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

Carlson
HH(x)

(6) Or in time of war, deserts or entices others to desert;
(7) Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust."

Article 5 reads: "All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge."(R.S., sec 1624 art. 5.)

We note that the United States laws provide death as the penalty for the above offenses in the descretion of the court. But these are United States laws you say and the accused is a Japanese Army officer who punished Japanese subjects for crimes committed against Japan in the face of the enemy.

Article 20 Part II of the Japanese Criminal Law provides "Those who have formed a clique and have been in arms engaged in rebellion shall be condemned as follows:

1. The leader shall be condemned to death.
2. Those who have been engaged in the plan or led a crowd shall be condemned to ddath, or to life term or above five years servitude or confinement."

Article 21. "Those who have with the purpose of starting rebellion formed a clique and stolen arms, ammunition and other munitions shall be condemned according to the previous article."

Article 22. "Those who have done the following action shall be condemned to death. . . .

2. To spy for the benefit of the enemy or help the enemy's spy.
3. To give the naval secret to the enemy. . . . "

Article 23. "Those who have done the following action for the benefit of the enemy shall be condemned to death. . . .

6. To inform or make false orders, information or reports.
7. To spread false informations or to make uprears in the face of the enemy."

Article 24. "Those who have given naval facilities to the enemy or injured the Japanese Navy with ways other than those stated in the foregoing two articles shall be condemned to death, or life term or above five years imprisonment."

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"HH(10)"

Carlson
HH(xi)

Article 25. "Those who have done the action of the above three articles for the benefit of those who have raised rebellion or civil war shall be condemned to death, or life term or above three years imprisonment or confinement."

Article 25. " The attempted crimes of the above six articles shall be punished."

That is the pertinent Japanese Naval Criminal Law. Article 17 of that same law protects persons who enforce the law because it provides:

"Article 17. The action which has been done in order to quell the people who used violence of to keep naval discipline in face of the enemy or when the ship is in danger, shall not be punished."

The prosecution have failed to show in a single instance any provisions in The Hague Convention, the Geneva Prisoners of War Convention, of the Geneval Red Cross Convention which provides punishment by a victorious belligerent over an individual of the vanquished power for the action he took in order to quell the people who used violence in the face of the enemy or carried out the orders of his superior ufider such circumstances.

Since the prosecution charge violation of the laws and customs of war it is incumbent upon them to state this law and to cite cases.

During the First World War, Germany confiscated French and Belgian machinery. Actions for the receipt of stolen goods were instituted against Rhenish entrepreneurs who were in possession of the machinery. The most sensational case that of Robert and HermannRöchling, leading industrialists of the Saar basin, were indicted for having transferred 8,000 tons of machines and materials from French factories to their own enterprise.

Reading from Ernst Fraenkel's book, "Military Occupation and the Rule of Law" page 59, Prosecution of War Criminals:

"Roberts defense, that he had acted on command of superior authorities, was rejected by the French military tribunal in Amiens which tried the case (Journal du drost international, 1921, vol. 48, pp. 363-363). The looting of foreign factories for one's own benefit was considered to be punishable, even if it had been done on the command of superiors; the Röshling brothers were considered to have acted not as soldiers but as industrialists. It is worth emphasizing, however, that

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

"HH(11)"

in a total war, where there is no clear line of demarcation between military and industrialist activities, any distinction between non-military persons and soldiers, in regard to the recognition granted the respondeat superior defense may lead to very arbitrary results. Robert and Hermann Röchling, the latter in absentia were sentenced to ten years imprisonment and a fine of ten million francs (Grimm, pp. 58 ff.) but the decision of the Amiens court was revised, on appeal, by the superior military tribunal in Nancy. The reversal, according to the French writer (Cardoux, p. 459), 'was motivated by the fact that the responsibility for the incriminating acts--however verified and vile these were--rested on the German authorities whose orders were executed by brothers as officers.

"Almost all the leading Rhenish industrialists were in danger of criminal prosecution for possession of French of Belgian machinery and after several others had been arrested, the German government asked R von Hippel, the Gottingen professor of international law, to prepare a memorandum on the legality of the German measures and of the arrest of German managers for the purchase of such machines. Von Hippel (whose memorandum was published in 1920 in Niemeyers Zeitschrift Für internationales Recht, vol. 28, pp. 183-206), contended that the German military authorities had exercised the right of eminent domain in the occupied Belgain and French territories, with respect to all property that they considered essential for the pursuit of the war. He admitted that no exception had yet been recognized to the rule of international law according to which the private property of the residents of an occupied territory should be protected. He maintained, however, that such protection should be granted only under the same reservations that The Hague Convention (Article 23g) stipulates in regard to private property in an area of actual fighting, since urgent necessities justify infringement of property rights in an occupied as well as in a fighting zone. This principle, he said, was particularly applicable to the german confiscation of Belgian and French machines, because Germany, under the British blockade was in a 'state of distress' (Notstand), and was 'entitled' to take all measures necessary to overcome it. Von Hippel concluded this section of his memorandum with the words (p. 94) that such procedures as those against German industrialists, ' which may prove basic significance in the future, can hardly be reconciled with the true French interests. France would implicitly deny that in case of war, recognition whould be granted to a right of distress, aimed at the preservation of (the nation's) existence, and thus would create a precedent which might be applicable to herself in the event of a future war.' At the time this memorandum was presented to the victors of the

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

Carlson
HH(xiii)

war, the peace treaty had not yet been signed.

"From the point of view of criminal law, von Hippel denied that the French had jurisdiction in regard to crimes committed by Germans in Germany, even if French interests were violated. (Cf. the Cutting case, in which the government of the United States denied the rights of the Mexican Government to punish an American citizen for having insulted a Mexican citizen on American soil (Moore Digest, vol. 2, p. 233). This contention raises the question of evidence, which was almost as difficult in the confiscation cases as in the more general war-criminal cases, though for quite different reasons. The military authorities in the Rhineland followed the principle that possession of such machines was sufficient to subject the holder to the suspicion that he had violated the criminal provisions on receiving stolen goods. But if the defendant declared that he had bought the machines on German territory it was almost impossible for the prosecuting government to refute his statement. And von Hippel had a strong argument in his favor when he said that the French had no jurisdiction in criminal cases of this kind if the crime was committed in Germany. Neither French nor German law permits the prosecution of a foreign subject for a crime violating individual rights of nationals if the crime was committed on foreign territory--though both permit such prosecutions if the crime was an attack on the security of the state. In an article on the German confiscations, published in 1919, Nast explicitly stated ('Les sanctions penales. . .' pp. 120, 127) that criminal prosecution for the purchase of stolen goods was out of the question if the goods had been acquired on German territory. Actually, all evidence difficulties concerning the Rhenish industrialists could have been overcome by applying the maxim res ipsa loquitur, but this was impossible so long as the 'territorial' principle was adhered to.

"In a conference in Brussels, on 23 March 1919, the Industrial Sub-Committee of the Inter-Allied Armistice Commission decided to abstain from further criminal prosecution of Germans who had benefited from the looting of Belgium and French factories, provided that German enacted a statute permitting the return of the material. Such a statute was enacted on 28 March (Reichsgesetzblatt, 1919, p. 349), and thereafter, in accordance with orders of Marshall Foch, proceedings were instituted only against persons who had not declared or had destroyed the confiscated material (Nast, 'L' occupation. . . .' p. 157; Der Waffenstillstand, vol. 3, pp. 99-103; vol 2, ppl 265-331). The material returned to Belgium and France during the armistice period alone amounted to 164,000 tons, with a value of 135,000,000 gold marks (Der Waffenstillstand,

"HH(13)"

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

vol 2, p. 331). The delicacy of the whole problem is indicated in the fact that on several occasions German workers threatened to demolish the machines rather than see them removed (Hunt, p. 233).

The Brussels decision represented a German victory in the war criminal question. The available sources do not reveal whether the occupying powers were unable or unwilling to overcome the legalistic objections that were used as justification for the gesture of conciliation. Shortly afterward, the occupation authorities extended their lenient attitude from the criminal to the administrative side of the looted-machinery problem. On the ground that many of these machines were in the hands of 'virtually innocent purchasers' they decided to apply 'business arrangements' rather than arbitrary 'methods to the question of retransfer' (Allen, Occupation, p. 67.).

"Although the Reich was compelled to return the confiscated machines to Belgium and France, the Germans clung to the theory that because of German 'distress' during the war, the confiscations had been lawful. This principle was adopted by the German supreme court in a civil case decided on 1 November 1922 (105 RGZ 326; Annual Digest, 1919-22, case 296, p. 427). The court declared that the requisition although contrary to the Hague Convention, was lawful, for 'it is a principle which is recognized in international law, and which must be applied also to the Hague Conventions, that a states right to self-preservation is superior to all obligations undertaken in treaties, and that in case of necessity, a state may depart from and go beyond the provisions of the Hague Convention'. Thus the Reichsgericht, four years after the end of hostilities, repeated the principle which Germany had used during the war as justification for her violation of Belgian neutrality and for many other violations of international law. This principle, contained in the German Manual of War, 'when carried out to its logical conclustion leads to the absolute supremacy of strategical interests as expressed in the ancient maxim, "omnia licere quae necessaria ad finem belli"' (Garner, German War Code. . . p. 11)." Ernest Frenkel, Military Occupation and the Rule of Law, pp. 59-63.

The prosecution have also failed to show wherein these conventions provide courts of punishments for individuals who violate the laws and customs of war.

The prosecution allege that the accused violated the laws and customs of war. We pointed out that Article 2 , Chapter 2, Laws and Customs of War on Land, Hague Convetion No. IV of October 1907, provides that the provisions do not apply in the case. Article 1 reads:

CERTIFIED TO BE A TRUE COPY
James P. Keady Lieut USN

"The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convetion."

Article 2.

"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 ratified this 1907 Convention, Japan as a Contracting Power is not bound and certainly the accused Major Furuki cannot be bound by this Convention.

As to the Geneva Prisoners of War Convention of 27 July 1929, Japan did not even ratify this convention or did she formally adhere to this Prisoners of War Convention. Even though Japan did through the Swiss Government agree to apply the provisions thereof to prisoners of war under its control, and also so far as practicable, to interned civilians, (See Foreword to War Department Technical Manual TM27-25, "Treaties Governing Land Warfare.") This makes no difference legally.

On the other hand we have the distinguished author and professor at Harvard Law School who says in his book "War Criminals and Their Prosecution and Punishment" pp. 14-15.

"In our day and age, one major aim of the administration of justice in international affairs is to demonstrate beyond doubt that lawlessness, whether indulged in by Heads of States, members of military general staff, members of political cliques, or persons of lesser status, entails prosecution and punishment."

This Military Commission must decide if the offense charged is a war crime. There can be no doubt, that, only if the offenses charged is a war crime is there jurisdiction to try the accused, Major Furuki. In Section D-13, Appendix D, Naval Courts and Boards, we read: "These exceptional military courts, unlike the court-martial, derive their sanction from the laws of war and not from the enactments of Congress."

It is incumbent upon the judge advocate to define a war crime. He has not done so during the trial, nor has he proved that the crime alleged is a war crime. All that he has done so far is to show by an admission of the accused (to which we objected), introduced into evidence, that the accused admitted that he executed the native in-

CERTIFIED TO BE A TRUE COPY
James P. Kerry Lieut. USN

habitants by reason of his duty as judge advocate and by orders of his superior, Admiral Masuda.

In paragraph 347 of the Rules of Land Warfare, we find the following statement: "Individuals of the armed forces will not be punished for those offenses [violations of the customs and laws of war] in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

Under this rule, the ordinary soldier is excused, but his commander or government is liable. Major Furuki si the ordinary soldier; Admiral Masuda was the commander.

You have seen Major Furuki since the trial started March 1, 1947, and you have heard his testimony. All the circumstances justify any acts which he may have admitted during those awful days when we Americans were making a living hell of Jaluit.

Everyone has testified as to the loyalty of the natives on Jaluit to Japan, but the Americans had a way to break down the most loyal natives and you have heard how six hundred deserted to the Americans in one day. The Americans bombed Jaluit continuously, food was scarce, starvation imminent, and ammunition and guns pitifully inadequate. The Japanese garrison on Jaluit was indeed in a state of distress. Then occurred the native incidents, the subject of this criminal case. How did the garrison on Jaluit handle them? It was all tied up in the problem and the right of self-preservation. There is such a principle as the absolute supremacy of strategical interests. Witnesses have testified that the Jaluit Commander tried to handle the situation the best way possible.

We have heard of the long and thorough investigations, the impossibility of a regular trial, but the holding of the best trial possible.

What is meant by a trial? Bouvier says: "Trial in Practice. The examination before a competent tribunal according to the laws of the land, of the facts, put in issue in a cause, for the purpose of determining such issue" US v. Curtis, 4 Mass 232, Fed Cas. No. 14905, p. 3320, Bouvier's Law Dictionary, vol. 2.

Historically trial has meant many different things. There was the trial by ordeal. Bouvier tells of Trial by Wager of Battle.

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

Carlson
HH(xvii)

"A mode of trial which existed among almost all the German people and was introduced into England by William the Conqueror."

"In the statutes of South Carolina, Edition of 1857 it is said to be in existence in that state." Bouvier's Law Dictionary, vol. 2., p. 3416.

Major Furuki was selected to play a most important and for him indeed an unhappy part. Admiral Masuda appointed him the judge advocate in the case. My associates have explained what the duties of a judge advocate are in Japanese procedure. It was part of his duty also to see that the sentence of the court was carried out. Admiral Masuda ordered him to execute the accused natives.

The prosecution have charged his with "wilfully, feloniously, with premeditation and malice aforethough, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon."

On page 2067 of Bouvier's, Malice is defined as "The doing a wrongful act intentionally without just cause or excuse. 4 B&C 255; Com v. York, 9 Metc. (Mass.), 104; 43 Am Dec 373; Zimmerman v. Whitely; 134 Mich, 39, 95 N.W. 989. A wicked and mischievous purpose which characterizes the perpetration of an injurious act without lawful excuse. 4 B. & C. 255; Com. v. York, 9 Metc. (Mass.) 104, 43 Am. Dec. 373."

In Wharton's Criminal Law, Vol. 1, par 421, pp 634-636 we read, "Murder is distinguished from other kinds of killing by the condition of malice aforethough. . ."

"Premeditation and deliberation, as an element in murder, consists in the exercise of the judgment in weighing and considering and forming and determining the intent or design to kill." State v. Roberson (1909) 150 N. C. 837, 648 S. E. 182.

"The corpus delicti, or the fact that a crime has been committed, is an important element entering into the trial of every person charged with the commission of a crime. In theory, if not in practice, the prosecution is required to establish the fact that a crime has been committed before it can either (1) introduce evidence to show that the accused committed the crime, or (2) require the accused to show that he did not do so. In otherwords, the corpus delicti must be established by satisfactory evidence before the accused can be put upon his defense. . . . .

"HH(17)"

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

"The phrase corpus delicti means, literally the body of the transgression charged, the essence of the crime or offense committed, the existence of the substantial fact that a crime or offense has been committed. . . . .

"The essential elements of the corpus delicti are (1) the existence of a certain state of fact or result forming the basis of the criminal act charged and (2) the existence of a criminal act or agency or cause in bringing the state of fact into existence; e.g., that a man has died, . . . and that some person wrongfully brought about this state of fact. . . ."

"Some of the cases go a step further and require (3) that the defendant's criminal agency in the production of the state of fact shall also be established; citing "The language of other decisions, however, seems to require proof of the criminal agency of the accused as part of the corpus delicti. See State v. Dickson (1883) 78 Mo. 438; State v. Shackelford (1899) 148 Mo. 493, 50 S.W. 105; Lovelady v. State (1883) 14 Tex. App. 560, (1884) 17 Tex. App. 287; Jackson v. State (1891) 29 Tex. App. 458, 16 S. W. 274; Josef V. State (1895) 34 Tex. Crim Rep. 446, 30 S.W. 1067; Little v. State (1898) 39 Tex Crim Rep. 654, 47 S.W. 984."

"Before a conviction can rightfully be had on a criminal charge, the prosecution must show (1) the corpus delicti (2) that it was produced by a criminal act or agency, (3) that the accused did the criminal act, or set in motion the criminal agency, or sustains responsible complicity therewith. . .

"First essential fact to be proved is the corpus delicti, and this must be established beyond a resonable doubt. Tatus v. State (1907) 1 Ga. App. 778, 57 S.E. 956.

"A conviction very seldom occurswithout direct proof of the corpus delicti, either by eyewitness of the homicide or by subsequent discovery of the dead body; yet there may be exceptions, where corpus delicti may be proved circumstantially or inferentially, e.g. as where the body is consumed by fire, or boiled in potash, or dissolved in acids, rendering it impossible that it sould ever be produced. Citing People v. Alviso (1880) 55 Cal. 230; Rines v. State (1903) 118 Ga. 320, 68 L.R.A. 33, 45 S.E. 376, 12 Am. Crim. Rep. 205; State v. Cardell (1886) 19 Nev. 319, 10 Pac 433; People v. Beckwith (1888), 108 N. Y. 67, 15 N. E. 53; Lovelady v. State (1883) 14 Tex App 548; Walker v. State (1883) 14 Tex App. 609.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Carlson
HH(xxix)

In the case of McBride v. People (1894) 5 Col. App. 91, 37 Pac 593, it was held that "The confession of defendant without aliunde cannot establish the corpus delicti."

Want of proof of the corpus delicti cannot be supplied by proof of the extrajudicial confession of the accused. People v. Besold (1908) 154 Cal. 363, 97 Pac. 871...

Thus in a prosecution for murder, proof of the corpus delicti involves the establishment (1) that the person named is dead (2) that he came to his death through the criminal act or agency of another human being...

The facts forming the basis of the offense, that is, the corpus delicti, must be proved either (1) by direct testimony, or (2) by presumptive or circumstantial evidence; and where the evidence is of the latter class, it must be of the most cogent or irresistible kind...

In some of the states it is held that the elements constituting the legal corpus delicti, that is, (1) the state of facts constituting the basis of the prosecution, (2) the criminal agency of some other human being in bringing them about, must be established by direct evidence; citing two New York cases, Ruloff v. People (1858) 18 N.Y. 179 and People v. Bennett (1872) 49 N.Y. 137.

Lord Chief Justice Hale says: "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or, at least, the body found dead." 2 Hale P.C. 290.

Wharton's Criminal Law, Vol I, pp. 449-458: "It seems now pretty generally held that circumstantial evidence is admissible to establish the corpus delicti in a trial for murder, but that it must be strong and cogent. Chancellor Walworth, however, says: 'One rule which is never to be departed from is that no one should be convicted or murder upon circumstantial evidence, unless the body of the person supposed to have been murdered has been found, or there is clear and irresistible proof that such person is actually dead.' citing People v. Videto (1825) 1 Park. Crim. Rep. (N.Y.) 603. In New York it is held that in trials for murder, the people must establish by positive evidence either (1) the corpus delicti or (2) the criminal agency producing it; and that after either is thus established, the other may be shown by circumstantial evidence. Ruloff v. People (1858) 18 N.Y. 179; People v. Bennett (1872) 49 N.Y. 137 (by divided court). In such a prosecution the corpus delicti is established by proof of the finding of the body of a human being under

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

such circumstances as indicate that the death or killing was felonious, and not by accident or suicide. State v. Potter (1879) 52 Vt. 33. But the proof of the identity of the dead body must be established by evidence outside of the death of the party alleged; the remains of the deceased, or a portion of them, must be sufficiently identified to establish the death of the party. Lovelady v. State (1883) 14 Tex App. 545; Gay v. State (1901) 42 Tex Crim Rep. 450, 50 S. W. 771.

Wharton's Criminal Law, Vol I, pp. 459-460. What Blackstone said of confessions was certainly true of the admission which the prosecution introduced in this case: "confessions even in cases of felony at common law, were the weakest and most suspicious of all testimony, very likely to be obtained by artifice, false hopes, promises of favor, or menaces; seldom remembered accurately, or reported with precision, incapable in their nature, of being disproved by other negative testimony." 4 Bl.Com. 357.

The accused on the witness stand explained clearly and logically what the natives did in the face of the enemy, the strategical interests of the Japanese garrison in their great state of distress, which "distress" was caused by the continuous bombings by the American forces, the investigations conducted under great hazards to the investigators, the trial of the natives criminals, the judgment even to written judgment, the reading of the sentence to the native criminals, and the final chapter, the execution of the natives found guilty and sentenced to death.

The prosecution put into evidence a written statement signed by the accused. This was secured from the accused on December 3, 1947, and then, on February 24, 1947, the accused was served with the charges and specifications.

This admission is what would be known as a circumstantial confession if it were a confession. It is however just an admission.

The prosecution have only produced circumstantial evidence and have introduced a circumstantial admission. This circumstantial admission has been fully explained by the accused on the witness stand. He was subjected to the grilling cross-examination by the judge advocate but this only tended to prove his innocence as regards to both charge one and charge two.

Strictly speaking the statement of the accused which the judge advocate introduced into evidence is strictly speaking not a "confession," but an "admission." Confession is a voluntary acknowledgment of guilt. Admission is an acknowledgment of facts tending to establish guilt. People v. Sevetsky, 323 Ill. 183, 153 NE 615.

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

"HH(20)"

Statements, declaration, or admissions of fact incriminating in their nature or tending to prove guilt are admissions and not confessions. People v. Rupert, 316 Ill. 38, 146 NE 456.

This admission was explained by the accused and the commission must now weigh the evidence. The commission must determine the credibility of the testimony of the accused under the same rules and principles as with other witnesses.

If the defendant's testimony explaining his act was not improbable and no contradictory evidence to it was introduced, it could not be rejected by the jury. Miller v. State 191 Wisc. 477, 211 NW 278.

So much for the testimony of the accused.

At this time we wish to call the attention of the commission to what in our opinions are grave errors in the procedure and have been most prejudicial to the substantive rights of the accused.

On the Fourteenth Day of the trial the judge advocate in questioning the defense witness, Morikawa, Shigeru read from a document which purported to be an interrogation of the witness by an officer of the United States Navy.

"Q. When you were interrogated, you were asked concerning the execution of the natives. Question: 'Were they given a trial?' Your answer: 'No.' How do you explain the fact that when youtestified before the officer you stated there was no trial and that now when testifying before this commission you state there is a trial?"

This question was objected to by the accused on the ground of the line of questioning by the judge advocate and seemed the judge advocate is using questions and answers from a document purporting to be a previous investigation thereby putting words into the mouth of the witness and trying to introduce by the back door, evidence in a document without introducing the document. The document is the best evidence and if the judge advocate desires to introduce it into evidence he must do so properly.

The judge advocate replied that he could impeach the witness any way he pleased and he could read from this document or any document and need not or did he desire to introduce the document into evidence.

The commission announced that the objection was not sustained.

The judge advocate continued to read questions from what purported

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

to be an interrogation of the witness in 1945 by an officer of the United States Navy. Throughout the cross-examination of this defense witness the judge advocate kept saying that the witness was lying and that he, the judge advocate, could impeach his credibility by reading any document and impeach him in any way he wanted.

The defense are still of the opinion that the commission erred in failing to sustain our objection to the procedure of the judge advocate. We are of the opinion that the improper procedure of the judge advocate affected the court in giving or denying credence to the testimony of the defense witness, Morikawa.

The judge advocate on the sixteenth day of the trial had the witness Morikawa read Articles 87 and 89, Japanese Naval Court Martial Law (see question number 428). Why we ask didnt't the judge advocate have him read Article 93, which revokes the provisions of Articles 87 to 92 inclusive in case of Special Court Martial. Article 93 reads: "Regulations of the preceding six articles shall not be applied to a Special Court Martial."

The judge advocate said it was done to impeach the defense witness, Morikawa. Let us see what the Navy Department says of the impeachment of witnesses on pages 829-831, Compilation of Court Martial Orders, 1916-1937, Volume I, we read:

"IMPEACHMENT OF WITNESS: Improper Method.

"In a recent trial during the cross-examination of a material witness for the defense the judge advocate attempted to impeach the witness by showing that he had given testimony before a previous board of investigation to an effect contrary to his testimony before the present court. In attempting to thus impeach the witness on the stand the judge advocate was well within his rights but it so happened that he was permitted over objection, to bring before this court in an imporper manner an unverified version of what had been the witness's testimony before the above mentioned board of investigation. The following excerpt from the record of the testimony of the witness illustrates what is meant:

"87. Q. Now, can you explain why you failed to tell the Board of Investigation or give the Board of Investigation that (bad table manners) as a reason for "bawling out" Mr. A. instead of Seamanship questions? They created quite an impression on your mind and you have no difficulty at all in stating that it was for that reason and no other he was "bawled out"; and yet before the Board of Investigation you said nothing whatever about it and assigned as the reason for his "bawling out," failure to answer Seamanship questions. Can you explain that discrepancy?

A. I do not know that I said Seamanship questions. I said "bawling out" because I thought it was misconduct. It was the same as ill table manners.

"HH(22)"

CERTIFIED TO BE A TRUE COPY
James R. Kenny Lieut. USN

'88. Q. But why did you say before the Board of Investigation that he was "bawled out" for failure to answer Seamanship questions and you did not mention his table manners. Now, how can you explain the discrepancy or do you explain it?

A. If I remember rightly I never mentioned his "bawling out" at the table in my former testimony.

'89. Q. You didn't mention table manners before the Board of Investigation?

'Objected to by the counsel for the accused on the ground of the line of questioning by the judge advocate. He is making a supposition and is not quoting exactly from the record of the Board of Investigation. He has improper reasons to suspect this and is bringing out the evidence without quoting anything from the Board of Investigation.

'The judge advocate replied that he can impeach this witness in any way he pleases, whether by contradictory statements in answer to oral statements, or by referring to the Board of Investigation without bringing it into the record.

'The Court was cleared.

(P. 11) 'The court was opened. All parties to the trial entered and the president announced that the objection by the counsel for the accused is not sustained. It is the understanding of the court that the judge advocate is proceeding along the line of questioning for the purpose that the witness has made contradictory statements before a properly constituted Board of Investigation and that such questioning is permitted by rules of evidence, page 164, paragraph 167.'

"In connection with the foregoing it is important to note that at no time during the trial was the record of the board of investigation brought into evidence for the purpose of showing by reading therefrom, which is the only way in which it could properlyhave been shown, what testimony the witness M. did actually give before said board.

An examination of the context of Section 167 Naval Courts and Boards shows that it in no way supports the above ruling which the court attempted to base upon it. On the contrary, the section in question distinctly requires that the contradictory statements of a witness be proved. It is true that reference is made to certain preliminary questioning in regard to contradictory statements but such questioning is permitted only for the purpose of laying the foundation for future impeaching evidence. It in no way takes the place of such evidence. As stated above no proper impeaching evidence

CERTIFIED TO BE A TRUE COPY
James P. Kendy Lieut. USN

was later introduced in this case, and the impression is created, from the reading of the above quoted excerpt from the record that the judge advocate's unsworn version of what the record of the board of investigation contained was accepted by the court as evidencing what such record did actually contain. From this it would appear that the judge advocate was permitted to testify without being placed under oath and was permitted to testify in regard to a matter as to which the record of the board of investigation itself and not the testimony of the judge advocate could have been the best evidence. The proper procedure would have been for the judge advocate to have asked the witness questions in regard to the testimony previously given by him before the board of investigation and thus lay the foundation for later impeachment in the event of inconsistence; but in order to have properly brought before the court the impeaching evidence, the judge advocate should have taken the stand as the custodian of the record of the board of investigation and should have introduced such record into evidence and read therefrom the testimony which he intended to impeach the witness.

"It is not know to what extent the improper procedure commented upon above affected the court in giving or denying credence to the testimony of the witness M, but it is considered that the court's ruling in failing to sustain counsel's objection to such procedure was erroneous. It is necessary, therefore, to determine whether such erroneous ruling prejudiced the interests of the accused (P. 12) to such an extent as to invalidate the proceedings in this case; or, in other words, whether the interests of the accused were materially affected by such a ruling. On this question it is the opinion of the Department that, for reasons hereinbefore set forth in full, the credibility of the material witnesses as to facts in this case was of the utmost importance in aiding the court to arrive at its findings and that, in view of the fact that the erroneous ruling of the court now under consideration was on a point that involved the credibility of a material witness for the defense, it must be held that such error was fatal to the proceedings in this case (File 26262-10008, J.A.G., Dec 16, 1922; G.C.M. Rec. 5587;--CMO 1-1923; p. 10-12).

We feel that this Navy Department ruling is exactly in point in this present case. In this case, the judge advocate in attempting to impeach the defense witness, Morikawa, in an improper manner and he was permitted over objection to bring before the court in an improper manner an unverified version of what had been the witness's testimony before an investigating officer. This prejudiced the interests of the accused to the same extent as set forth in CMO 1-1923 (p. 10-12).

Next we shall refer to the proceedings of the same day, the sixteenth day, when another defense witness, Inoue, Fumio, Captain, Imperial Japanese Army took the stand after being duly sworn.

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

"HH(24)"

Carlson
HH(xxv)

The judge advocate requested that this witness be advised that anything he might say in this trial may be used against him in any trial from now on. He further stated that the witness had been served with charges and specifications and is to be the next defendant before this commission.

Sixteenth day, Inoue on the witness stand.

"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 these points and cannot refuse to answer at that time, so it would be well for the witness to remember this before answering questions of the accused."

We objected but were overruled.

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

This we hold to be error The instructions are not correct and it was most prejudicial for the judge advocate to so attack the credibility of the witness before he had even been given one single question by the accused.

Section 261, Naval Courts and Boards, under paragraph (b) reads:

"A witness may properly decline to answer a criminating question."

In our objection to the statement of the law by the judge advocte we referred the commission to the section in Naval Courts and Boards regarding criminating questions, Section 261.

We at this time also feel that the credibility of this witness was seriously impaired by the remarks of the judge advocate. Section 400 of Naval Courts and Boards clearly specifies the duties of the judge advocate during the trial.

On the seventeenth day at 3:42 p. m., the judge advocate started to cross-examine the defense witness, Captain Inoue. Question 87 was: "Have you told the truth in your testimony before this commission?" Answer. "Yes."

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

This question was objected to but not sustained.

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

"HH(25)"

Answer: "Yes."

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

"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?"

"92. Q. Were you asked the following question during that investigation: [judge advocate then read from a document] ' I understand that the Admiral wished to disclose all the truth at the time of the surrender, but that a group of officers persuaded him not to, what do you know about that?'"

This question was objected to b y the accused on the ground that it was beyond the scope of direct examination, that it is improper for the judge advocate to read from a document which has not been introduced into evidence and the judge advocate is thereby being allowed to testify without being placed under oath.

The judge advocate replied that he could impeach the credibility in any way he wanted to.

The commission announced that the objection was not sustained.

"94. Q. The record indicates you were asked the following question: [judge advocate read from a document] 'Why did the subordinate officers make this suggestion?' You answered: 'We 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?"

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. The judge advocate is being allowed to again testify by reading from a record which has not been introduced into evidence nor does the judge advocate say he intends to offer the document into evidence. The original document is the best evidence and the only proper way to get it into evidence and not to continue to read from it. By doing the way he is the judge advocate is testifying and is not under oath. The judge advocate is thereby prejudicing the rights of the accused.

The judge advocate replied as before that he could impeach the credibility of the witness any way he saw fit.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Again the commission announced that the objection was not sustained.

The defense witness answered, "Yes I answered this question. This questioning was in another case, altogether different from this native incident. Concerning that case I was asked by Lieutenant Commander McKinson, an investigator, and Okiymiyo, an interpreter was there such a 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 you have read to me was on a case altogether different from the present case and if it is wished I will clarify this testimony."

But did the judge advocate ask him to clarify it? He did not. He continued to treat him as if he were the accused in this case, quite unfairly and without any consideration. The next question he asked him was question 95. "Is it true that you officers agreed not to tell the truth because you desired to protect your fellow officers and the enlisted men?"

We again objected but were overruled.

Q. 96. The judge advocate again read from a document. "On that occasion when you were questioned you said: [reading from a document] 'We officers did not want the AtCom to be punished and likewise 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 executinners?"

This question was objected to by the accused because of the line of questianing, because the judge advocate was reading from a document not offered in evidence and thus being allowed to testify not under oath, and by reading questions and answers picked at random from the document he may well be giving improper testimony. The document is the best evidence of what it contains and it should be offered into evidence. This is most prejudicial to accused and damage has already been done. Again the judge advocate replied as before that he could impeach the credibility in any way he was fit.

The commission announced that the objection was sustained this time.

As we stated the damage to the accused has already been done by the improper questioning and conduct of the judge advocate during his cross-examination of the defense witness, Captain Inoue.

CERTIFIED TO BE A TRUE COPY
James P Kenny Lieut USN

After one more question by the judge advocate to which we objected the commission adjourned that day, Thursday, March 27, 1947, until the following day, Friday, March 28, 1947.

On the eighteenth day, the judge advocate started out again by reading from a document.

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

The accused objected to this question because it was beyond the scope of the direct examination, and was irrelevant, and because, as before, the judge advocate is being allowed to testify by reading from a record; he is not under oath; he does not state he will offer the document into evidence. This conduct and questioning is most prejudicial to the substantive rights of the accused.

Now the judge advocate replies that he is reading from the record of this case.

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

If the judge advocate was reading from the record of this case, we feel that he certainly was misquoting by not reading all the pertinent matter connected with the question. We ask that the commission carefully read again the testimony of that day.

The judge advocate's question 96 on the seventeenth day was read from another document than the record of this trial and we objected most strenuously to the judge advocate being allowed to read from the document which was not offered into evidence. We stated that the proper way for the judge advocate to do was to offer the document in evidence and not read at random from it without putting the entire document into evidence.

To this question 96 the commission did sustain our objection.

Question 94, as we have stated, was read from a document not offered into evidence. That question was as follows:

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

CERTIFIED TO BE A TRUE COPY
James A Kenney Lieut. USN

you make this answer to the investigator?"

We have previously given the answer which the defense witness, Captain Inoue, gave to this question 94.

Question 100 was as follows: "Have you decided to try and hide the truth in your testimony before this commission?"

We again call the commission's attention to what was said in CMO 1-1923 (p. 10-12). We feel that the error was just as grave in this present case as in the case cited and that what the Judge Advocate General said is applicable in this case. I shall again read what was said:

"IMPEACHMENT OF WITNESS: Improper Method.

"In a recent trial during the cross-examination of a material witness for the defense the judge advocate attempted to impeach the witness by showing that he had given testimony before a previous board of investigation to an effect contrary to his testimony before the present court. In attempting to thus impeach the witness on the stand the judge advocate was well within his rights but it so happened that he was permitted over objection, to bring before the court in an improper manner an unverified version of what had been the witness's testimony before the above mentioned board of investigation. The following excerpt from the record of the testimony of the witness illustrates what is meant.

"'87. Q. Now, can you explain why you failed to tell the Board of Investigation or give the Board of Investigation that (bad table manners) as a reason for "bawling out" Mr. A. instead of Seamanship questions? They created quite an impression on your mind and you have no difficulty at all in stating that it was for that reason and no other he was "bawled out"; and yet before the Board of Investigation you said nothing whatever about it and assigned as the reason for his "bawling out," failure to answer Seamanship questions. Can you explain that discrepancy?

A. I do not know that I said Seamanship questions. I said "bawling out" because I thought it was misconduct. It was the same as ill table manners.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

'88. Q. But why did you say before the Board of Investigation that he was "bawled out" for failure to answer Seamanship questions and you did not mention his table manners. Now, how can you explain the discrepancy or do you explain it?

A. If I remember rightly I never mentioned his "bawling out" at the table in my former testimony.

'89. Q. You didn't mention table manners before the Board of Investigation?

'Objected to by the counsel for the accused on the ground of the line of questioning by the judge advocate. He is making a supposition and is not quoting exactly from the record of the Board of Investigation. He has improper reasons to suspect this and is bringingtout the evidence without quoting anything from the Board of Investigation.

'The judge advocate replied that he can impeach this witness in any way he pleases, whether by contradictory statements in answer to oral statements, or by referring to the Board of Investigation without bringing it into the record.

'The Court was cleared.

(P. 11) 'The court was opened. All parties to the trial entered and the president announced that the objection by the counsel for the accused is not sustained. It is the understanding of the court that the judge advocate is proceeding along the line of questioning for the purpose that the witness has made contradictory statements before a properly constituted Board of Investigation and that such questioning is permitted by rules of evidence, page 164, paragraph 167.'

"In connection with the foregoing it is important to note that at no time during the trial was the record of the board of investigation brought into evidence for the purpose of showing by reading therefrom, which is the only way in which it could properlyhave been shown, what testimony the witness M. did actually give before said board.

An examination of the context of Section 167 Naval Courts and Boards shows that it in no way supports the above ruling which the court attempted to base upon it. On the contrary, the section in question distinctly requires the the contradictory statements of a witness be proved. It is true that reference is made to certain preliminary questioning in regard to contradictory statements but such questioning is permitted only for the purpose of laying the foundation for future impeaching evidence. It in no way takes the place of such evidence. As stated above no proper impeaching evidence

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

was later introduced in this case, and the impression is created, from the reading of the above quoted excerpt from the record that the judge advocate's unsworn version of what the record of the board of investigation contained was accepted by the court as evidencing what such record did actually contain. From this it would appear that the judge advocate was permitted to testify without being placed under oath and was permitted to testify in regard to a matter as to which the record of the board of investigation itself and not the testimony of the judge advocate could have been the best evidence. The proper procedure would have been for the judge advocate to have asked the witness questions in regard to the testimony previously given by him before the board of investigation and thus lay the foundation for later impeachment in the event of inconsistence; but in order to have properly brought before the court the impeaching evidence, the judge advocate should have taken the stand . . . as the custodian of the record of the board of investigation and should have introduced such record into evidence and read therefrom the testimony which he intended to impeach the witness.

"It is not know to what extent the improper procedure commented upon above affected the court in giving or denying credence to the testimony of the witness M, but it is considered that the court's ruling in failing to sustain counsel's objection to such procedure was erroneous. It is necessary, therefore, to determine whether such erroneous ruling prejudiced the interests of the accused (P. 12) to such an extent as to invalidate the proceedings in this case; or, in other words, whether the interests of the accused were materially affected by such a ruling. On this question it is the opinion of the Department that, for reasons hereinbefore set forth in full, the credibility of the material witnesses as to facts in this case was of the utmost importance in aiding the court to arrive at its findings and that, in view of the fact that the erroneous ruling of the court now under consideration was on a point that involved the credibility of a material witness for the defense, it must be held that such error was fatal to the proceedings in this case (File 26262-10008, J.A.G., Dec 16, 1922; G.C.M. Rec. 56875)--CMO 1-1923, p. 10-12).

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

On the eighteenth day the judge advocate again read fromaa document.

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

The accused objected as before but the objection was not sustained. So again the judge advocate was allowed to testify,not under oath by reading from a document not in evidence.

Finally when we were allowed to reexamine the defense witness, Captain Inoue, we tried to show by questions that the testimony read from the document by the judge advocate was not admissible in evidence in this present trial. We put those questions to the witness, Inoue.

"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 replied.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"The commission announced that the objection was sustained."

It is very interesting to hear what the Judge Advocate General has to say about the accused offering evidence showing an alleged confession to be voluntary.

"When the question of the admissibility of a confession arises the defense as well as the prosecution should be permitted to introduce evidence to show that the confession was not voluntarily made by the accused. . . . However, it cannot properly accept testimony offered by the prosecution showing a confession to be a voluntary one without giving the defense an opportunity to show contra. It is apparent, therefore, that the court's action in refusing to permit the accused to offer evidence showing the alleged confession to be involuntary was a fatal irregularity. (26262-10507, J.A.G, Oct. 8, 1923; G.C.M. Rec. No. 58085)" Compilation of Court-Martial Orders (1916-1937), Vol I, p. 849, CMO 10-1923, p. 8.).

I shall also at this time refer to Section 400, Naval Courts and Boards.

Defense witness Captain Inoue finsihed his testimony on the eighteenth day; the commission asked the witness if he had anything further to state. Section 588, footnote 25, Naval Courts and Boards, states: "When all the parties indicate that they have no more questions to ask, the court will inform the witness that he took an oath to state everything within his knowledge in relation to the charges, and that he is now privileged to make any further statement necessary to fulfill his oath; that if he is not sure what the charges are they will be explained to him."

"The witness made the following statement:" then the record shows what thedefense witness Inoue said.

The record then reads:

"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 the 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."

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

We believe the objection of the judge advocate was improper and his statement regarding the witness was prejudicial to the substantitive rights of the accused. We further believe that it was error for the commission to sustain the objection of the judge advocate and to strike the statement of the defense witness Captain Inoue from the record.

We next call the commission's attention to the cross-examination by the judge advocate of the accused, Major Furuki, as a witness in his own behalf. From the record of the twenty-second day we read as follows:

"156. Q. Did you ever read the following Naval Regulations." Then the judge advocate read from a document.

The question was objected to by the accused as shown in the record. This objection is based on the same principle as before that the judge advocate is being allowed to testify when now sworn and is reading from a document not offered into evidence.

Again the commission did not sustain the objection of the defense.

Q. 157 was as follows: "You testified concerning certain things which you claim Admiral Masuda said or did. Did you testify truthfully in these matters?"

The defense objected to this question but the objection 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?"

The record shows that the accused objected on the same grounds as before that the judge advocate is attempting to introduce into evidence a document not doing it in the proper way, but reading only certain portions from the document. The procedure is highly prejudicial to the rights of the accused who is now on the stand.

The objection was not sustained.

Q. 163 by the judge advocate is another instance of the judge advocate reading from a document which has not been offered into evidence.

"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,

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

when you sent the lying statement I assumed you were equally guilty when the truth came out. I want the whole story.' and your 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?"

The record shows:

"This question was objected to by the accused as follows: We object to the judge advocabe 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 now 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.

"The judge advocate replied.

"The commission announced that the objection was not sustained."

"164.Q. To refresh your recollection, I refer you how to the trial of Kawachi and Yoshimura and others in which you testified you were asked '59. Q. Was that a true statement?' and you answered, 'No, it was not.' This statement was in connection with the American flyers at Emidj. Do you recall making that statement? The trial was held at Kwajalein, U. S. Naval Air Base on December 7,1945."

"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 the 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 record shows the reply of the judge advocate.

The accused replied as follows: Counsel for the defense does not agree to stipulate that this record from which the judge advocate has been

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

"HH(35)"

reading be admitted as part of this trial for very obvious reasons. We agree that the judge advocate is 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 carnage has been done already.

The judge advocate replied as shown by the record.

"The Commission announced that the objection was not sustained."

Q. 166 by the judge advocate: "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.

"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."

The accused also objected because the judge advocate was again being allowed to testify by reading from a document, this time by way of the translator who translated and read from the document handed him by the judge advocate and read aloud to the witness, the accused, in Japanese.

"The judge advocate replied.

"The commission announced that the objection was not sustained."

We ask that the commission consider carefully the questions and answers and the objections of the accused and the reply of the judge advocate on the twenty-second day of this trial, Wednesday, April 2, 1947.

We are of the opinion that what the Judge Advocate General said in Court Martial Order No. 1-1923 (p. 10- 12) is applicable under the present circumstances and particularly as regards this witness, Major Furuki, the accused in this case.

We shall again read into the record what was said regarding impeachment of witness: improper method.

"HH(36)"

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

Carlson
HH(22)

"IMPEACHMENT OF WITNESS: Improper Method.

"In a recent trial during the cross-examination of a material witness for the defense the judge advocate attempted to impeach the witness by showing that he had given testimony before a previous board of investigation to an effect contrary to his testimony before the present court. In attempting to thus impeach the witness on the stand the judge advocate was well within his rights but it so happened that he was permitted over objection, to bring before this court in an imporper manner an unverified version of what had been the witness's testimony before the above mentioned board of investigation. The following excerpt from the record of the testimony of the witness illustrates what is meant:

"87. Q. Now, can you explain why you failed to tell the Board of Investigation or give the Board of Investigation that (bad table manners) as a reason for "bawling out" Mr. A. instead of Seamanship questions? They created quite an impression on your mind and you have no difficulty at all in stating that it was for that reason and no other he was "bawled out"; and yet before the Board of Investigation you said nothing whatever about it and assigned as the reason for his "bawling out," failure to answer Seamanship questions. Can you explain that discrepancy?

A. I do not know that I said Seamanship questions. I said "bawling out" because I thought it was misconduct. It was the same as ill table manners.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"HH(

'88. Q. But why did you say before the Board of Investigation that he was "bawled out" for failure to answer Seamanship questions and you did not mention his table manners. Now, how can you explain the discrepancy or do you explain it?

A. If I remember rightly I never mentioned his "bawling out" at the table in my former testimony.

'89. Q. You didn't mention table manners before the Board of Investigation?

'Objected to by the counsel for the accused on the ground of the line of questioning by the judge advocate. He is making a supposition and is not quoting exactly from the record of the Board of Investigation. He has improper reasons to suspect this and is bringingtout the evidence without quoting anything from the Board of Investigation.

'The judge advocate replied that he can impeach this witness in any way he pleases, whether by contradictory statements in answer to oral statements, or by referring to the Board of Investigation without bringing it into the record.

'The Court was cleared.

(P. 11) 'The court was opened. All parties to the trial entered and the president announced that the objection by the counsel for the accused is not sustained. It is the understanding of the court that the judge advocate is proceeding along the line of questioning for the purpose that the witness has made contradictory statements before a properly constituted Board of Investigation and that such questioning is permitted by rules of evidence, page 164, paragraph 167.'

"In connection with the foregoing it is important to note that at no time during the trial was the record of the board of investigation brought into evidence for the purpose of showing by reading therefrom, which is the only way in which it could properlyhave been shown, what testimony the witness M. did actually give before said board.

An examination of the context of Section 167 Naval Courts and Boards shows that it in no way supports the above ruling which the court attempted to base upon it. On the contrary, the section in question distinctly requires that the contradictory statements of a witness be proved. It is true that reference is made to certain preliminary questioning in regard to contradictory statements but such questioning is permitted only for the purpose of laying the foundation for future impeaching evidence. It in no way takes the place of such evidence. As stated above no proper impeaching evidence

"HH( )"

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

was later introduced in this case, and the impression is created, from the reading of the above quoted excerpt from the record that the judge advocate's unsworn version of what the record of the board of investigation contained was accepted by the court as evidencing what such record did actually contain. From this it would appear that the judge advocate was permitted to testify without being placed under oath and was permitted to testify in regard to a matter as to which the record of the board of investigation itself and not the testimony of the judge advocate could have been the best evidence. The proper procedure would have been for the judge advocate to have asked the witness questions in regard to the testimony previously given by him before the board of investigation and thus lay the foundation for later impeachment in the event of inconsistence; but in order to have properly brought before the court the impeaching evidence, the judge advocate should have taken the stand . . . as the custodian of the record of the board of investigation and should have introduced such record into evidence and read therefrom the testimony which he intended to impeach the witness.

"It is not know to what extent the improper procedure commented upon above affected the court in giving or denying credence to the testimony of the witness M, but it is considered that the court's ruling in failing to sustain counsel's objection to such procedure was erroneous. It is necessary, therefore, to determine whether such erroneous ruling prejudiced the interests of the accused (P. 12) to such an extent as to invalidate the proceedings in this case; or, in other words, whether the interests of the accused were materially affected by such a ruling. On this question it is the opinion of the Department that, for reasons hereinbefore set forth in full, the credibility of the material witnesses as to facts in this case was of the utmost importance in aiding the court to arrive at its findings and that, in view of the fact that the erroneous ruling of the court now under consideration was on a point that involved the credibility of a material witness for the defense, it must be held that such error was fatal to the proceedings in this case (File 26262-10008, J.A.G., Dec 16, 1922; G.C.M. Rec. 56875)--CMO 1-1923, p. 10-12).

CERTIFIED TO BE A TRUE COPY
James P. Keady Lieut. USN

Q. 185 put to the accused on the witness stand was as follows: "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.

"The judge advocate replied.

"The commission announced that the objection was not sustained."

Q. 196 by the judge advocate 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. After the reply of the judge advocate the commission announced that the objection was not sustained.

We respectfully call the commission's attention to the twenty-third day, Thursday, April 3, 1947, starting with question 265. During the questioning the accused, as a witness in his own behalf, was required to write on a piece of paper and as we stated required to manufacture evidence against himself which procedure as we then pointed out was at variance with Section 235 of Naval Courts and Boards.

The accused, Major Furuki, continued on the stand under cross-examination by the judge advocate until late afternoon of the twenty-fourth day, Friday, April 4, 1947.

You remember well how he honestly admitted the acts which he did. You remember also the testimony of all the witnesses. Not a single one testified except that Major Furuki was a loyal soldier. All had only words of praise for this soldier who is charged with murder.

At this time we are not asking for mitigatinn for the accused, Major Furuki. If he is guilty of the atrocities for which his death is sought, he can expect no sympathy because this is a military commission, a legal court and the law must be carried out.

It was Mr. Justice Rutledge in the dissenting opinion in the General Yomoyuki, Kamashita, Petitioner said:

"But there can be and should be justice administered according to law. In this stage of war's aftermath, it is too early for Lincoln's great spirit, best lighted in the Second Inaugunral, to have wide hold for

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

"HH(40)"

the treatment of foes. It is not too early, it is never too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against unbridled power than due process of law in the trial and punishment of men, that is, of all men, whether citizens, aliens, alien enemies, or enemy belligerents. It can become too late.

"This long-held attachment marks the great divide between our enemies and ourselves. . . . Every departure weakesn the tradition, whether it touches the high or the low, the powerful or the weak, the triumphant or the conquered. If we need not or cannot be magnaninous, we can keep our own law on the plane from which it has not descended hitherto and to which the defeated foes never rose."

The accused, Major Furuki, Hidesaku, is charged with murder and in Charge II with violation of the Laws and Customs of War.

Section 158, Naval Courts and Boards states a fundamental rule: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted."

We ask the commission, therefore, to find as to the accused, Major Furuki, Hidesaku, specifications one, two, three, four and five of Charge I not proved , and the accused is of the charge of murder not guilty and the commission does therefore acquit the said Major Furuki, Hidesaku, of the specifications and of the charge of murder, and to find as to the accused, Major Furuki, Hidesaku, specifications, one, two three, four, and five of Charge II not proved and the accused is of the charge of Violation of the Laws and Customs of War, not guilty, and the commission does therefore acquit the said Major Furuki, Hidesaku, of the specifications and of the charge of Violatinn of the Laws and Customs of War.

Respectfully,

Martin Emilius Carlson,
Commander, U. S. Naval Reserve.

"HH(41)"

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Bolton
Index(i) II

CLOSING ARGUMENT FOR THE PROSECUTION

delivered by

Lieutenant David Bolton, U. S. Navy,

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

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

BoIton
XI(i)

CLOSING ARGUMENT FOR THE PROSECUTION

By Lieutenant David BoIton, USN.

INTRODUCTION

The co-mission has heard able and extensive arguments by defense counsel, Mr. Yuichiro Akimoto, Mr. Saizo Suzuki and Commander Martin E. CarIson, USNR. The quality and skill of their agruments as well as their zealous defense of this case is as much a tribute to the high standards of the international profession they represent, as it is to their exceptionalpersonal and professional talents. I have highest regard for their integrity and skill, and I desire that they clearly understand that remarks in my argument which relate to obvious fabrications in the defense, do not relate to defense counsel, but are directed toward the accused, and the various Japanese war crimes witnesses who together in close confinement for more than a year, have had ample opportunity to weave this strange fictional fabrication of an alleged defense. If they had possessed more skill and more knowledge, these witnesses would have woven a strong, perhaps indestructible cloth, depicting love and compassion for the natives. But, fortunately for Justice and unfortunately for the accused, the cloth they have manufactured is filled with holes and the truth shines through like the brilliant light of the Sun revealing the brutal cold-blooded criminal trying to hide behind this curtain of lies.

In reflecting about Mr. Akimoto's inspiring quotation from the Corinthians, I cannot help thinking about the accused and I am then reminded that even the devil can quote Scripture for his own uses.

Like philosophical Mr. Akimoto, I say, "Let us take off our dark glasses and look at the truth."

Because of the nature of the case and because of the very elaborate arguments by defense counsel, the judge advocate is compelled to deliver an extensive and detailed closing argument. My colleague has tersely discussed the evidence presented in the trial, and noted the applicable law. My function is to give a detailed and complete analysis of the applicable law, and to rebut the fallacious defense arguments.

My argument will be presented in two phases. First, I will briefly discuss my understanding of the purpose and function of these trials. Secondly, I will discuss the charges and the guilt of the accused. Many legal technicalities of International Law, American Law, Japanese criminal and military law, etc., are involved in this phase of my argument, and therefore, in presenting it, I will first give a summary and then for the purpose of thorough treatment will give a complete detailed analysis of the applicable law, the proof of the guilt of the accused, and the necessity of his conviction and punishment

CERTIFIED TO BE A TRUE COPY
James A Kenney Lieut. USN

Bolton
II(ii)

PART I. Purpose of War Crimes Trial.

FIRST, Let us briefly consider the purpose and function of this trial.

With respect to Charge I, the instant case is like any trial of homicide. Charge II is like any typical war crimes case. In the broader social implications, in the essential function of law, these charges--the local and the international--merge into one problem of justice and one problem of social order and control.

The war crimes picture has vivid colors. Its background was painted at the sneak attack at Pearl Harbor, and it has been indelibly colored by the "March of Death," and other atrocities too numerous and too horrible to mention. The homicides in the instant case are the product of that same barbaric lust for power which disregarded all decencies and allhuman rights in an effort to win the war so treacherously begun.

When Americans realized that the enemy would stop at nothing, would destroy any and all of the laws and rights of civilized man, we sought to dissuade them. Protests were made, and when disregarded, they changed to warnings. On August 21, 1942, President Roosevelt declared, "It is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders in Europe and Asia. It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer for their acts."

The accused had his warning, and now, four years later, in this court room in the presence of three Marshallese observers, he is tried for the barbaric murder of thirteen of their fellow countrymen.

What was said by President Roosevelt in August,1942, and later repeated over and over again, was not a new credo. The deterrent functionnof international law was expressed many years ago. Lawrence, in The Principles of International Law (7th ec. 1923) pp. 373-374, expressed it as follows:

"A ruler drunk with the consciousness of overwhelming power might venture to defy the moral sentiments of mankind, but only to discover by and by that outraged humanity avenges itself in unexpected ways. . . . . Those, therefore, who imagine that a state is free to ignorebecause of the exigencies of the moment any rule. . . are as erroneous in their reasoning as they are anarchical in their sentiments. The laws of war are made to be obeyed, not to be set aside at pleasure."

All is not fair in war. Certain fundamental domestic laws must still be obeyed and in the field of war, the laws and customs of war set definite standards, violation of which constitutes a crime against the laws and customs of war and is punishable as such.

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

"II(. 4"

Warning potential wrongdoers that society will punish those who violate its fundamental laws and customs is a basic function of international criminal justice. This commission is an instrument of that justice and must exercise that deterrent function. In Charge II, the accused is charged with violation of the laws and customs of war. If he is proven guilty of this international crime as charged, it is your duty to safeguard and protect organized civilized society by convicting and punishing him.

Charge I--Murder--is perhaps not as dramatic as the charge in violation of the laws and customs of war. Yet the social problem, the importance of your decision, and the fundamental juridical principles requiring trial and punishment are identical. Society is governed and controlled by law, and only if that law is effective and enforced can the rights of individuals in society be protected.

Whether we consider the violation of the laws of local society, as evidenced by Charge I, or the violation of the laws of international society, as evidenced by Charge II, the problem is identical. The accused has committed a serious violation of the laws of society. Society demands that he be punished. From the individual standpoint, the particular punishment may be designed to intimidate, reform, or incapacitate him. From the social standpoint--not revenge--but deterrence is the primary objective.

The eyes of the world are upon you. Not only FURUKI, but this court, and international law and order itself is on trial in this room. The purpose and function of the trial is to reaffirm the integrity, the force, and the justice of that law and order. The accused has been given a fair and impartial trial. If he is found guilty, he must be punished so that others who may be "drunk with the consciousness of overwhelming power" or faced with the "exigencies of the moment" will stop and think.

PART II. Proof of Charges and Specifications.
A. Reasonable Doubt.

As to the charges and proof of the guilt of the accused:

The law requires that the accused must be proven guilty beyond a reasonable doubt. This requirement is set forth at length in Naval Courts and Boards, Sections 158 and 159. In part, these sections state:

"It is not necessary that each particular fact advanced by the prosecution should be proved beyond a reasonable doubt; it is sufficient to warrant conviction if, on the whole evidence, the court is satisfied beyond such doubt that the accused is guilty. By reasonable doubt, is meant an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or court and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the accused to escape conviction nor prompted by sympathy for him or those connected with him. . ."

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

The accused, FURUKI, Hidesaku, Major, Imperial Japanese Army, is charged in ten specifications with two crimes: Murder and Violation of the Laws and Customs of War. The evidence clearly establishes the guilt of the accused beyond a reasonable doubt.

In considering this evidence, the judge advocate will first give a summary of the main features of the argument, and then present an extensive analysis of the evidence in the light of the applicable law.

B. Summary Analysis.
1. As to Murder.

SUMMARY: As to Charge I, Murder.

Murder has been alleged in violation of the effective local law, Section 199, of the Japanese Criminal Code. Specifications 1 through 5 allege this murder in the language of the local law, and also in the language of the common law.

In substance there is little difference in their application. On analysis, it will be seen that while the language of Section 199 is very broad, its contents must be read in the light of certain limiting provisions in Chapter VII, Book 1, of the Japanese Criminal Code. The pertinent provisions of this chapter, upon analysis are seen to be clearly included within the scope of the terms "without legal justification or legal excuse."

Specifications 1 through 5 in alleging these murders, use certain historical legal terms commonly used in American courts. Analyzing these terms according to legal usage, it is demonstrated that in the instant case, the words "wilfully, premeditation, malice aforethought, feloniously, and without justifiable cause," like the concepts of the Japanese law, require only that the killings be proved to be intentional and "without legal justification or legal excuse."

There is no question that the accused intended to kill the natives. He took them to the place of execution with the intention of killing them, and after they arrived at the place, he did kill them. The defense have not denied that Furuki intended to kill these natives. They merely argue that he did not have a "criminal intent," because he did not intend to commit a crime. The Japanese criminal law, like our own, does not require that it be proved that the accused knew that the acts he intended to commit were prohibited by law. Ignorance of the law is no excuse under any system of criminal law; and it is specifically provided in Article 38 of the Japanese Criminal Code:

"Ignorance of the law cannot be invoked to establish absence of design, but the punishment may be mitigated according to the circumstances."

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut USN

The defense argument that Furuki did not know the law, and did not know that the killing was illegal, has been interesting, and perhaps should even be considered in mitigation of punishment, but it is totally irrelevant in regard to the question of guilt.

Furuki's good character or his motive in killing these natives is similarly unimportant. For obvious reasons the law does not require that the prosecution prove than a man had a bad motive or an evil mind, when he committed a criminal act. Allegations of good character or good motive are totally irrelevant to the question of guilt once it is established that the accused committed the prohibited acts. From the standpoint of guilt, even if Furuki killed these natives in the belief it was necessary for the survival of his men, even if he killed the natives for their own good or at their own request, he would still be guilty of murder, and his intention to kill is all that must be proved to establish the required criminal intent.

This fundamental legal concept is clearly expressed in Wharton's Criminal Evidence, as follows: "There is no bad act which the perpetrator does not summon up good motives to excuse..... The law is: No matter what may be the motives leading to a particular act, if the act is illegal, it is indictable, notwithstanding some one or more of the motives inducing the act may be meritorious." (Wharton's Criminal Evidence, 11th ed. p. 283; and see numerous cases cited in the footnotes thereto.)

In the instant case, the legal requirement of "intention to kill" is unequivocally present and to establish guilt of murder under Charge I, it is only necessary to prove that the killing was done "without legal justification or legal excuse."

In extensive commingled arguments, the defense has made three separate major defenses. First, they argued an alleged legal justification that the killing was an act of necessity or a kind of self-defense. Secondly, as an alleged legal excuse they have argued that the killing was done ~~pursuant~~ pursuant to the order of a superior commanding officer. Finally, they argued it was an execution done pursuant to sentence at a legal trial. None of these arguments are sustained by the facts or the law.

As to the argument of necessity or self-defense. Our law requires that the act be a necessary act of self-defense against imminent peril created by the person killed. The Japanese law similarly requires that the acts be "unavoidable" and done in order to protect "against imminent and unjust violation." It was not necessary to kill these five groups of natives. They were unarmed, bound prisoners of the Japanese. They American Armed Forces, and not those poor frightened natives were responsible for the danger to the Japanese; and even the activity of the American forces was not an unjust violation of the rights of the Japanese; it was just retribution. The killing of these natives could have

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

been avoided. They could have been released and sent back to their islands. They could have been utilized as laborers. They could have been kept in safe confinement. True, it may have been simpler or more advantageous to kill them as a warning toother natives, but this does not make their killing "unavoidable" or in "self-defense." It does not constitute a legal justification for killing them.

The accused argues that there was a legal excuse for the execution of these natives in that the killings were done by order of a superior commanding officer.

Commingled with this is the argument that Furuki was compelled to execute these mtives, that if he did not do so, he would himself have been punished by MASUDA. This latter argument or coercion has been rejected by the courts in all homicide cases. Society cannot permit an individual to commit an act of homicide and escape conviction with the argument that he was compelled to commit the crime. To permit this excuse would open up a broad avenue for the defeat of justice, and would permit organized criminals and criminal societies to evade punishment byy claiming they would have been killed by their boss or fellow members if they refused to obey the order to kill.

For the same social reason, the defense of superior orders must be rejected. There was a time when it was argued that superior orders could be a defense for certain criminal actions. It never was a defense in an otherwise unjustified homicide. It clearly is not a defense under International Law. This argument has been advanced in practically every war crimes case--and it has been universally rejected. The law was well settled long before the famous Nuremberg Trials in which the court tersely stated, "The defense of superior orders has never been recognized as a defense to a crime, but is considered in mitigation, as the charter here provides."

If in fact, Masuda ordered Furuki to execute these natives, then this fact merely makes MASUDA an accomplice, but it does not excuse Furuki for this participation in the crime of murder. Such alleged superior orders may be considered in mitigation--but Furuki must be found guilty as charged.

As his final excuse the accused alleged that these homicides were legal executions resulting from a legal trial. This excuse, if proven by the facts would constitute a full and complete defense. But, to be a legal execution, it must first be established that a proper legal trial was held, that in accordance with legal procedure the accused was found guilty, that a legally authorized sentence was properly determined and pronounced; and that the executions occurred in strict accord with said legal sentence. Defense counsel argued that all five groups of executions were legal because the thirteen natives were convicted at legal trials at which Masuda, Shintomo, and Inoue were the judges.

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

The judge advocate established that the executed natives were never present at the alleged trials; they were never permitted to question witnesses against them; no sworn testimony was ever considered as in fact no witnesses were present, and the accused natives were never permitted to have counsel or anyone else present to represent them.

Defense counsel argue that the "evidence" utilized at these alleged proceedings consisted of an investigation report and an opinion by Major Furuki based upon it. Defense counsel even argue that these investigations themselves constituted a part of the trial. It is unnecessary to point out that these investigations were not judicial proceedings. They were carried out in an atmosphere of violence, brutality, and terror. According to FURUKI's own testimony, he and Masuda went to see and question the natives before the "trial." It is apparent and it must have been to Furuki and Masuda, who were there, that these brutal investigations and the alleged proceedings in Admiral Masuda's office did not constitute judicial proceedings.

But there is still more to be said on the subject of the alleged trials. The defense contended that prior to each execution, Admiral Masuda, Captain Inoue, and Lieutenant Commander Shintomo held these special trials--these special proceedings--and acted as judges. In answer 47, the accused, Furuki, reported in considerable detail hearing Admiral Masuda inform Inoue and Shintomo of their appointment as judges and then instruct them in detail about their functions and to express their opinion impartially as judges.

But on cross-examination of the defense witness, Inoue, the judge advocate made him admit that he did not even know he was supposed to be a judge, and did not even know this was supposed to be a trial and didn't decide it was a trial until after the war when he was confined as a ~~war~~ suspect. ~~It is~~ seriously contended that this man was a judge when he did not even know there was a trial until months afterward. On rebuttal, Former Lieutenant Commander Shintomo testified that he was accidentally present at one such meeting; that he was not called upon to give his opinion as to the guilt or innocence of the natives; that he was never informed that he was a judge and that he definitely was not a judge. Thus, two of the three alleged judges testified that they did not act as judges.

The defense admitting that there were five incidents of group killings extending over the period from the end of May to the middle of August contended that there were five separate trials consisting of two meetings each, and that Rear Admiral Masuda, Lieutenant Commander Shintomo, and Captain Inoue were the judges at all these "special proceedings." The facts however completely eradicate their argument. The facts proven establish not only that Shintomo and Inoue were not judges at these alleged meetings, but that in fact Shintomo was present for only part of one such meeting. And at that meeting he and Inoue, according to both their testimonies did not approve execution of the natives. This, despite the Japanese naval court martial law of majority rule, Masuda ordered execution of the natives, which fact also establishes that at that meeting they were not judges, and there was no judicial proceedings.

"II( )"

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

Bolton
II(viii)

Let us reconsider the facts concerning these alleged trials: one of the three alleged judges was not present at four of the alleged trials; two of the three alleged judges did not know the proceedings were a trial or that they were supposed to be judges; the third alleged judge is dead. At these alleged meetings, defense contends that the evidence consisted of certain investigation reports, based on confessions which have been proven to have been obtained like the rest of the evidence, through brutality and torture. At the alleged meetings no witnesses were present; no sworn testimony was received; no defense counsel or other representative of the accused was present; and finally the accused was not permitted to be present at these alleged trials.

It is not necessary to consider whether a fair trial was given these natives--for, in the light of all these facts, the elaborately fabricated defense of "special trials," dissolves into a pool of petty falsehoods. There was no trial, and there was no legal excuse for these executions.

Masuda is dead, and to the defense, his silence is golden. For the defense has made him a silent witness for every order or law they wish to prove, every power they wish to create, and every act they wish to explain.

Defense contends that conditions similar to martial law existed on Jaluit and that Masuda controlled all military, administrative, and judicial authority on Jaluit. Mr. Akamatsu characterized Masuda as a dictator, and Mr. Suzuki said he was despotic. If so, it merely characterizes the true nature of Masuda's and Furuki's acts, but does not give them legality. Even martial law under the law of Japan, which, as defense pointed out, is similar to the martial law you are familiar with as military officers, does not give limitless power. Admiral Ariga testified that the Fourth Fleet dispatches did not give the commanding officer the power to violate international law. Martial law may suspend certain civil rights; and it may, as was done during our Civil War, permit trial by military rather than civil courts. But it does not under any system of law, give the legal right to punish by death without a trial.

If the accused had alleged that Masuda, as legal head of Jaluit, had himself attempted to make new laws empowering him to sentence to death without a trial it would only be necessary to point out that the Japanese constitution guarantees its subjects the right of trial; and that in the field of international crimes, similar attempts by the Nazis to escape responsibility for their lawless acts by resorting to subterfuge of passing alleged new laws has been unequivocally rejected. It is a fundamental principle of international law that acts must be legal, not only under domestic, but also under international law, and where they conflict, international law must prevail.

"II(viii)"

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

It should be noted that even the defense did not try to contend that no trial was necessary, but rather attempted to concoct a wierd intricate theory of a special procedure which they contended was a kind of a trial.

To forestall our proof that there was no trial, the defense have sought to argue that even if it was not a trial, it was the best possible procedure they could apply under the conditions at Jaluit. Even if Masuda or the others believed it to be the best possible procedure, this could not make the executions legal. The human life which the Japanese militarists so wantonly destroyed, is very precious in the eyes of the law. The law does not compromise and it requires that to be legally excusable, there must in fact be not only a fair legal trial, and a lawful sentence, but even requires the strictest compliance with the statutes authorizing theexecutions. Thus, the courts have shown that even where sentence of death was legal, it is murder to substitute a different method of execution. 26 American Jurisprudence 230. I cite this to show how zealously the law guards human life and how strictly it requires fullest compliance with the requirements of a legal executinn before it is considered an excuse for homicide. The law clearly rejects this contention of the accused that even the "best possible procedure under the circumstances" could constitute a legal excuse for the homicides.

When we examine the defense contention a little closer, regardless of the law, the alleged facts do not support them. What was done may have been the most effective procedure from the standpoint of the Japanese, but it clearly was not the best possible procedure from the standpoint of the accused or of justice. Disregarding the investigation and its brutal nature, and looking at the alleged trials in Masuda's office, it is clear that at least the accused could have been present, and the witnesses who were already in custody could have been called,and the accused could have been given an opportunity to deny the charges and try to prove his innocence. All these rights, at least the right to be present, could certainly have been afforded the accused. Clearly, the alleged proceedings could not under any guise be believed to have been the "best possible procedure" for the natives under the circumstances.

Finally, it must be realized that it was not necessary for any judicial reasons to kill the natives without a trial merely because it was inconvenient or even impossible at the time to hold a regular trial. It was possible to imprison them, even if they were guilty, until some future time when trial was possible. Failure to give them a trial or any semblance of a trial prior to execution, could not be justified under any legal or moral standards.

International law requires not merely a semblance of trial, it requires a real trial, a fair trial. But we need not here consider the requirements of a fair trial, for in the instant case, notrial of any kind was held.

I do not know what motive FURUKI or MASUDA had in killing these natives. And

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

in the eyes of the law it is immaterial. It does not matter whether the natives were trying to escape and Masuda or Furuki felt it was their moral duty to punish the natives or whether the killings were intended as warnings to try to keep up the power and prestige of the Japanese forces. The fact remains that whatever the motive, whatever the reason, there was no trial, no legal execution and no legal excuse.

Furuki killed the 13 natives; he intended to kill them; and he killed them without legal justification or legal excuse. FURUKI, as charged in Charge I, specifications 1 through 5, is guilty of MURDER.

2. As to Violation of Laws and Customs of War.

Charge II charges violation of the laws and customs of war, and Specifications 1 through 5 allege that wilfully, unlawfully, and without previous trial, FURUKI punished these natives as spies. His wilfullness, unlawfullness, and absence of previous trial have been briefly discussed in connection with the charge MURDER. To establish FURUKI's guilt under Charge II, it is merely necessary to establish that these natives were punished as spies.

Sakuda testified that pursuant to Masuda's orders it was presumed conclusively that any native attempting to escape would, and therefore intended to, relay military information to the enemy. Clearly, therefore, all the executed natives, since they were attempting to escape, were presumed to be guilty of spying, and were so punished by execution.

In the case of Molein and Mejkane, Furuki himself proved that they were punished as spies. In his answer 99, he testified "Molein had ordered Mejkane to get the natives to desert from all the islands from Pingelap to Jaluit and also to spy upon the defense garrison military secrets, and to give the information to the Americans. They planned and executed this." In his question 101 he was asked, "What was your opinion in punishment of Molen and Mejkane, and what were the laws applied?" He answered: "My opinion expressed in the case of Molein was death, in the case of Mejkane, fifteen years hard labor. The laws applied to Molein, 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 law concerning intentional relaying of information to the enemy...

Thus in all specifications, as testified by Sakuda, and as specifically testified by the accused in thecases of Molein and Mejkane, the natives were punished as spies.

The defense has argued that there is distinction between foreign and domestic spies; and that the Hague Convention can only be applied in the case of foreign

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

spies. This argument is clearly fallacious. In the first place, The Hague Convention makes no such distinction. The offense of spying has always been considered an international one, and the protection which the Hague Convention sought to give to one accused of spying was not limited to "foreign spies." If such a distinction had been made by the Hague Convention, the commission would be compelled to decide whether or not these natives of the mandated islands were "foreign" of "domestic" to Japan. It is unnecessary to make this distinction for Article 30 of the Annex to the Fourth Hague Convention of 18 October 1907, merely provides: "A spy taken in the act shall not be punished without previous trial," and in Article 29: "A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party." There is not portion of this provision which distinguishes between a "foreign" and a "domestic" spy, and the entire argument of such distinction in application of International Law is one which has no foundation.

Similarly, their argument that because the natives were not caught in the actual act they could be punished without a trial, is patently fallacious. The Hague Convention does not purport to restrict or limit the application of basic accepted international law with regard to the rights of persons accused as spies. It merely reflects part of that basic law and states that even when caught in the very act of spying, one cannot be punished as a spy without a trial. A fortiori, if the natives were not caught in the very act, they were guaranteed by international law the right to a trial before being punished as spies.

Since Furuki, wilfully, unlawfully, and without previous trial, punished these natives as spies, the accused Furuki was guilty of violation of the laws and customs of war, and is guilty of the charge and specifications of Charge II.

This, in essence, is the summary of the prosecution's case against Furuki. Before going into the detailed analysis of this case, the judge advocate will consider certain arguments of defense counsel, which do not merit inclusion in the main argument of this case.

C. Detailed Analysis of Case.
1. Special Defense Counsel Arguments.

Defense counsel have made various arguments implying that certain procedures used before the commission, and that certain rulings by the commission, were prejudicial to the accused. The judge advocate could summarily dismiss these arguments by indicating that all the rulings by the commission are clearly proper under the wide latitude permitted in SCAP rules which the Commission is authorized to utilize under the convening precept. The judge advocate could similarly dismiss these arguments by referring to the fact that this matter has already at

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

various times been argued before this commission prior to permitting any of the questions or making the rulings to which the defense counsel refers. However, the judge advocate considers that it is important for the accused, as well as defense counsel and the entire Japanese people to realize that this accused has received not only a full, but a completely fair trial and has not been prejudiced by methods of prosecution or rulings of the commission. For this reason, the judge advocate will extensively consider the contentions by accused that certain rulings were improper.

a. Admission of Confession of Accused.

The defense counsel, Commander Carlson, argues that it was prejudicial to admit into evidence the confession of the accused. He also contends that it was improper for the court to sustain the objection to his question asking whether the accused had counsel at the time of the writing of the confession. Defense argument is completely specious. At no time have they sought to deny the contents of that confession--in fact Commander Carlson has himself made use of it in trying to show that the accused thought he was obeying a lawful order of Admiral Masuda. The defense counsel argued that the court did not permit him to show that the confession was involuntary. The defense counsel had the accused on the stand and never sought to establish that the confession was involuntary. On the contrary, the defense counsel asked the witness questions which educed the identical testimony and evidence which is contained in that confession. Clearly there was nothing prejudicial in regard to these confessions.

b. Advising witness Inoue of privilege vs. self-incrimination.

Defense counsel, Commander Carlson, claims it was prejudicial for the judge advocate to request an instruction to the witness Inoue informing him of his right u under our law to refuse to answer incriminating questions, in view of the fact that he is to be a defendant in a later war crimes trial. This instruction was intended to prevent any prejudice to Inoue, by informing him of his privilege against self-incrimination. This was not an effort to attack the credibility of this witness, nor did the judge advocate in cross-examination of this witness subject him to an attack on his credibility based upon the fact that he was a defendant in a similar war crimes case and therefore had motive to lie. It was clearly permissible in cross-examination of Inoue, and even by collateral evidence, to establish that he was a war crimes accused and therefore had a motive to lie in his own behalf. Thejudge advocate has not pursued this method of attacking the credibility of a witness--and it is apparent that the commission did not consider the request that the witness be given instructions as an attack upon his credibility. Defense counsel did not make objection to the request of the judge advocate--it is apparent therefore that they concurred in it. Similarly they did not object when the commission directed that the judge advocate's remarks be explained to the witness as instructions. Their failure to object is, in view of their very numerous objections to even the most trivial matters, clear evidence not only that they were in full accord with the request for this instruction--but that they do not in fact consider that the request was prejudicial.

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

c. Reference in questions to contents of documents not submitted into evidence.

Mr. Akimoto and Commander Carlson in behalf of the accused argued that the judge advocate has improperly been permitted to refer to certain documents in cross-examination of the defense witnesses. They are mistaken in their assumption that this was improper or prejudicial.

Two documents were referred to by the judge advocate in cross-examination of these witnesses. The documents themselves, and clearly the portions thereof referred to by the judge advocate in his questions, could properly have been offered and admitted into evidence. These are not ordinary memoranda, nor are these self-serving documents prepared subsequent to the commencement of trial, like Exhibits 3 and 4 which were offered by and admitted for the defense.

The documents referred to in cross-examination are first, the official Record of Proceedings of War Crimes Investigation conducted at Jaluit, Majuro, and Kwajalein Atolls, Marshall Islands, by order of the Commander Marshalls Gilberts Area, October 7, 1945, to inquire into the alleged executions of American prisoners and war crimes and atrocities on Jaluit Atoll. The investigation was conducted in the period from October 7, 1945 to November 18, 1945, in accordance with Serial6921, authorizing administration of oath to the witnesses. Some of the witnesses before that Board of Investigation were sworn, others were not, but their testimony was carefully transcribed, and the record included not only the American aviators, but also the death of the thirteen natives concerned in the instant trial. This is evidenced by the Board of Investigation report, paragraph II, as follows: "L. Seven Marshallese natives executed in May, 1945. M. Two Marshallese natives executed in June, 1945. N. Two natives executed in July, 1945. O. Twonatives executed in August, 1945." In the course of this investigation the questions and the answers of the witnesses related not only to the American aviators, but also to the executed natives for whose death the accused, FURUKI, is now being tried.

The second document referred to by the judge advocate in cross-examination was an official record of the trial before a United States Military Commission, on December 7, 1945, at Kwajalein Atoll, Marshall Islands, of Yoshimura, Kawachia, Taska, and Tanaka. The case against Admiral Masuda, an original party defendant was nol pressed. The accused, Major Furuki, testified at that trial, and in cross-examination of Furuki, this testimony of his was referred to in certain questions of the judge advocate.

In cross-examining certain defense witnesses the judge advocate directed their attention to certain prior statements made by the witness which are recorded in these two documents: the record of the former war crimes trial and the record of the official board of investigation. Largely because the defense witnesses did

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

not deny the essential content of their prior statements, the judge advocate found it unnecessary from the legal as well as the practical standpoint, to introduce these two documents into evidence; and he refrained from doing so because certain questions and answers by the accused, as well as by other defense witnesses contained in these documents, might be construed as prejudicial to the rights of the accused.

The prior statements by the defense witnesses were of two types: (1) statements indicating that the testimony of those witnesses and of other Japanese military personnel were made to the Investigators were false statements, and that the witnesses before the Board of Investigation had knowingly testified falsely in accordance with a common plan, and (2) statements made at the Board of Investigation indicating that no trials were held on Jaluit.

By reference to the first type of statement, the judge advocate desired to establish that the defense witnesses were not credible before this commission because they had previously under official investigation madd false statements; and that the same motives which, by their admissions, caused them to testify falsely at their prior investigation, namely to aid their commanding officer, were present for fabrication in this trial of the officer second in command. Certainly it is admissible to attack the credibility of any witness by showing the existence of a motive to lie. It is doubly damaging to the credibility of such a witness to show that because of that motive he has previously in official proceedings deliberately falsified his testimony.

With regard to the propriety of establishing the bias or motive to lie of a witness, the judge advocate need merely cite Underhill, op cit., Section 437, which states: "The bias of the witness and his interest in the event of the prosecution are not collateral, and may always be proved to enable the jury to estimate his credibility. They may be proved by his own testimony upon cross-examination, or by independent evidence, and, while much latitude is allowed, the extent of such cross-examination rests very much in the sound discretion of the court. . . The bias of the witness may be shown, either by independent testimony or by questions put to him upon his examination. He may be interrogated as to his sympathy for the prisoner. . . In proving bias or interest by questions put to the witness regarding his previous statements out of court indicating bias, it is necessary to state details of time, place and person attendant upon such declarations. If the witness denies having uttered the statement indicating bias or if he refuses to answer or answers evasively, the facts of bias may be proved by other witnesses." (italics supplied).

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

With reference to the second type of statement, the judge advocate , in questioning witnesses w'o testified before this commission that a trial was held for the natives, referred these witnesses to prior statements made by them indicating that no trials were held on Jaluit. Reference to the prior conflicting statements was made for the purpose of establishing that the witness was not credible; and, if in fact the witness denied having made the prior conflicting or contradictory statement, the law requires that a proper foundation be laid before introducing the prior contradictory statement which the witness denies having previously made. Underhill's Criminal Evidence, 4th ed., sec. 425, et. seq., relate to the laying of foundation, etc., for impeachment of an adverse witness by showing of contradictory statements. But if, as in the instant case, the witness fails to deny making the prior statements, then not only is it legally unnecessary to further prove the prior statements, but from the practical standpoint, it is obviously unnecessary when the witness in reiteration of attempted explanation of his prior conflicting statements has directly ~~weaked~~ WEAKENED the efficacy of his testimony.

So much for the law, it is clear, and authorized the use of such questions for the purpose indicated. Now let us look at the facts.

At the Yoshimura trial, Major Furuki was confrontedwith the fact that he had previously made a contradictory statement. Faced with this fact, Furuki claimed that the prior statement was false and that he and the other officers had agreed to tell this lie in order to save the Admiral. Inoue, during the Board of Investigation, was similarly faced with such a prior statement, and he also claimed that the prior statement was false and that he and the other officers had agreed to tell this lie in order to save the Admiral. It is true that the false statement that they gave related to another case, a case concerning American aviators, but it should be noted that the same motive which they admit prompted them to make false statements, namely their desire to aid their senior officer, is similarly present now when Major Furuki who is the next senior officer is on trial before this commission. It should also be noted that the statements that Inoue and Furuki made with relation to the American aviators, is a part of that same record of investigation, which contains the statements concerning the execution of the natives. It would therefore have been proper and material to inquire into this matter of false statements in order to determine first whether or not they had also changed their stories after Admiral Masuda's death in connection with the native cases, and secondly which of the two groups of stories were true--those stores told about both the aviators and the native cases prior to Masuda's death or those stories told after Masuda's death.

That the stores with relation to the natives was changed is what the judge advocate directed his questions at with regard to the question of trial, in order to show by their contradictory statements that the witnesses were incredible and that their testimony indicating a trial conflicted with their prior statements. In questioning Morikawa, the judge advocate directed his attention to a prior

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

statement made by him in Exhibit 55 of the Board of Investigation. This exhibit refers solely to two native cases--one a case of natives from Mille Atoll which was referred to by defense in their testimony before this commission, and the case of the natives Molein and Mejkano. From the record of the investigation it would appear that both native cases were referred to when the witness was at the board of investigation asked the question concerning trial. The judge advocate therefore asked the witness, Morikawa, "306. Q. When you were interrogated, you were asked concerning the execution of the natives, 'Were they given a trial?'" Your answer, 'No.' How do you explain the fact that when you testified before the officer you stated there was no trial, and that now when testifying before this commission you state that there was a trial?" This question is clearly permissible, and in fact, is essential to laying a foundation for subsequent introduction of the prior contradictory statement if the prior testimony is in fact denied.

The witness Morikawa, however, did not deny that he was asked that question, nor did he deny that he made that answer which the judge advocate cited from the prior Board of Investigation proceeding. The facts of the instant case are therefore clearly distinguished from the case, CMO 1-1923, pp. 10-12, cited by Defense Counsel. ~~Morikawa~~ in answer to question 306 stated: "At that time when I replied I meant there was no regular trial. At present I am still thinking there was no trial, but a trial by special procedure." Similarly, question 318, et seq. the witness did not deny that he was asked these question, nor did he deny that he used the word "no" in his answer--he merely contended that while he did not distinctly remember his answer, he believed that after that he indicated that there was no regular trial. I cite the following portinent portions of this testimony.

"318. Q. At the original investigation before the investigating officer, were you asked in connection with these natives, 'Were they given a trial?'"
"A. As I recollect it I was asked this question."

"319. Q. Did you answer this question with the word 'No'?
A. I replied that there was not a regular trial.

"320. Q. When did you answer this question using the word 'No' in your answer?
A. I do not remember if I answered in Japanese 'yes' or 'no,' but after the word I stated that it was not a regular trial.

"321. Q. Do you remember distinctly that when you testified you told this investigator that there was not a regular trial. Is that correct?
A. I do not know.

"II(13)"

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"322. Q. Did you tell this investigator that there was a special trial?
A. No."

Note that the judge advocate did not refer to any other questions or any other testimony by the witness, but merely used this one former question which the witness did not deny answering, but as to which he merely sought to explain what he meant when he made that prior answer. Morikawa was not prevented from making this explanation. He was permitted to explain that he meant there was no regular trial. Since he had not denied making the statement that there was no trial, and since he now, similarly, admitted in his testimony before this commission, that there was no regular trial, there was no practical or legal reason which required the introduction of the prior statement--for the prior statement was not in this respect contradictory to his testimony before this commission, although his credibility had been shaken not only by his shift in testimony but also by his evasiveness in responding to the judge advocate's questions after they were ruled admissible by the commission.

Similarly, Inoue was asked by the judge advocate, "175. Q. In Jaluit, in October, 1945, were you asked 'What kind of a trial did they have or was your investigation the only thing used?'" While the question asked in Jaluit related to the case of the Mille native, the answer which Inoue is recorded as having made in that case clearly related not only to the Mille native, but to all natives, and in fact specifically related even to Japanese soldiers. The judge advocate believed that when he refreshed the witness's recollection with that question the witness would make the same answer which he made at the Board of Investigation, and which in the judge advocate's opinion contradicted his testimony before this commission to the effect that a trial was held for the natives executed by Furuki. Note that the judge advocate did not in his question repeat the content of the witness's former answer at the Board of Investigation and clearly therefore this was not prejudicial to the accused. The witness however avoided and did not answer the judge advocate's question. The judge advocate could have introduced the transcript of this testimony of the witness which indicated a statement conflicting with his current testimony. However, Inoue had already on cross-examination been compelled to admit that no real trial was held for the executed natives, in fact, Inoue carelessly admitted that he did not even believe that the alleged meeting in Masuda's office was any kind of a trial until after the war when he was confined. In view of this testimony it is obvious why the judge advocate deemed in unnecessary to introduce into evidence the record of this answer at the prior Board of Investigation. It was permissible to do so, not only under the rules relating to relevancy, but also under the rules of evidence permitting attack on credibility by proof of prior contradictory statements. But it was unnecessary because not only did the witnesses fail to deny having been asked the question but also, it should be noted, the actual prior contradictory statement was never even quoted on referred to in the judge advocate's question.

So much for the argument that these questions by the judge advocate were improperly permitted by the commission.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

("II(xvii)")

d. Objections sustained as to improper defense questions.

Similarly defense counsel, particularly Commander Carlson, have argued that they have improperly been prevented from asking certain witnesses concerning certain alleged penal regulations, and concerning the provisions of martial law. Clearly the judge advocate did object to such questions, but the objections were fundamental ones and the commission properly refused to permit counsel to flagrantly violate the most elementary principles of evidence. If material documents and pertinent provisions thereof had never been admitted into evidence, the defense would have no one but themselves to blame for failure to properly introduce such evidence. That in fact the defense has not been prejudiced by even their own failure, is apparent from reading the full testimony of all the witnesses, and the objection and arguments of defense counsel. But it should be noted that objections of judge advocate were properly sustained as to the methods by which defense counsel sought to introduce this evidence.

As clear illustration, let us consider their numerous questions to various witnesses concerning the content of the "MARTIAL LAW." These questions were asked of witnesses whom the defense refused to even attempt to qualify as legal experts, which is a basic preliminary to any questions calling for expert opinion concerning the meaning of, the application of, and the content of a purported Japanese law and this is particularly true where the effort is made to determine by an inexpert witness, its application to the Marshall Islands. Does defense counsel seriously contend that even he tried to prove the law by the "best available witnesses" whom he did not even try to qualify as experts? There were two well qualified experts on Japanese law available here - in this very court room - all during the course of this trial. I refer to defense counsel Mr. Suzuki and Mr. Akimoto. No attempt was made to prove or establish the existence of, the terms of, or the applicability of that law by means of these available experts. One of these experts, Mr. Akimoto did testify before this commission, but he did not at that time, nor was he subsequently recalled to the stand to testify concerning martial law. Why? Certainly the judge advocate did not prevent it. Was it because the defense was unwilling to have him asked, as an expert under oath, to testify concerning the contents and meaning of that law, and the naval court martial law they were seeking to prove applicable to the natives? Was it because they feared that in cross-examination the judge advocate could unequivocally establish that martial law was not applicable to Jaluit, and from Mr. Akimoto's own lips establish that even if applicable and Navy Court Martial Law could therefore be applied under Japanese naval court martial law, the natives were not given a trial and were illegally and criminally executed?

c. Jurisdiction.

The next argument of counsel, made by Mr. Akimoto, and reiterated by Mr. Suzuki and Commander Carlson, relates to jurisdiction.

The commission has previously heard extended arguments on the subject of jurisdiction and has clearly, correctly, and unequivocally rejected the misleading

and fallacious arguments of defense. The defense have added nothing to their previous arguments, they continue to cite generalized concepts of law, completely inapplicable to the present case, and still fail to cite a single case which relates to the condition of military occupancy and denies the right of the military occupant to exercise jurisdiction in the occupied area over crimes committed within that area. The defense fails to cite any case denying this power, because they have been unable to find any such case. It is therefore necessary in rebuttal to do more than refer the commission to the previous argument of the judge advocate with regard to jurisdiction and to reiterate to the commission that their jurisdiction over the instant case is firmly recognized under established principles of international law authorizing such jurisdiction under the power of military occupancy, as well as the related concept of quasi-sovereignty which similarly empowers the armed forces of the United States under current conditions, as the military occupant, to try the accused criminal Furuki by military commission for the crimes charged.

f. Punishment of individuals for violation of International Law.

It is unnecessary for the judge advocate to answer defense arguments that an individual cannot be punished for international crimes, such as violation of the Hague Convention. The argument was previously answered, and I need merely remind the commission that in the cases referred to them, the Llandovery Castle Case, the Nuremberg Trials, and all the war crimes cases, individuals have been held subject to international law and criminally punishable for violation of the laws and customs of war.

The judge advocate will now in detail discuss the case against the accused, and in the course of this discussion, will fully rebut the remaining defense arguments.

2. Murder.
a. Under effective local law - the Japanese law.

Charge I, in five specifications charges the accused with murder. The judge advocate will first discuss the specifications in terms of the pertinent local law, which was the Japanese law, and will then discuss the meaning of the American and common law terms used in those specifications.

In the language of Article 199 of the Criminal Code of Japan, which was the effective local law on Jaluit at the time the offense was committed, there are no expressed requirements other than the homicide to establish the crime. The language of this provision reads:

"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."

Chapter VII of the Criminal Code of Japan contains general provisions which provide that under certain circumstances, acts which would ordinarily constitute a crime are not criminal, and that under other circumstances acts which are criminal should receive a lesser punishment because of mitigating factors present.

CERTIFIED TO BE A TRUE COPY

These provisions have been discussed at length by counsel for the defense, but will be examined minutely and accurately with reference to the facts at issue in the instant case. Certain Articles of Chapter VII are clearly inapplicable and will be briefly disposed of prior to consideration of the instant case. Chapter VII consists of Articles 35 through 42. Articles 39 through 42 are not applicable to the instant facts, nor has the defense attempted to apply them. Article 39 relates to acts of persons of unsound mind; Article 40 relates to acts of deaf mutes; Article 41 relates to mitigation of punishment for those who denounce themselves before official detection.

The remaining articles 35 through 38 of this chapter, will be briefly discussed in order to establish that the pertinent portions thereof are included in the common law concept of murder as an intentional killing, without legal justificatio or legal excuse.

a(1) - Criminal intents.

Article 38 of the criminal code of Japan deals with intent, and what it requires as intent is less extensive than the common law requirement of intentional killing.

Article 38 of the Criminal Code of Japan provides "Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable. A person who without knowledge of the fact has committed a grave offense (crime) cannot be punished in proportion to its gravity. Ignorance of the law cannot be invoked to establish absence of design, but the punishment may be mitigated according to the circumstances."

While it is true that criminal intent is required by this provision of the Japanese Code, it is clear that the intent required is no greater than that required under our laws. In fact, it appears to be considerably less of a requirement because it seems to provide that for all serious crimes, even ignorance of the facts will only be considered in mitigation; this portion reads: a person who without knowledge (of the fact) has committed a grave offense (crime) cannot be punished in proportion to its gravity.

Furuki admits that he killed the natives, and he admits that he intended to kill the natives. He argues that he believed the executions were legal. If the executions were in fact legal, then he was not guilty of murder, but if the executions were not legal, then the mere fact that he was ignorant of the law, and believed them to be legal, does not protect him. His ignorance of the law is not a defense, it is an argument in mitigation. The Japanese Criminal Code, like our own law, clearly and specifically states that "ignorance of the law cannot be invoked to establish absence of design," but the punishment may be mitigated according to the circumstances. Similarly, under our law and under international law, Furuki's plea of ignorance of the law is merely an argument in mitigation and not a substantial defense. Since Furuki admits he intended to kill them, the mere

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

fact that he intended to do what he thought was legal, does not, under any system of law constitute a legal excuse or negative the existence of the criminal intent. The existence of the required criminal intent will be further discussed in analyzing the common law wording of the specifications of Charge I, and at that time the judge advocate will indicate that even the alleged argument in mitigation is an incredible, indigestible defense concoction.

a(2). - Acts of necessity or self defense.

The counterpart of the defense of legal justification by self-defense, etc., is set forth in the Japanese Criminal Code in Articles 36 and 37 of Chapter VII, which relate to "unavoidable acts." The accused, Furuki, in an intricate argument has attempted to show that in view of war conditions on Jaluit, there was a military necessity of self-defense which required and justified the execution of the natives. Articles 36 and 37 of the Japanese Criminal Code do not support this argument of defense or necessity. These provisions require, first that the act be unavoidable, and secondly, as in all self-defense provisions, the danger against which one is seeking to protect oneself must be imminent and caused by the person one injures in such defense.

Article 36 reads: "Unavoidable acts done in order to protect the right of oneself or another person against imminent and unjust violation are not punishable According to circumstances, punishments may be mitigated or remitted for acts exceeding the limits of defense." Article 37 reads: "Unavoidable acts done in order to avert present danger to life, person, liberty or property of oneself or another person are not punishable, provided the injury occasioned by such acts does not exceed in degree the injury endeavored to be averted. According to circumstances however, punishment may be mitigated or remitted for acts exceeding such limit....."

It is clear that both these provisions of Japanese law require first that the acts be unavoidable, and secondly that they be in defense against imminent and unjustifiable danger. We have proved, and the defense have by their silence admitted, that the natives were unarmed. Any imminent danger to the Japanese was not caused by these thirteen natives. The United States armed forces, and not the natives created the conditions causing danger to the Japanese armed forces. Such imminent danger as the Japanese found themselves in, was not an unjust violation of their rights. The illegal aggressor cannot when his victims seek to escape murder them in cold blood and when finally captured and brought to trial by the law argue that he must be excused from this murder because it was necessary for him to prevent the escape of his victims.

Reduced to everyday human experience, the false nature of the defense argument becomes crystal clear. Japan forced the natives to the ground and stood upon them while it treacherously stabbed the United States in the back. The United States turned to defend itself from this treachery. The natives sought to escape from the Japanese, and Furuki killed them. Now in defense of his act, he protests he had to kill them; it was an an act of self-defense or military necessity.

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

Does the law permit an assailant standing upon the throat of his victim to kill that victim because the victim tries to escape to the police? It is a fabulous argument, not recognized by any concept of law or common sense.

In passing it should be noted that the Japanese requirement of unavoidability of the act, is similar to our theory that even in self-defense one must not go beyond the absolute necessities of that self-defense, as required by the immediate conditions at the time of the act of self-defense.

William Sebald of Kobe, Japan, in his authoritative book, "The Criminal Code of Japan," illustrates this concept of unavoidability and shows that even if danger is imminent from an unjust aggression, the extent of force used must be clearly unavoidable. He cites in regard to Article 36 the following decision of the Supreme Court of Japan:

"When a person is attempting to restrain another who, under the influence of liquor, was violently behaving himself was grappled by the latter and in consequence thereof, struck him on the head with a porcelain bowl in order to push him aside, the act was done in order to protect himself against an imminent unjust aggression, but it cannot be said to have been unavoidable. Furthermore, if he struck the drunkard on the head with a candlestick to stop him, because in consequence of the blow the latter was more intoxicated than before and shouted 'come out, old fellow!" and pulled him by the sleeve, his act was done to protect himself against an imminent unjust aggression, but cannot be said to have been done unavoidably." (11 S.C.N.S. 1804, Daishinin Henreishu.)

Striking the drunkard who was grappling with him, first with a porcelain bowl, and then later with a candlestick, was conceded by the court to have been done "to protect himself against an imminent unjust aggression", but nevertheless the court held that the acts "cannot be said to have been done unavoidably."

The Japanese Supreme Court has thus declared not only that the danger must come from the person who is injured, not only that the danger must be imminent, not only that the danger must be caused by an unjust aggression, but also that the means and extent of repelling such danger must be "unavoidable." In the instant case, the danger did not arise from the natives, but was instead caused by the lawful acts of American armed forces; the accused was not in danger of imminent unjust aggression from these natives. They were unarmed, securely bound, and prisoners under guard. Finally the means used was not unavoidable. As a measure of self-defense, it was not necessary for Furuki to execute them. Furuki himself admits that for he claims that in many of these cases he had recommended that the natives be sent back to work on their home island, thus the Japanese requirements that the act be "unavoidable" and to avert "present danger" or "imminent and unjust violation" are not met in the instant case, and the homicides are not justifiable under the Japanese law. The question of legal justification under our law will be further discussed infra.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"III 24"

The Japanese counterpart of the defense of legal excuse is found in Article 35 of the Japanese Criminal Code which provides: "Acts done in accordance with laws and ordinances or in pursuance of a legitimate business or occupation are not punishable." This provision is a common one applied in all legal criminal systems. This defense ~~is~~ lawful excuse has been argued extensively by defense counsel before this commission, and represents the heart of their case.

The judge advocate will consider this defense at length in discussing the concept of legal excuse under our law. But in considering the Japanese law it should be clearly remembered that the mere fact that an act is done in the course of legitimate business or occupation or within the apparent framework of the law, does not make it legal. The act done must be judged on its own merits, and not in terms merely of whether it purports to be in the course of a legitimate order, business or occupation.

The question of Furuki's criminal intent and the absence of legal justificatio and excuse will be discussed in detail in connection with the common law terms used in the specifications of Charge I.

In summarizing the foregoing discussion of the pertinent Japanese criminal law I need merely say that we have discussed all the provisions of Chapter VII of Book I of the Japanese Criminal Code, and have clearly ascertained that everything included therein is encompassed within the broader protections of the concepts of intention, and legal justification and legal excuse.

In the Japanese law, all of these terms have a narrower meaning than they possess in our own law. For this reason, and for the greater protection of these defendants, the specifications of Charge I have utilized American statutory and common law terms as well as the provisions of Section 199 of the Japanese Criminal Code. In application to the facts of the instant case these historical terms boil down to the requirement that the killing be intentional and that it be without legal justification or legal excuse.

b. Remaining Requirements - statutory and common law terms.

It has been proved, and thereafter the accused Furuki admitted that on Jaluit Atoll, Marshall Islands, he killed thirteen unarmed natives. But, the accused has not pleaded guilty to the charge of murder, and in view of this it is necessary for the commission to determine whether the requirements of the specifications of murder have been met; and it will be established in reviewing the evidence. It should again be noted that in no way can the accused claim that he has been substantially prejudiced by any admission or exclusion of evidence, or by any ruling of the commission. All that is needed to convict the accused is his own testimony - as corroborated by his own defense witnesses - that he killed the 13 natives - and that his alleged justification of trial rests upon a proceeding in which the 13 accused and subsequently executed natives were not present.

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

Since Furuki intended to kill the natives, it is clear that this is not a case of involuntary manslaughter, for in such homidide the killing must be accidental. Similarly this is not a case of voluntary manslaughter, for, as it is described in Naval Courts and Boards, Section 119, "Voluntary manslaughter is distinguished from murder by the fact that it is committed not with malice aforethought, express or implied, but in the heat of passion or heat of blood caused by reasonable provocation." It follows therefore, that where the killing is intended (which is all that malice aforethought means) there can be no manslaughter and the killing must be either murder or legally justifiable or excusable.

Naval Courts and Boards, section 53, defines Murder, as "The unlawful killing of a human being with malice aforethought..... 'Unlawful' means without legal justification or excuse. Malice does not necessarily mean hatred or personal ill-will toward the person killed, nor an actual intent to take his life, or even to take anyone's life. The use of the word 'aforethought' does not mean that the malice must exist for any particular time before commission of the act, or that the intention to kill must have previously existed. It is sufficient that it exist at the time the act is committed."

Specifications 1 through 5 of Charge I, allege that Furuki wilfuly with premeditation and malice aforethought, feloniously and without justifiable cause, killed thirteen unarmed natives.

A layman approaching the law of homicide for the first time, may well wonder at the peculiar phrasing and technical wording of these specifications of murder. While some of the words used in the specification have an everyday meaning and usage, their legal meaning is special and technical. It must be remembered that these terms are historical concepts which arose in order to make certain differentiations between the punishments allowed by the law for the different degrees of the crime of homicide.

Whenever non-lawyers have been confronted with these terms, confusion occurs. - American Jurisprudence, vol. 26 p. 528, citing State v. McGuire, 84 Conn. 470, 80 A. 761, 38 LRA(NS) 1045 and ANNO: 38 LRA(NS) 1064, in discussing malice states:

".....Indeed, it has been observed by high authority that it is practically impossible so to define and explain the term 'malice' as to bring it within the comprehension of the average juror, and it is said to be the better practice for the trial judge in charging the jury not to attempt a definition of malice, but to say, rather, that if the jurors find the fact of death and that it was accomplished by the defendant without legal justification or excuse and without circumstances of extenuation, then the crime proved is murder."

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

Why the law continues to use these archaic and confusing terms is difficult to explain. Perhaps as Cardozo implies, certain of the terms were designed to give the jury the opportunity to find the lesser degree of murder and thus forestall the imposition of the death sentence. In discussing the standard of premeditation, used in New York in distinguishing first degree murder from second degree murder, Cardozo "What Medicine Can Do for Law," pp 100-101 states:

"What we have is merely a privilege offered to the jury to find the lesser degree when the suddenness of the intent, the vehemence of the passion, seems to call irresistably for the exercise of mercy. I have no objection to giving them this dispensing power, but it should be given to them directly and not in a mystifying cloud of words. The present distinction is so obscure that no jury hearing it for the first time can fairly be expected to assimilate and understand it. I am not at all sure that I understand it myself after trying to apply it for many years and after diligent study of what has been written in the books."

The terms wilfully, with premeditation and malice aforethought, feloniously, and without justifiable cause, are all legal terms, terms of art whose applied meaning must be ascertained by consulting legal authorities and case precedent. Let us examine these terms, see what they mean as applied in the law, and then ascertain whether the evidence educed at the trial establishes them.

b.(2) - Wilfully.

The word "wilfully" means simply intentionally and not by accident. In Bouvier's Law Dictionary (Rawles 3rd edition), for the word "wilfully", the term "intentionally" is used as the defining word, and the definition continues in part as follows: "In charging certain offenses it is required that they should be stated to be wilfully done..... In an indictment charging a wilful killing, it means intentionally and not by accident. State v. Schaefer 116 Mo. 96, 22 S.W. 447.....It is synonymous with intentionally, designedly, without lawful excuse, and therefore not accidentally. Miller v. State (Okl) 130 Pac. 813." In the instant case, Furuki admits he intended to execute the natives. He intended to kill them, therefore, the killing was intentional and not accidental. It is therefore clear and unequivocal from the admission of the defense, that the killings were wilful.

b.(3) - Premeditation.

Simply stated, the term "premeditation" means that the decision to kill was made some appreciable time before the commission of the act. The requirement of premeditation was derived from the American statute and case law, seeking to differentiate between those murders justifying capital punishment. (first degree murder) and those murders which do not warrant capital punishment. (American Jurisprudence, Vol. 26, page 186). Wechsler and Michael in their stimulating study "A Rationale of the Law of Homicide" 37 Col. Law Review 706 note: "For the most part therefore, the functions performed by all the English definitions of murder--the determination of what homicides may be capitally punished--is

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

performed in the United States by the 'deliberation and premeditation' formula... However, the balance of the common law of murder performs under American statutes the analogous function of singling out those homicides which, though not capital, are nevertheless punishable more severly for the most part than the other criminal homicides. . . . "

As to premeditation in the instant cases it is clear that prior to the actual killing of each group of natives, Furuki had made his decision to kill these natives. He went for them in a truck; he took them bound to the place where he killed them; and then after instructing the guards not to let any passersby come into the area, he took the natives into the coconut grove and there killed them. It is clear that for some appreciable time prior to the killing of each group of natives, the accused had the design and intention to kill them. It is clear therefore that the prosecution has established the existence of premeditation.

b. (4.) Malice Aforethought.

Malice aforethought is a closely related concept. The word "aforethought" in its popular sense conveys some of the sense of premeditation. But the legal terms "with premeditation and malice aforethought" mean little more than the existence of the intention to kill at the time of or just prior to the killing. Wechsler and Michael in their "A Rationale of the Law of Homicide," op. cit., pp. 702-708, explain this briefly as follows:

"The most striking phase of the development of the English law was the reduction of 'malice aforeghought' to a term of art signifying neither 'malice' nor 'forethought' in the popular sense. Strikingly analogous in the judicial development of the American law of homicide is the narrow interpretation of 'deliberation' and 'premeditation' to exclude the two elements which the words normally signify: a determination to kill reached (1) calmly and (2) some appreciable time prior to the homicide. The elimination of these elements leaves, as Judge Cardozo pointed out, nothing precise as the crucial state of mind but the intention to kill."

Similarly, American Jurisprudence, Vol. 26, p. 182, states: "Malice in the sense of hatred or malevolence toward the deceased is not necessary to constitute murder in the first degree, nor is it necessary to show what motive, if any, inspiredthe killing." Similarly, on page 183, "Malice is an essential ingredient or element of murder at common law and also under statutes which have been enacted in many jurisdictions. However the term 'malice' as used in the law of homicide is difficult to define, for in its technical sense it comprehends a considerable number of different conditions of mind. The term has often been defined as the intentional killing of one human being by another without legal justification or excuse and under circumstances which are insufficient to reduce the crime to manslaughter. It is said to include all those states and conditions of mind which accompany a homicide committed without legal excuse or extenuation..

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

MANN vs STATE 124 Ga. 420 52 SE 924

The definitions of malice aforethought, as set forth in Naval Courts and Boards, American Jurisprudence, and numerous other authoritative texts reflects the decisions of the courts. Two typical leading cases are 4. L.R.A.(NS) 934: "Legal malice is the intent unlawfully to take human life in cases where the law neither mitigates nor justifies the killing." Comm. v. Medericus 255 Mass. 304, 151 N.E. 297, 47 A.L.R. 962 "Malice as an element to murder does not necessarily imply ill-will toward the person killed; any intentional killing of a human being without legal justification or excuse, with no extenuating circumstances sufficient in law to reduce the crime to manslaughter, is malicious."

Once it is established that the accused intended to commit the homicide, his motive is completely irrelevant in determining the question of guilt, although it may be considered in mitigation of punishment. This has already been shown in regard to Japanese law, and it should be noted that the same is clearly true under our law. In Roberts v. People, 221 Michigan 187 (1920) the defendant at the request of his incurably sick wife provided her with the means to commit suicide. The defendant was found guilty.

Similarly, since as it has been proved that the accused, Furuki, intended to kill the natives, he must be judged solely on the basis of whether his acts were in fact legally justifiable or excusable. His motives may have been excellent or revolting, it is immaterial, except in mitigation or aggravation of the punishment. It may seem strange to the layman that a man with a good heart or a good character can be found guilty of a crime, but we are dealing with the practical problems of an organized society and in determining guilt, we cannot probe into nor seek justification in the innermost motives of the criminal. Society has determined what circumstances constitute legal justification of legal excuse for acts which would otherwise be criminal. Society does not, and cannot recognize personal motives, or other personal justifications or excuses, as means of escaping criminal liability. The law does permit these things to be considered in determining the extent of punishment--but to permit it to determine the existence or non-existence of guilt, would mean the destruction of the entire system of law, and or organized society itself.

Wharton in his Criminal Evidence (11th ed. vol. 1, p. 283) explains this as follows: "There is no bad act which the perpetrator does not summon up good motives to excuse. As assassination, for instances is rarely for the exclusive purpose of satisfying private hate. A bad man is to be removed from the world, or some good deeds are to be aided by part of the plunder. If whenever good intentions are mingled with the bad intention, there could be no conviction, in any case. . . . Thelaw is: No matter what may be the motives leading to a particular act, if the act is illegal, it is indictable, notwithstanding some one or more of the motives inducing the act may be meritorious."

there could be some comment

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lawt. USN

In the foregoing discussion the judge advocate has established that Furuki killed these natives intentionally, and that in fact this intention to kill existed for some time prior to the actual killing of each group of natives. Therefore, the legal requirements of "wilfullness, premeditation and malice aforethought" have been clearly established. Under the specifications of Charge I, two terms remain to be considered, "feloniously" and "without justifiable cause." In its broader application, the term feloniously includes the term "without justifiable cause," for it means merely that the act was done unlawfully, that is to say without legal justification or legal excuse.

b (5.) - Feloniously.

Bouvier's Law Dictionary (Rawle's Third Revision) defines "feloniously" as follows: "Feloniously. This is a technical word which at common law was essential to every indictment for a felony, charging the offense to have been committed feloniously; no other word nor any circumlocution could supply its place.....It is necessary in describing a common-law felony, or where its use is prescribed by statute; Wharton's Criminal Pleading, Section 260; Bowler v. State 41 Miss 570;.....In an indictment it is equivalent to purposely or unlawfully; State v. Bush, 47 Kan 201, 27 Pac 834, 13 L.R.A. 607."

Felonious homicide is defined in Bouvier as: "Felonious Homicide. The killing of a human creature, of any age or sex, without justification or excuse. It may include killing oneself as well as any other person; 4 Bla. Com 188....."

We have discussed in considerable detail, both the Japanese and the American Law with regard to murder. In synthesis, in relation to the instant case, it has been shown that they require merely that the killing was intentional and that it was without legal justification or legal excuse. We have demonstrated at length, that the required intent to kill was present. It is now necessary to consider the proof that this killing was done without legal justification or legal excuse.

c. - Absence of legal justification or excuse.

Defense counsel implied that Furuki was legally justified in killing the natives because of a good motive to obey Masuda and to help the Japanese forces in their fight for survival. This entire question was fully discussed in proving the existence of intent to kill, and at that time, it was clearly demonstrated that a good motive is not a legal justification, whether under Japanese, American, or international law; and that the entire defense argument of motive is only relevant after finding of guilty, in regard to mitigation of punishment.

c (1.) - Self-defense, necessity or self-preservation.

In a related argument defense counsel implied that even if the motive is not a justification or excuse, the conditions on Jaluit were such that the killing of these natives was required by a condition of self-defense or necessity, and that these conditions and this necessity justified the homicides.

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

Self-defense is a legal justification for intentional homicide. In its broader aspects it includes the defense of others as well as the defense of oneself. We have already discussed the corresponding provisions under Chapter VII of the Japanese Criminal Code, and have seen that the killing of the natives by the accused was not excused or justified under the provisions of Articles 36 and 37. These require that the acts must be "unavoidable acts" either to protect against "imminent and unjust violation" or "to avert present danger to life.....provided the injury occasioned by such acts does not exceed in degree the injury endeavored to be averted." The acts, the killing of the natives, was avoidable, there was no imminent danger from the natives, and as previously demonstrated, neither the natives who were seeking to escape, nor the American forces, were guilty of any unjust violation of the rights of the Japanese.

Under our law - indicated in Wharton's Criminal Evidence, Vol. 1, p. 438, there are four essential conditions to make out a case of self-defense: "First the party assaulted or seriously threatened must be free from fault in bringing about the difficulty; second, he must believe at the time and under the circumstances that the danger of death or of serious bodily harm at the hands of his assailant is such as to render it necessary to take his assailant's life to save his own life or to prevent serious bodily harm; third, the circumstances must be such as to warrant such belief in the mind of an ordinarily prudent person; fourth, there must exist a necessity to take life, of which necessity the jury are the judges."

Since the natives were unarmed, bound prisoners of the accused at the time of the homicide, it is clear that they were not assailants of the accused, that the accused was not in imminent danger of bodily harm from them, and that there was no necessity to take the life of those natives. Finally, it must be noted that the Japanese were not free from fault in bringing about the difficulty. Obviously therefore, this argument of self-defense, or necessity, like the argument of "unavoidable acts" under the Japanese code, is not sustained by the facts in the instant case.

Similarly under international law, the alleged justification is not sustained. It is true that the principle of military necessity is recognized in international law as justifying certain acts which would otherwise be illegal- such as the killing of enemy soldiers during the heat of battle. But the nature and extent of these excused or justified acts, is definitely limited in international as it is in domestic law. Glueck, War Criminals, Their Prosecution and Punishment, pg. 42. All is not fair in war. Lawrence, Principles in International Law, which I quoted earlier in this argument clearly points out the fact that international law does not authorize violation of the rules of international law because of the exigencies of the moment. Also note that under international law the concept of military necessity is limited by the doctrine of humanity which prohibits employment of such kind or degree of violence as is not strictly necessary for the purpose of war. Glueck, op.cit.pg. 42.

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

It is apparent from what has been said before, the killing of these unarmed natives was not strictly necessary for the purpose of war. There was no imminent danger which necessitated their being killed without a trial, and even if there had been such danger, the alleged necessity of taking their lives would not have constituted a legal justification or excuse. Cardozo (What Medicine Can Do For Law, 1928, in Law and Literature 1930, p.113) speaking of the decision in United States v. Holmes, 1 Wall p. 142, said "There is no rule of human jettison."

c.(2) - Coercion or compulsion.

There is a final argument of the accused in alleged justification, which is commingled with the alleged legal excuse of superior orders. The defense counsel implied that if Furuki failed to obey the orders of his superior officer Admiral Masuda, he might himself have suffered death at the hands of Masuda. The argument is of course sheer speculation because there was no testimony before the commission indicating either that such threat or compulsion had actually been applied, or that the accused even believed that such compulsion existed. Obviously it is highly doubtful whether Masuda could have compelled Furuki, the highest ranking army officer on Jaluit Atoll, to perform these homicides against his will. But it is unnecessary to probe into these facts, for even if such compulsion had actually existed, the law does not recognize this fact as an excuse or justification for a homicide. While generally one may excuse the commission of various crimes by showing that he was acting under coercion or compulsion, one cannot excuse the taking of a human life, under the plea of compulsion. 26 American Jurisprudence 206.

Part of the reason for this rule of law is ably expressed in 2 Stephen History of the Criminal Law (1883) pp. 107-108, as follows: "Criminal Law is itself a system of compulsion on the widest scale. It is a collection of threats of injury to life, liberty and property if people do commit crimes. Are such threats to be withdrawn as soon as they are encountered by opposing threats? The law says to a man intending to commit murder, if you do it I will hang you. Is the law to withdraw its threat if someone else says, "If you do not do it I will shoot you?"

"Surely it is at the moment when temptation to commit crime is strongest that the law should speak most clearly and emphatically to the contrary. It is of course a misfortune for a man that he should be placed between two fires, but it would be a much greater misfortune for society at large if criminals could confer impunity upon their agents by threatening them with death of violence if they refused to execute their commands. If impunity could be so secured a wide door would be open to collusion, and encouragement would be given to associations of malefactors, secret or otherwise. No doubt the moral guilt of a person who commits a crime under compulsion is less than that of a person who commits it freely, but any effect which is thought proper may be given to this circumstance by a proportional mitigation of the offender's punishment.

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

"These reasons lead me to think that compulsion by threats ought in no case whatever to be admitted as an excuse for crime, though it may and ought to operate in mitigation of punishment in most though not in all cases. If a man chooses to expose, and still more if he chooses to submit himself to illegal compulsion, it may not operate even in mitigation of punishment. It would surely be monstrous to mitigate the punishment of a murderer on the ground that he was a member of a secret society by which he would have been assassinated if he had not committed murder."

The accused's confused intricate argument of justification because of alleged self-defense, self-preservation, personal compulsion, or so-called necessity, is not sustained in fact or in law as a defense under the circumstances of the killing of these natives.

c.(3) - Superior orders.

The accused then argues that his homicides should be excused because he alleges they were done pursuant to the order of his superior commanding officer. There is no mystic relationship between a commanding officer and his inferior. The courts have consistently held that a soldier like any other citizen is bound to respect the laws of the state, and is justified in disobeying improper and illegal orders, 67 L.R.A. 294. The compulsion of an actual threat of death cannot justify a homicide; and therefore, even the fact that the commanding officer might have the power to kill his inferior, does not in the eyes of the law, excuse a homicide performed in obedience to his order or even his expressed threat.

In almost every war crimes case, the accused has contended that his illegal acts were the result of the orders of a superior officer. The argument has been universally rejected. Superior orders can be argued in mitigation, but they cannot be accepted as a substantive defense in determining whether the accused is guilty of the crime charged. The accused ~~had~~ had due warning that superior orders would not be considered a defense. The Joint Declaration on Punishment of War Crimes, of the Inter-Allied Conference in January 1942, announced to the world that they placed "among their principal war aims the punishment through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them."

The SCAP Regulations (Basic ltr. SCAP 000.5, 5 Dec 45) which this Commission is authorized to use, provide "The official position of the accused shall not absolve him from responsibility.....Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires."

The logical basis for this rule is apparent. As Glueck points out, War Criminals, Their Prosecution and Punishment, page 140, "A little reflection will show that this provisions (superior orders and governmental immunity) if followed liberally would give almost the entire band of Axis war criminals a valid defense."

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

The position of the courts on this subject is ably and briefly expressed in the decision of the famous International Tribunal at Nuremberg, in the summary of the judgment released at Nuremberg, September 30, 1946, the Tribunal states: "The defense of 'Superior Orders' has never been recognized as a defense to a crime, but is considered in mitigation as the charter here provides." In view of this case, and the numerous other cases on the same subject, the matter is clearly so well settled that it is unnecessary to burden the commission with further argument on this point.

c. (4) - Legal execution.

Only one defense of the accused remains to be considered and that is the argument by the accused that the homicides are legally excused because they were legal executions.

If proved, this excuse would constitute a complete defense, and it would be your duty to find the accused not guilty of murder. But a legal execution must be based upon a legal sentence properly determined and pronounced at a legal trial. The requirements are strictly applied, because the law does not readily or carelessly justify the taking of human life. How rigidly these requirements are applied is apparent in the following excerpt from American Jurisprudence (26 American Jurisprudence, 230)

"If however, judgment of death is given by a judge not authorized by lawful commission, and execution is done accordingly, the judge is guilty of murder.
"Such judgment where legal, must be executed by the proper officer or his duty appointed deputy, and if another person does it of his own head, it is murder, even though it is the judge himself.
"So too, the execution must pursue the sentence of the court, the substitution by the officer charged with the duty of execution of one method of killing for another being murdered." See 2. LRA (NS) 76 and 67 LRA 293.

To constitute a legal excuse it must be proved that the killing of these natives was in fact a legal execution. In the determination of the guilt or innocence of the accused, what Furuki thought about the legality of the execution is totally irrelevant, except in mitigation of punishment after a finding of guilt. Furuki's mental attitude, his motives, his opinion as to whether there was a legal trial and a legal sentence, is immaterial. The only question remaining to be considered by the commission is, was this in fact a legal execution.

c.(4)(a) - Whether natives committed crimes is immaterial if not trial given.

Mr. Akimoto, and other defense counsel argue it must have been a legal execution, for in fact the natives were guilty of serious crimes. We have the story of various Japanese officers, fellow officers of the accused, who by their testimony are revealed as clearly friendly toward the accused. These witnesses testify that the executed natives did plan or attempt to escape, and that certain of the natives committed other illegal acts. Under torture some of the accused

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

may have confessed, Morikawa and others claimed they did confess. As defense counsel Commander Carlson points out - confessions obtained under duress are no evidence of guilt. Apparently in the case of Melein and Mejkane, the evidence of their alleged guilt was the confessions obtained by the beatings and torture. Certain natives who were questioned in connection with that incident were brought before this commission. They testified as to the brutality of that questioning. On cross examination Saburo testifed that when questioned by Morikawa, even when the wire was stuck up his nose, that he testified then, he did not know anything about Mejkane. (Note: I disagree strongly with defense counsel, the fact that one sneezes when a foreign object is jammed up one's nose is not an indication that it was not painful. It is an automatic involuntary nerve reaction to sneeze and move your head when any foreign body penetrates into one's nose.) And the insertion of a long wire far up into the nose of a witness, is not a judicial procedure. Saburo knew nothing indicating that Mejkane or Melein was guilty. Obetto also testified before this commission, and his answers in Q. 22, 23, and 24 clearly indicate serious ground for doubting that Melein had participated in any crimes. In A. 23, Obetto testified "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?' 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." Obetto also in his testimony before the commission, Q. 10, 11, 12 testified that he had never told the Japanese that he had received any letter from Melein or Mejkane.

From this brief testimony, which came forth incidentally in connection with ascertaining the methods of investigation used by the Japanese, it appears clear that there is certainly serious doubt as to the guilt of some of the natives who were executed. We do not know what acts if any, each of these natives committed. All we know is: that they were executed; that under torture some of them protested innocence, and some of them broke down and confessed. The accused Furuki is on trial here because no trial was given these natives and therefore they had no fair judicial opportunity to prove their innocence. Surely the defense will not argue that we must again convict these natives in absentia and without a trial.

Learned defense counsel argues the executed natives were guilty of serious crimes. The law does not permit the accused to argue that if he had in fact tried the natives he would have been able to prove that all 13 of them were guilty. The law requires that to constitute a legal execution the trial must be held prior to the execution. At this time two years after the events we cannot, nor is it our province to try these dead natives. They cannot testify and they cannot defend themselves. And even if we did now find that they were then guilty, the accused must still be convicted of murder if in fact at the time that he commited the execution it was not legal because no trial was held. It isobvious why society cannot permit men to be executed first and tried later.

CERTIFIED TO BE A TRUE COPY
James P. Keaney Lieut. USN

Mr. Akimoto himself during the course of his argument, in referring to execution under superior orders, stated that he believed that with regard to the doctrine of legal executions the laws of Japan and Germany, as well as England and the United States was the same. He then cited Section 640 of Wharton's Criminal Law as evidencing that doctrine of legal execution. I agree with Mr. Akimoto that this reflects the law of Japan, Germany, England and the United States - for that section of Whartons clearly establishes the fact that there must be a prior trial or the execution is illegal. That section of Wharton's Criminal Law cited by defense counsel, reads: "Section 640 - Killing under mandate of law justifiable. The execution of malefactors, by the person whose office obliges him, in the performance of public justice, to put those to death who have forfeited their lives by the laws and verdict of their country, is an act of necessity, where the law requires it. But the act must be under the immediate precept of the law, or else it is not justifiable: and, therefore, wantonly to kill the greatest of malefactors without special warrant would be murder. And a subaltern can only justify killing another on the ground of orders from his superior in cases where the orders were lawful. As we have seen, a warrant that is without authority is no defense; though it is otherwise when the defects are merely formal." (Italics supplied.)

It is apparent from the Section of Wharton cited by defense counsel, that it is totally immaterial to the question of Furuki's guilt of murder, whether or not in fact the executed natives had committed criminal acts. For as Wharton states "Wantonly to kill the greatest of malefactors without special warrant would be murder."

*(4)b - No trial, ergo no legal execution.

It is elementary that to have a legal execution there must have been a legal sentence properly derived, at a legal trial held in accordance with a legal procedure.

Even the Japanese Constitution, provides in Chapter II, Article 23, "No Japanese subject shall be arrested, detained, tried, or punished except according to law." Article 24, "No Japanese subject shall be deprived of his right of being tried by the judges determined by law."

The judge advocate will establish that as to these thirteen homicides there could be no legal execution because there was no legal trial and no legal procedure.

First let us briefly dispose of this so-called judgment paper. On careful examination of all the evidence it was shown that this sheet of paper consisted of a written opinion made by Furuki prior to the so-called trial, and a so-called judgment or sentence portion which was written in by Admiral Masuda. It was then signed by Inoue, Shintome, Furuki, and according to Shintome, by all the other unit officers for information, "in the same manner as all routine orders. Clearly

CERTIFIED TO BE A TRUE COPY
James A Kenney Lieut. USN

this so-called judgment paper was not a trial, and has no probative value to establish a trial. If a legal trial had beenheld, then we would be concerned with the question of whether this paper and its contents could constitute a legal sentence document. It is highly doubtful, for the sentence was attached to an opinion admittedly written by the so-called judge advocate before the alleged trial. Mr. Suzuki himself implies this was improper. However, we are not concerned with this problem, for the facts clearly establish that there was no trial.

Defense counsel argued that the executions were legal because in each of the five incidents, the natives were convicted and sentenced at a "legal trial" "a special proceeding) held in Admiral Masuda's office.

On cross-examination the judge advocate established that the accused natives were never present at these alleged trials; that no witnesses appeared at these meetings; that no sworn testimony was presented at these meetings; that the accused were never permitted to question witnesses against them; and that the accused were never permitted to have counsel or anyone else present to defend them. No civilized country in the world would contend that these alleged meetings in Masuda's office constituted trials or judicial procedures. Why at the infamous Star Chamber Proceedings, at least the accused was permitted to be present, hear the evidence against him, and make his plea in defense. But defense counsel in an effort to save the accused have contended that these were authorized judicial proceedings. Under what law, under what procedure, did these meetings constitute trials?

c(4)(b)1 - No trial under Japanese Code of Criminal Procedure.

The defense has contended that due to war conditions the natives lost their right to trial by the Local Court of Ponape. The judge advocate has previously argued that the authority given Masuda by the alleged dispatches did not give him any power of any governmental agency outside of Jaluit, and therefore, did not deprive the Ponape court of its jurisdiction over all serious criminal cases on Jaluit Atoll. But even if Masuda by means of war conditions derived judicial criminal jurisdiction over these natives, it does not follow that he had the power to subject them to court martial law, rather than the Japanese Code of Criminal Procedure which is the normally applied code of criminal procedure for Japanese civilians.

If the natives were entitled to the protection set forth in the Japanese Code of Criminal Procedure, it is apparent that the proceedings at these alleged meetings was in complete violation of all their rights, and were not trials in accordance with that code. Some of the pertinent provisions of the Japanese Code of Criminal Procedure will be briefly cited: Book IV, Public Trial, Chapter 1, General Provisions, Section 176, Public trial shall be held in court where shall be present the judges, the public procurator, and the clerk of the court. Sec. 177 - the accused shall appear in the court free of personal restraint, but may be

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

placed under guard. Sec. 179 - the accused may employ counsel to plead for him. Sec. 181, the legal representative of the accused may participate in the proceedings as his assistant. Section 183. If the accused cannot appear at the hearing by reason of mental derangement or sickness, the proceedings shall be suspended until his recovery. Section 189, Witnesses who have been examined, or experts who have given their opinions at the preliminary examination, may be summoned anew. Sec. 193, Witness shall not communicate with each other nor shall they be present at the proceedings until they give their testimony. Section 194. The presiding judge shall interrogate the witnesses and accused. The parties interested in the case may require the presiding judge to put to the witness questions for the elucidation of such matters as they may deem essential to the pleadings."

This is but a brief thumbnail sketch of some of the pertinent provisions of the Japanese Code of Criminal Procedure. It is readily noted that while some of the procedure is slightly different, essential rights are carefully safeguarded. The alleged meetings in Masuda's office were certainly not trials in accordance with these provisions.

c(4)(b)2 - No trial under naval court martial law or any civilized concept of trial.

Defense counsel argues that because of dire battle conditions and because this area was isolated, Admiral Masuda could in accordance with martial law try these natives by "Temporary Court Martial" a kind of specially established court martial." Since defense witnesses have admitted that martial law was never established in Jaluit, the judge advocate will not concede that Naval Court Martial Law could legally be applied to these natives. But even if it could be so applied, and even if the natives were legally deprived of their right to be tried in accordance with the Japanese Code of Criminal Procedure, they still retained their right to a trial; and even defense counsel admits this fact, and tries to establish that in substance, the natives were accorded this right. Let us examine the defense argument in the light of the facts and see whether the Japanese Naval Court Martial Law authorizes as a trial, the procedures alleged to have been held in Masuda's office.

c(4)(b)2a - Right to defense counsel.

Defense counsel, Mr. Akimoto, argued that Section 93, which provides that the "preceding six articles" shall not be applied to a special court martial, explains why the accused had no legal representative or advisor at the trial. But he fails to mention that article 94, which does not precede article 93, provides: "Legal representative.....of the accused can at any time after the indictment has been lodged, become a legal advisor to the accused....." It would appear, therefore, that Section 93, was designed not to destroy, even in special courts martial, the right to counsel or legal representative, but was merely designed to permit under special war conditions a relaxation of certain related technicalities with regard to the selection of the number of and the duties of defense counsel. Section 369, cited by defense counsel, merely means that even if the accused does not want defense counsel, he must be required to have one, unless sentence is pronounced in open court. Under Article 372, it would appear that in a special court martial, the accused may waive his right to counsel and be sentenced in camera.

"II(38)"

CERTIFIED TO BE A TRUE COPY

c(4)(b)2b - Closed court.

Next, Mr. Akimoto cited Article 96 of the Naval Court Martial Law to the effect that "The consultation of judges shall not be held public.....It's proceedings and the opinions of the judges shall be held secret." From this the defense counsel argued that the trial should not be public - but should be kept secret. Article 96, as cited, is clearly misleading. The provisions cited relate to "consultations" and to "opinions of each judge" - it appears therefore, that this provision relates to the same common type of "closed consultations" which are held with regard to rulings, objections, findings, and sentences by any military commission or court. Nothing in this section authorizes a secret or closed court. On the contrary, Article 102, specifically provides in part, "The announcement of Court decisions should be given by declaration in open court. But, in the instant case, it is unimportant whether the provisions authorized "secret trials" or not, unless this provision is cited to show that the proceedings the "trial" in Masuda's office, was so secret that even witnesses were not allowed to be present to testify, and similarly the accused was not permitted to be present. Surely, defense will not argue this absurdity, so we need not concern ourselves with it. Mr. Akimoto did not argue that the witnesses could not be present.

c(4)(b)2c - Oath to witnesses.

Defense counsel argued that under Japanese law, an oath is unnecessary in the questioning of a witness by the judge advocate whether in a civil court or a court martial. Counsel cites Article 267 of the Naval Court Martial Law, but this relates to a preliminary investigation. The provisions with regard to trials are set forth in Articles 247, 248, 249 and 250, which state not only that a witness should be given the prescribed oath, but that he should be warned that there is a punishment for false testimony.

If the defense admits that this investigation procedure was not part of the alleged special trial, then the fact that the natives were not sworn is unimportant. But,defense cannot blow hot and cold at the same time, contending on the one hand that it was unnecessary to swear the natives because that was an investigation not a judicial procedure, and on the other hand that the thorough investigation was part of a judicial proceeding, and that therefore, it was unnecessary to have those witnesses present at the alleged meetings.

c(4)(b)2d - Absence of the accused.

But what about the accused? The defense admits the accused natives were not present; and they admit that they have been unable to find any authority for not permitting the accused to be present at his own trial. Mr. Akimoto admits this was in clear violation of all law. He states in his argument, "The defense doesnot deny that this was evidently in violation, in this point, of the principles

CERTIFIED TO BE A TRUE COPY
Jesse P. Keady Lieut. USN

of trial." But Mr. Akimoto argues this was "a mere formality." I could expect this argument from the accused who, with regard to the executed natives, evidenced a cold-blooded disregard for the "formality" of basic human rights and human life itself. But I did not anticipate this argument from learned counsel. The rights of the accused to be present at the trial and to be confronted with the evidence against him is a fundamental right of every system of jurisprudence in every civilized country of the world. The rule is so fundamental that it requires no discussion and I need merely state that Mr. Akimoto several sentences prior to this argument of "mere formality" himself stated with regard to absence of the accused that it was in violation of "the principles of trial."

Learned counsel Mr. Suzuki in attempting to explain the failure to have the accused present at the alleged meetings, sought tojustify it by reference to a simplified procedure in minor cases in Japan wherein a fine can be levied in absentia. Similarly in our law we have such a simplified procedure and many police courts accept traffic fines in the absence of the accused. This does not mean that such procedure is a trial, it merely means that as admitted by Mr. Suzuki, in certain minor cases, the accused need not be present, but can accept a penalty by default. It means merely that in trivial cases the accused may waive his right to trial, and accept a fine. In the instant case the natives were not fined, they were finished; and as admitted by Mr. Akimoto the failure to have the accused present was in violation of "the principles of trial."

We must not be misled by Mr. Akimoto's statement that "It was a regular trial if only the accused were present at the court. But on the contrary, the judges went to the place of the accused." The "judges" - plural judges, did not go to the accused. There is no evidence in the record which even alleges that Shintome or Inoue (who are alleged by defense to have been two of the judges), ever went to the accused natives.

There is testimony that Admiral Masuda went to see the natives. But when did he go to the natives - was it during the alleged trial in order to judge the guilt of the accused natives? No! The defense in direct examination claimed that Masuda and Furuki went to see the natives before the alleged meetings. (Note that while this would perhaps be permissible under Special Court Martial Procedure, the practice of the judge going to question the accused before trial, is clearly frowned upon by even Japanese naval court martial law, which provides: "Art. 81. 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.") Again he was asked with reference to the Mejkane case, "184. ". Did you and Admiral Masuda speak with Melein and Mejkane, Obetto and Paul?" "A. We talked only with Melein and Mejkane." Thus from the admission of the accused himself, it is apparent that the native witnesses were not questioned in these cases.

We come then to the last stand of the defense, namely that at least the convicted natives were questioned prior to these alleged proceedings - here certainly the accused believed his falsehoods could not be disclosed. Ah, but he forgot that in trying to prove the leniency and justice of the Japanese militarists the defense had alleged that two of the convicted natives had only been

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

sentenced to hard labor. Morikawa had testified that in the Melein and Mojkane incident, Obotto and Paul were convicted and sentenced to hard labor. Furuki never denied this and merely stated in answer 185 that he did not remember if the punishment had actually been carried out. These two allegedly convicted natives, Obotto and Paul, were alive. The judge advocate located Obotto and he was brought to Guam. He appeared and testified before this commission. He was asked, "Q. During your confinement did you ever see a Japanese naval officer? A. No." The accused, Furuki, must have anticipated this as an attack on his credibility for in cross-examination he was asked if Obotto and Paul were questioned by Masuda and Furuki. He himself answered, "We talked only with Melein and Mojkane." From his own testimony, therefore, it is admitted that not even all the "convicted" natives were questioned by even Masuda prior to their alleged trial and conviction.

Did Masuda really question any of the allegedly convicted natives before their trial? If he did, then since it was before their trial, it is indeed a strange coincidence that they are all dead - and that Obotto who was also alleged to have been convicted and is still alive, was not questioned before this alleged trial or at any time by Masuda.

Reduced to the facts - with all the dark glasses removed - the alleged visit of the judges prior to the trial to the place of the accused becomes a claim that they did not question any of the allegedly convicted natives who are still alive, but, by strange coincidence, questioned all the natives who were executed; they did not question the other witnesses or the convicted native who was not executed; and that one, not three, of the alleged judges went to the place where the natives were.

Did this alleged visit by one of the alleged judges, morally or legally, remedy the failure of these Japanese militarists, to afford the executed natives, the most elementary right of trial known to civilized man. The right to be present to defend himself against a death penalty charge.

c(4)(b)2e - Confessions obtained by brutality.

But this is only part of the story, at this <u>ex parte</u> proceeding, without witnesses, the so-called evidence consisted of an investigation report and a written opinion by Major Furuki based upon the report. In substance therefore the investigation constituted a material part of this alleged trial. The defense has attempted to persuade the commission that the natives confessed to their alleged offenses. By cross-examination it was shown that in several of these native incidents, the investigation report was based primarily, if not completely upon the so-called confession of the natives. Under Japanese law, a confession alone is not considered evidence. I cite the learned Japanese counsel Shizuo Morikawa who in his arguments in the Chichi Jima cases, after referring to the famous Teijin Incident, stated, "After this case, it became apparent that to make a decision upon a confession alone was most hazardous, and since then, it has become the practical rule that a confession alone will not be treated as evidence." Defense counsel in their argument before this commission have similarly indicated the importance of rejecting involuntary confessions.

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

Whatever credibility a voluntary confession may have, it is clear that a forced confession - derived in fear and in torture - has no credibility.

In brief rebuttal, the judge advocate presented some of the natives who had been investigated in connection with two of these incidents. Their testimony established conclusively that the investigations were carried out with bestial violence, brutality and terror. The investigations were not judicial proceedings they were themselves vicious crimes. The investigation reports, and the investigation proceedings can lend no legal color, no judicial fiction to the meetings in Masuda's office.

c(4)(b)2f - Alleged judges and meetings.

But the full story is not yet completely unfolded. The defense contended that prior to each execution a special trial - a special proceedings was held, at which Admiral Masuda, Captain Inoue, and Lieutenant Commander Shintome were the judges. Furuki told of a meeting at which Masuda informed Inoue and Shintome of their appointment as judges, referred to them as such, and instructed them as follows, and I quote, excerpts from Furuki's answer to question 47: ".....When the Imrodj incident occurred, Admiral Masuda called myself, Shintome, and Inoue to his room and told us as follows....."You shall perform your duties impartially ~~and carefully~~ and carefully, as your duties require you to judge on people. Lieutenant (jg) Sakuda shall act as investigator, Furuki, you shall act as judge advocate, Lieutenant Shintome and Captain Inoue and myself shall act as judges. .....Inoue and Shintome shall express your opinions as judges' .....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.'"

If such instructions had in fact been given, Inoue and Shintome would certainly have known and remembered that this conference was supposed to be a part of a trial and they would never have forgotten they were judges.

Defense witness Inoue told a lengthy story about these alleged trials - suddenly the judge advocate attacking his credibility faced him with a prior contradictory statement made at the end of the war in which he had said that there were no trials. It should be noted that the question asked at Jaluit in October, 1945, related to the trial of natives, and the answer given by the witness in Jaluit was applicable to all so-called trials on Jaluit.

Inoue was concentrating on the problem of trying to prove that he was a truthful witness and was not lying to the commission. He attempted to discount the effect of the prior statement on his credibility by saying that at the time he made it he believed it was true, and that therefore he was a truthful person then, and was a truthful person now, because he now believed there was a trial.

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

Suddenly the trap was sprung, and the truth was captured even before Inoue knew that he had destroyed the entire fabricated defense. For in trying to prove that he was a credible witness, Inoue had said he did not know or decide that this was a trial until after the war, and months after the executions. This proved not only that Inoue was not a judge at the alleged proceedings, but also that this elaborate defense story about the alleged original meeting at which Masuda was supposed to have told Inoue and Shintome that they would be judges at a special trial of these natives - was a complete unmitigated falsehood.

Once the judge advocate realized this, he immediately sent to Japan for the witness Shintome who had been located for, but never called by the defense.

Shintome had been in Japan, he had not been in the War Crimes Witness Camp, he had not had an opportunity to be infected by the story prepared for the accused. Shintome appeared and testified in rebuttal before the commission. He was an old mustang, loyal to Japan with no motive to help the prosecution. He testified that he was present at one meeting, with Masuda, Inoue and Furuki, that while he was not called upon to give his opinion as to guilt or punishment of the natives, Clearly this testimony was not intended to help the prosecution, or injure the accused. If he had a motive to lie, to help the prosecution he would have testified that he didn't know anything about any such meetings, that he had never attended any. He certainly would not have testified that he was present and that he, Furuki and Inoue gave their opinions. If he had a motive to lie, to protect himself, it is clear that he would have either given the story of never being at any such meetings, or conversely, if he had previously heard the defense story, he would have accepted it and claimed that he, Masuda, and Inoue were judges, and that therefore the sentence was legal, and he Shintome, as well as Masuda and Furuki were absolutely blameless.

The fact that Shintome testified as he did - proves that he told the truth, if anything, leaning toward the defense in attempting to help Furuki.

Shintome testified that he was not a judge - and that he did not attend the meeting in any judicial or official capacity. He was not called upon to weigh the facts, or determine the guilt of the natives and therefore was not a judge at this meeting. This testimony corroborates the testimony of defense witness Captain Inoue, who on cross-examination admitted that he did not know it was a trial when he attended the meeting. I quote Inoue's testimony of the eighteenth day:

"170. Q. Have you always, since November, 1943, believed that such procedure constituted a trial?
"A. No.

"171. Q. When did you decide that this procedure constituted a trial?
"A. From the time I was confined at Jaluit as a suspect.

"172. Q. Was this after the war?
"A. Yes."

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

"II(43)"

While defense alleged that there were five trials, of two sessions each, and that Masuda, Shintome, and Inoue were the judges at all these trials, Shintome was only present at one such meeting. It is not clear what native incident was discussed at that meeting, but it is clear that with regard to the other four groups of natives Shintome was not even present.

c(4)(b)2g - Alleged judge advocate.

Incidentally, we have heard much talk about how Furuki was the judge advocate not only at the alleged meetings, but also at the executions. It was said that Furuki and Masuda went and questioned the natives at the place of confinement both before the meetings and after those alleged sentences. If true, this implies not only constructive, but actual knowledge of the brutal treatment of the natives.

It was stated by defense counsel that it was the duty of the Japanese judge advocate to make his own careful investigation of the witnesses before the trial. Defense claimed Furuki had made such an investigation before he wrote his alleged opinion paper. Yet on cross-examination Furuki admitted that he and Masuda had only questioned some of the natives; and when we mentioned the names of the witnesses in two of these native incidents, he admitted he had not questioned any of those specific witnesses. The natives who appeared before this commission similarly testified that Furuki had not spoken to them until the day of their release. Obviously, Furuki did not carry out his own careful thorough investigation of the native witnesses at Jaluit.

Does defense counsel wish us to believe that Furuki was a very careless judge advocate and that perhaps the natives were improperly convicted without a trial because of both Furuki's failure to consult the available copy of Japanese Court Martial law, and his failure to investigate the natives carefully and thoroughly as the duty of a Japanese judge advocate requires? Is it not more likely that Furuki who by his daily conduct here in court demonstrates he is a thorough methodical man - in fact did not consider himself to be a judge advocate, and therefore did not in fact concern himself with the legal requirements of the duty of a judge advocate, before and during and after the trial. Certainly his failure to act like a proper judge advocate indicates that he did not consider himself one, and did not consider the alleged proceedings at Masuda's office, a trial.

c(4)(b)2h - Decision by majority.

But the contradictions of the defense are not yet exhausted. The accused is caught in the whirlpool of his own fabrications. Inoue testified that in the case of the woman Mojkane, he and Shintome both gave the opinion that she should be sent home. Similarly, Shintome testified that at the meeting he attended, he and Inoue had expressed their opinion that the natives should be sent home. Naval Court Martial Law, Article 98, provides: "A decision of the court is determined by the majority." However, Masuda ordered the execution of the natives.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

It is apparent therefore - and it must have been to Furuki - that since the death sentence was put into effect, contrary to the decision of the majority - Inoue and Shintome were not judges and this alleged procedure was no trial. During Mr. Akimoto's closing argument I believe I heard him mention some type of appeal system in which the judgment is not made by vote, but is made by the decision of the president. I believe he must have been referring either to the decision on rulings on evidence - or perhaps by stating that the decision was made by the president he merely meant the announcement of the decision. In any event, regardless of what he meant, and even if in some civil criminal cases, the majority of judges do not control the decision, it is clear that the citation is irrelevant - for the defense have alleged that the so-called special trials were held in accordance with naval court martial law. Under Naval Court Martial Law, it is clearly provided in Article 98: "A decision of the Court is determined by the majority. When opinions of judges differ in three parts and none of them reach to a majority, then opinions unfavorable to the accused shall be added up to the favorable one gradually, until it reaches a majority number." Clearly therefore in Naval Court Martial Law - A decision of the court is determined by the majority.

c(4)(b)2i - Summary - No trial, no legal excuse.

In summary, when viewed in the light of all this evidence, the fantastic nature of the defense is clear. They contend that there were five trials, five special proceedings. The facts prove that two of the three alleged judges were not judges, and had never been instructed that the meeting was a trial or that they were judges. The third alleged judge is dead, and cannot speak for himself. One of the two living alleged judges testified that he was present at only one of the alleged meetings, yet the accused has attempted to prove that there were five separate trials of two sessions each at which this witness, and the other one (who didn't even know these were trials), acted as judges.

At these alleged judicial proceedings, no evidence was heard other than from an investigation report whose contents were obtained through brutality and torture. No counsel was present for the defense; no witnesses were called for the defense; no witnesses were sworn; and in fact no witnesses were called at the proceedings. And finally, the accused himself was not even present.

This was not a trial, and this was not a judicial proceeding under any concept of law.

The truth of the matter is that Furuki and Masuda did exercise absolute power, dictatorial and despotic power, without regard to law, without regard to justice, without regard to humanity. Whether their motive was revenge, whether it was a military or personal desire for prestige, or whether it was a periodic warning to the other natives, is totally immaterial. No trial was held, no semblance of a judicial procedure was followed, and therefore, on all the facts, no legal excuse existed.

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

"II(45)"

Furuki killed the 13 natives; he intended to kill them; he killed them without legal justification or legal excuse. Furuki as charged in Charge I, specifications 1 through 5 is guilty of murder.

d. - Argument in mitigation should be made after findings.

The accused has protested his purity of motive, his love and compassion for the natives. This is not the time for such an argument which is clearly an argument in mitigation. But when we consider the argument in which the defense speaks of Furuki's good character, etc., consider the fact that according to Furuki, he and Masuda had been to see the natives.

Consider the fact that Furuki was a mature man in a position of responsibility, an army academy graduate with fourteen years of army experience, with a copy of the court martial law available, a battalion commander and the highest ranking army officer on Jaluit, head of the defense section, in charge of native affairs, head of intelligence and second in command on Jaluit. Could he honestly and reasonably believe that these natives who were not even present, had been given a fair judicial proceeding? Could he then perform five group killings of 13 natives over a period of several months in the continued unshaken belief that the trials were legal and the executions legally justified?

If the commission believes Furuki's story let them consider it when the time for mitigation of punishment is at hand, I for one, cannot stomach it.

3. - Violation of the Laws and Customs of War.

With regard to Charge II, very little need be said. It charges violation of the laws and customs of war, and in specifications 1 through 5, it is alleged that wilfully, unlawfully, and without previous trial, Furuki punished these natives as spies.

It should be noted that under this charge of violation of laws and customs of war by punishing as spies, without a previous trial, the accused Furuki, as well as other Japanese officers who have been shown to have personally participated could have been tried for the brutal treatment that the natives received during the course of investigation, and admittedly prior to any trial. We must not however consider this aspect of the case, because the specifications in this charge allege that Furuki punished these natives as spies, without previous trial, by "assaulting, striking, wounding, and killing."

It has been proved that the accused Furuki punished these natives - that he killed the 13 natives. Similarly, the wilfullness, unlawfullness, and the absence of previous trial has been established in detail in considering the charge of murder. In order to establish Furuki's guilt under Charge II, it is only necessary to establish that the natives were punished as spies. However, before considering this remaining fact question, certain international law concepts with regard to the right of trial merit brief consideration.

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

a. - Right of trial under international law.

It should first be noted that Japanese law could not legalize the killing of these natives or their punishment without a trial. For the act of Furuki to be legally excusable, it not only had to be lawful under domestic law, but also under international law. It is a fundamental principle that no country can evade the basic principles of international law and society by the passage of domestic legislation which purports to legalize violation of international law.

Hyde, op cit., pp. 44-45, reviews some of the attempts by Nazis to create a fiction of legality to their uncivilized and brutal atrocities. He concludes that murders are murders, despite the instructions of the government. "No unilateral 'legalization' of such acts is possible; because no member of the Family of Nations can be permitted to make its own rules of warfare justifying mass-murder when committed upon its own governmental order only and as an exclusive instrument of its national policy.....It is not the paranoid decrees of a lawless State that determine the criminal or non-criminal quality of the acts in question, but rather the general principles of law or civilized nations....."

Therefore regardless of any attempt by Masuda to set in force his own laws in contradiction to the laws and customs of war, he was powerless to destroy these fundamental rights guaranteed under international law and carefully protected against such unilateral dictatorship. The defense has conceded this to be the law for they have not even argued that Masuda could punish these natives without a trial.

Since in fact, there was no trial, as we have painstakingly established, it is unnecessary to separately consider whether a fair trial was held as required by basic international law and every principle of civilized humanity. This requirement of a fair trial, is not only a moral, but a legal requirement. It is clearly set forth in numerous decisions in international law, in the expressed opinion of able international jurists and scholars, and in the provisions of various international agreements.

Hackworth, Digest of International Law, Vol 5, p. 589 quotes United States v. Mexico, William T. Way, Opinions of the Commissioners, (1929) 94, 106, as follows: "However, there are certain other broad principles with respect to personal rights which appear applicable to the instant case. These principles are recognized by the laws of Mexico, the laws of the United States and under the laws of civilized countries generally, and also under international law. ..... Gross mistreatment in connection with arrest and imprisonment is not tolerated, and it has been condemned by international tribunals."

Hackworth op cit., on page 590 reference to Margaret Roper (United States v. Mexico) Opinions of the Commissioners (1927) 205, 210, cites the following language of the International Commission: "The conclusions of the Judge at

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

Tampico with respect to the investigation conducted by him were treated in oral and in written arguments advanced in behalf of the Mexican Government as the judgment of a judicial tribunal. And the well known declarations of international tribunals and of authorities on international law with regard to the respect that is due to a nation's judiciary were invoked to support the argument that the Commission could not, in the light of the record in the case, question the propriety of the Judge's finding. In considering that contention we believe that we should look to matters of substance rather than form. We do not consider the functions exercised by a judge in making an investigation whether there should be a prosecution as judicial functions in the sense in which the term judicial is generally used in opinions of tribunals or in writings dealing with denial of justice growing out of judicial proceedings."

The right to trial is stated in the "Draft Convention on Jurisdiction with Respect to Crime," Article 12: (The Research in International Law, Harvard Law School) 29 A.J.I.L. Supp. (1935) 596-597, in part as follows: ".....No State shall.....subject an alien held for prosecution or punishment to other than just and humane treatment, prosecute an alien otherwise than by fair trial before an impartial tribunal.....".

Commissioner Nielsen, in his opinion in the Lovin Case, (United States v. Turkey), Nielsen's Opinions and Report (1937) 688, 704-705, cited in Hackworth op cit. Vol 5, p. 598, states:

"Complaints have often been made with respect to improper arrests and mistreatment pending trials. International law requires that, in connection with the execution of criminal laws, an alien must be accorded rights such as are granted under the laws of civilized countries generally both to aliens and nationals. Most important among these are the requirements that there must be some grounds for arrest and trial or, as is said in domestic law, probable cause. A person is entitled to be informed of the charge against him. He must be given a reasonably prompt opportunity to defend himself. He must not be mistreated during his period of imprisonment."

The Geneva Convention of 1929 in dealing with prisoners of war, at considerable length, describes the fundamental requirements of a fair trial. In the case of Rex v. Bosig (Ontario Court of Appeals) 2 D.L.R. 232 (1945) the court summarized these provisions (of parts two and three) as follows: "This provides rules and requirements relating to judicial hearings of charges against prisoners of war, for notice being given of the name and rank of the prisoner; the place of detention, and statement of the charges to the protecting power; that no prisoner should be compelled to admit his guilt, and he has a right to a qualified advocate of his own choice, and if necessary, to a competent interpreter, and various other provisions aimed at safeguarding the rights of a prisoner of war in judicial proceedings."

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

Moore, Digest of International Law, Vol. 2, p. 233, in discussing the famous Cutting's Case, refers to the dispatch from the Consul of the United States dated 17 Fuly 1886, in which he demanded the release of Cutting, first on the ground that there was no jurisdiction in the Mexican court, and secondly on the ground "that by the law of nations, no punishment can be inflicted by a sovereign on citizens of other countries 'unless in conformity with those sanctions of justice which all civilized nations hold in common.' 'Among these sanctions,' it was stated, 'are the right of having the facts on which the charge of guilt was made examined by an impartial court; the explanation to the accused of these facts, the opportunity granted to him of counsel; such delay as is necessary to prepare his case, permission in all cases, not capital, to go at large on bail till trial; the due production, under oath, of all evidence prejudicing the accused; giving him the right to cross-examination; the right to produce his own evidence in exculpation.....'" (Italics supplied.)

-These brief citations of international law clearly illustrate certain of the fundamental requirements of a fair trial.

b. - Natives punished without a trial.

None of these requirements were met in the handling of the accused natives. In the instant case, not only did the Japanese militarists fail to give the accused a fair trial; but, as has been clearly proven in discussing the murder charge, there was absolutely no semblance of a criminal trial, for the defense has itself established that the accused was not even present.

c. - Natives punished as spies.

In view of the fact that there was no trial, and in view of the fact that the natives were admittedly punished with death, to prove Furuki guilty of the specifications of Charge II, it merely remains to prove that the natives were punished as spies. It is not necessary to consider whether the natives were in fact spies, nor is it necessary to consider whether they were also accused or punished for other acts.

Witness Sakuda testified that by Admiral Masuda's orders, all persons who attempted to escape were presumed to be guilty as spies. I quote the following excerpts from his testimony:

"271. A. Admiral Masuda relayed through Major Furuki that any persons that deserted Jaluit Island, whether they intended to or not, the result would be that they would relay intelligence.....

274. Q. In your investigations, when you determined that these natives intended to escape, did you then determine whether they intended to pass information to the enemy?.....

275. Q. Do you know if Admiral Masuda made that determination?
A. Yes, he did."

Specifically with relation to the cases of Molein and Mejkane, the accused, Major Furuki, admitted that they were punished as spies. I quote parts of the relevant testimony, as follows:

"99. Q. Then please state what you know concerning the case of Molein and Mejkane.
A.....Molein had ordered Mejkane to .....spy upon the defense garrison military secrets and give the information to the Americans. They planned and executed this....."

"101. Q. What was your opinion in punishment of Molein and Mejkane and what were the laws that were applied?
A.....The laws applied to Molein, 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 Mejkane, 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....."

From the foregoing, it is clear that the natives were punished as spies. Since Furuki wilfully, unlawfully, and without previous trial punished them as spies, the accused Furuki is guilty of violation of the laws and customs of war and is guilty of the specifications of Charge II.

D. - Conclusion.

The accused Furuki is guilty of Charge I, specifications 1 through 5, Murder. The accused, Furuki, is guilty of Charge II, specifications 1 through 5, Violation of the Laws and Customs of War.

The War is over. The natives are dead. Is it necessary to punish this defendant? The question has been asked many times - there has been only one answer, and there can be only one answer. It is the answer that the law gives to all crime and to all criminals. Society is based upon a system of law - in which the weak as well as the strong - must be protected if life and order is to continue. The individuals who violate the laws of society - whether it is local, state, or internation law - must be punished, in accordance with the law. Human nature is such that if we did not punish the individual who commits the crime - that individual and other individuals believing that crimes are not punished - would cease to respect the law and would violate it without fear of punishment. The results would be violence, disorder and a threat to the very existence of society itself.

We have just finished a war in which at the cost of millions of lives we have reaffirmed our belief in a society of law and order in which the rights of individuals and nations is protected against the depredations of the strong or th

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

ambitions. An ordered civilized society requires that we protect individuals, as well as nations against illegal attack. The accused, Furuki, violated the local as well as the international laws of society. He is guilty; must be found guilty; and must be appropriately punished. Society requires it; justice demands it.

DAVID BOLTON,
Lieutenant, USN,
Judge Advocate.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"II(51)"

STATEMENT BY MARSHALLESE OBSERVERS

Guam, Marianas Islands,
April 18, 1947.

We are very glad to have had the opportunity to attend the war crimes trial of Major Hidesaku Furuki, Imp rial Japanese Army, held at Commander Marianas. We appreciate the invitation of the Navy Department of the United States and Commander Marianas which permitted us to attend as official observers from the Marshall Islands.

From every standpoint we can say that this trial was just and right, and we are very impressed by the fairness with which the trial was handled.

Also, we are very glad to know that International Laws and Customs of War can be enforced and are still existing everywhere.

We will be very glad to tell our brothers and friends at home that justice and righteousness still rule among men and nations, and that wrongdoers will be punished.

LAJORE

BUORN HEINE

MARK JUDA

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

"JJ"

STATEMENT ON THE EXECUTION OF THE NATIVE CRIMINALS, BY FURUKI, HIDESAKU

Original document appended to the original record.
Certified translation appended herewith marked "Exhibit 2."

"EXHIBIT 1"

STATEMENT ON THE EXECUTION OF THE NATIVE CRIMINALS

3 December 1946.

Former Jaluit Defense Force Army Major FURUKI, Hidesaku.

I. Summary.

I executed the native criminals who had been sentenced to death by Rear Admiral MASUDA on orders of Rear Admiral MASUDA former Commanding Officer of the JALUIT Defense Force in 1945 as follows:

Names & number of Native Criminals	Date of Execution	Guards on route and laborers after the completion of the execution	Place where the native criminals were incarcerated.
LEBOHR KOHRI KOZINA [illegible]	About 23 May	KIMURA P.O. 2c (dead) IKEDE, Leading Seaman (dead)	Number two Ammunition Dump.
ARMEN NAKUT TIAGRIK	About 26 May	SUGAHARA, CPO (living) MIYAZAKI, Leading Seaman (living)	Number two Ammunition Dump
CHUTA CHOMBOMLE	Middle of June	AKIZUKI, Leading Private (living)	Number two Ammunition Dump
MAWOALA LAPENIA	End of July	TANAKA, Leading Private (living)	Number two Ammunition Dump
MEJKANE	About 10 August	OTSUKOKIYA, Sgt. (living)	Number two Ammunition Dump
MELEIN	About 20 August	"	Base Transmitting Station

TOTAL - 13 PERSONS.

II. Developments.

1. I took command of the laborers in front of the KWAJ Battle Headquarters about two-thirty in the afternoon. I loaded them in a truck and went to the native criminal stockade. We blindfolded the prisoners, tied their hands, and put them in the truck. I gave orders to the laborers to stand watch and see that the natives did not escape.

2. We went toward AIKEMAN Island and stopped at a place about 4,000 meters south of the Base Transmitting Station.

3. I gave orders to the workers at that place to stop people passing along the road and not to let them enter the coconut grove. I accompanied the native criminals myself and going toward the open sea, I had them halt in the vicinity of the beach.

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

(1)

"Exhibit 2(1)"

4. I made the native criminals sit down and spoke as follows:

I had a man who understood Japanese translate it to the people who did not understand Japanese sufficiently:

a. You have been sentenced to death by Rear Admiral MASUDA for treason and other serious crimes which you have committed against the state. (I indicated the crime with which each native was likely.)

b. I will now carry out the order.

c. Because I will give you five minutes time, if you have any last minute will to make or offer your prayers, you may do so.

5. GUPTA and CHOKECHEE said, "We have done a bad thing, there is nothing we can say. Please apologize for us to Rear Admiral MASUDA and the men. Take a lot of coconut milk (i.e. to strengthen the body) and win the war." The other person mumbled something in the native tongue, but I don't know what he said.

6. About five minutes later I shot the native criminals in the head with a pistol from a distance of about one meter in front of them. I shot the people who did not die instantly once more.

7. After I had confirmed that the native criminals had ceased breathing, I called the workers from the road and dug a hole with a spade. We untied the ropes, lay the bodies down, piled sand upon them, erected a stone as a grave marker, and offered some flowers from trees in the vicinity. Then the workers and I saluted the body, prayed for their souls and started back.

8. I went to Rear Admiral MASUDA'S place and reported that the execution had been completed.

FUNUKI, Hideomi, Major, IJA.

This statement was written of my own free will.

3 December 1946.

FUNUKI, HIDEOMI, Army Major.

Subscribed to before me this 3rd day of December 1946.

_____
F. L. FIELD, Lieutenant, U.S.N.R.

_____
F. E. KINCAID, Lieutenant, U.S.N.R.

Certified to be a true translation of the original Japanese document dated 3 December 1946, signed by FUNUKI, Hideomi and witnessed by Lieut. F. L. FIELD, and Lieut. F. E. KINCAID.

_____ Court Interpreter

_____ Court Interpreter

_____ Court Interpreter

"Exhibit 2(2)"

CERTIFIED TO BE A TRUE COPY
Jerrold P. Kaney Lieut. USN

DOCUMENT NO. 19, PROVISIONS INVESTIGATION SECTION, SECOND DEMOBILIZATION DEPARTMENT TO CHIEF OF THE INVESTIGATION SECTION OF POWs, FIRST DEMOBILIZATION DEPARTMENT DATED 30 APRIL 1946

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "Exhibit 4."

"EXHIBIT 3"

DOCUMENT NO. 29
PROVISIONAL INVESTIGATION SECTION
SECOND DEMOBILIZATION DEPARTMENT

30 April 1946.

From: Chief of the Provisional Investigation Section, Second Demobilization Department.
To: Chief of the Investigation Section of POWs, First Demobilization Department.

Subject: Reply concerning the duty, etc., of Rear Admiral MASUDA, C. O. of the Jaluit Defense Garrison.

As per annexed paper due investigation has been made concerning your request (document no. 66, Section of Investigation of POWs, First Demobilization Department).

I certify that the following is a true description.

27 November 1946

signed and stamped by
HANDA, Hisoya
Chief of the 2nd Demobilization Bureau.

(1)
"Exhibit 4(1)"

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

(ANNEXED PAPERS)

1. The duty and the authority vested in Rear Admiral MASUDA, the Commanding Officer of the Jaluit Defense Garrison.

Since the documents concerned were burnt and the officers of the 4th Fleet Hq. have not been repatriated, the exact discription of the duty and the authority of the CO of the Jaluit Defense Garrison is unknown, but the outline is as follows:

(a) On operations:

By the Operation Order of the 4th Fleet, he (Adm. MASUDA) had the duty to command the Jaluit Defense Garrison as commanding officer and to defend his assigned area, but, since the order of the 4th Fleet: "The commanding officer of each base of Marshals shall have complete command over the base" which was issued immediately after the fall of Kwajalein and the 6th Naval Base Hq., he was vested the authority to command not only the Jaluit Defense Garrison but also all units at Jaluit Atoll (including civilian government).

(b) On military administration:

There was non except his original ones which were strategically necessary and regulated in concerning ordinances. But since all personnel of South Seas Civilian Government and all other Japanese civilians were taken into military service in April 1944, it may be considered that he became to have substantial duty and authority concerning civilian administration, because these personnel and civilians had two characteristic functions on account of the special circumstances of the Atoll which had become a battlefield. Since the beginning of 1944, the war conditions of Marshalls made a great change. These islands suffered intense air-raid every day and became battlefields. Transportations to Truk Atoll and other rear bases were entirely cut off and they could not receive the supply of war necessities. In such circumstances, in accordance with the substance of Art. 16 of the Fleet Ordinance and applying its Art. 18, it is considered that he was able to take necessary measures as the highest administrating authority in order to discharge his duty of operation. In fact, it was discussed at the beginning of 1944 in General Headquarters whether Martial Law had to be enforced there or not. But, at that time, the war condition and cooperation of Military and Civilians in the Marshalls had already shown more seriousness and effectiveness than Martial Law. So they reached the conclusion that it was not necessary now, to enforce Martial Law for these islands--that meant to tolerate the commanding officers of these islands, which became battlefields and had no means of transportation with the outside world, to have the same authority as that of the commander of the forces enforcing martial law, if it was necessary for them in discharging their strategical duty.

Natives produced and supplied provisions which were necessary for these forces to live on, and it can be recognised that they substantially had the position as component members of these forces.

The last transportation between Jaluit district and rear bases, and extract of regulations concerning above will be shown in Figure I and II.

CERTIFIED TO BE A TRUE COPY
James A. Kenny Lieut. USN

"Exhibit 4(2)"

2. Organization of the trial for civilians in Jaluit Atoll and the laws applied in the trial.

(a) Organization of the trial.

According to the "Ordinance for trial in the South Seas Islands" (issued on 30 March 1922 by the Imperial Ordinance No. 133), since 1 April 1944 the first trial was under the jurisdiction of Ponape Local Court (at Ponape Is.) and the Higher Court (located in Palau) was regarded as the retrial court, but Jaluit Atoll had no court of itself.

(Reference):

Ordinance for the trial in South Seas Islands (issued on 30 March 1922 by the Imperial Ordinance No. 131).

Article 1. Courts of the South Seas Government is under the immediate control of the Head of the South Sea Government and shall take charge of civil, criminal case and jurisdicto voluntaria.

Article 2. Courts of the South Sea Government are classified into local courts and higher courts. Establishment, abolishment and jurisdiction of the courts shall be decided by the Head of the South Sea Government.

Article 3. Local courts shall hold the first trial of civil and criminal cases, - - - -

Article 4. The Higher Court as the court for final trial shall conduct retrial on cases appealed to it by local court.

(b) Laws applied in the trial.

According to the "Ordinance for the court procedure of the South Seas Islands" (issued on 27 January 1923 by the Imperial Ordinance No. 26), Japanese Criminal Code, Criminal Codes of Japanese Army and Navy, Military Secret Law, Law of Criminal Procedure and such laws and regulations as are applied in Japan are applicable.

(Reference):

Ordinance for the court procedure of the South Seas Islands (issued on 27 January 1923 by the Imperial Ordinance No. 26)

Article 1. Civil and criminal cases and jurisdicto voluntaria shall be tried by the following law unless provided otherwise by other laws and regulations: Japanese Criminal Code, Law of Criminal Procedure, Army and Navy Criminal Code; Military Secret Law, ...

Article 62. For the criminal procedure of the higher court, the provisions of the Laws of Criminal Procedure concerning the courts of appeal will be applied; of the local courts, those concerning local courts and district courts.

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

(3)
"Exhibit 4(3)"

FIGURE I

Actual result of the last transportation between Jaluit district and the rear.

1. Secret transportations by submarines are shown as follows but not sub-transportation were made for Jaluit.

Destination	Date	Name of Cargoes and its quantity		Remarks
Hilo	11 March 1944	Provisions Ammunitions	20 t.	Ro-type submarine
Wotho	end of March 1944	Provisions Ammunitions	30 t.	I type 32 submarines. Did not succeed
Hilo	20 March 1944	Provisions Ammunitions	40 ton.	I type 154 submarine
Kusai	26 May 1944	Provisions Ammunitions	20 t.	Ro-type 41 submarine

2. Secret liaison by planes.

Destination	Date	Carried persons etc.	Remarks
Jaluit	June 1944	Repatriation of pilots and some equippers from Jaluit	Two large type flying boat

3. Liaison by ships.

Destination	Date	Name of Cargoes and its Quantity	Remarks
Jaluit	January 1944	Unknown	Transported in

(4)

"Exhibit 4(4)"

CERTIFIED TO BE A TRUE COPY

James P. Kenney Lieut. USN

FIGURE II

1. Regulations concerning special sea boat unit.
Article 57c. Special guard unit shall take charge of defence and guard of its location and vicinity and may take charge of matters concerning seaport, communication, and supply of munitions if necessary.

Article 57d. Regulations concerning Naval Guard Unit shall be applied to the members of Special Guard Unit and their duties.

2. Regulations concerning Naval Guard Unit.
Article 12. Details of the duties of the members of naval guard unit shall be provided by the Naval Minister.

3. Regulations concerning the duties of the membersof Naval Guard Unit.
Article 4. Commanding officer shall keep in touch with other units both of Navy and of other organizations in discharging his duty of defense and guard of his assigned area.

Article 8. Besides the provisions of preceding articles, those regulations concerning the duties of the members of warships shall be applied, so far as applicable to the members of Naval Guard Units.

4. Regulations concerning the duties of the members of warships.
Article 130. If there be fire, storm, or earthquake at the place where his ship is at anchor, the captain, if he thinks necessary, shall consult the authorities of the place and help them as best as possible.

5. Fleet Regulations.
Article 16. Commander-in-chief of the fleet, when detaching a squadron under him command, may appoint the senior officer of the squadron as its commanding officer and authorise him to perform a part of his official duty.

Article 18. Commander-in-chief of the fleet, when requested by the district governor to use his military force in order to maintain public peace, may accept it if it is urgent; he may also deal with it by his military force if it is too urgent to wait the request of district governor.

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

(5)

"Exhibit 4(5)"

NAVAL COURT MARTIAL LAW, ARTICLE 95 AND ARTICLE 96.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "Exhibit 6."

"EXHIBIT 5"

NAVAL COURT MARTIAL LAW

Article 95. A trial is performed by the consultation of judges of fixed number, unless there is a special stipulation.

Article 96. The consultation of judges shall not be held public. However, judiciary officers in probation might be allowed to listen to it.

A meeting for the consultation of judges is opened by the chief judge and he presides over it. However, its proceedings and opinion expressed by each judge should be held secret.

I certify the above to be a true and complete translation of the original Articles 95 and 96 of Naval Court Martial Law to the best of my ability.

EUGENE E. KE[illegible]RICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter

"Exhibit 6"

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

ORIGINAL PETITIONS IN JAPANESE IN MITIGATION OF PUNISHMENT FOR THE ACCUSED, FURUKI, HIDESAKU, MAJOR, IMPERIAL JAPANESE ARMY

Original petitions appended to the original record.
Certified translations appended herewith marked "Exhibit 7a" through "Exhibit 69a"

"EXHIBIT 7"
through
"EXHIBIT 69"

PETITION

Your Honor, the President.

Since the war ended in August, last year, we have been parying that my elder brother, Furuki, Hidesaku, would soon be repatriated. However, we are filled with deep surprise and sorrow to hear that he is to be tried as a war criminal suspect.

When we was in the primary and middle school, he was obedient, well-behaved and chivalrous. He was a model student who was trusted by teachers and loved and admired by his classmates. He was such a pure and honest young man that any man in his neighborhood who met him loved and admired him. To his family, he was a filial son as well as a kind brother, and when he grew older, he was a gentle husband and also an affectionate father.

Though he served in the army, he was always anxious to make this world a more comfortable and cheerful one. He taught us, his younger brother and sister, that a man must abandon his selfishness and serve for his neighbors and society. We admired him and followed the example of him, and grew up. We can not think on any account that he should do cruel or inhumane deeds.

We feel really sorry for his situation, because, we all know that he is of a very honest character and is too faithful to his environment. He was sent to the front of that abominable war, and his behaviour was bound by his responsible duty. We think that he acted in order to do his best as a military man and as a commanding officer. If there be anything in connection with a war crime in what he had done, it was his honest sense of responsibility that made him act so. His wife, with his young child, has been waiging for his return for about five years in that terrible confusion and inflation. There is nothing which enables his wife and child to maintain their future life. Their very hope and happiness depend upon his coming back.

Your Honor, the President, I beg your kind consideration on what we are feeling now, and that you will deal leniently with him for the sake of his wife and child who are looking forward to his return. If you will allow his repatriation, I think that he will become a good support for his family and also a good citizen for his society, and he will sure to do his best for the reconstruction of a peaceful democratic Japan.

I again beg you will return our kind elder brother and gentle husband to us, who have awakened from our abominable nightmare of war and are taying hard for the establishment of peace.

5 December 1946

HOSHINA, Hiden, younger brother,
Z-chome, Nakamachi,
Takatsuki, Niigataken,
Japan.

To: The US Military Commission of Mariana Area.

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

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 7a"

PETITION

I would like to lay a statement respectfully before Your Honor, the President.

Since the termination of the war, we have prayed that he would be back soon. During the war, he fought as a man according to the orders of his superiors. I am very sorry for this position of his, because I know that he is upright man and he will behave faithfully according to his circumstances. In his native village, he was good and honest and was a model young man. At his home, he has been a filial son to his father since he was very young, and he was also a mild husband and a benevolent father as he grew older. I am really surprised and am in deep sorrow to hear that he is to be tried as a war criminal.

He always wished to establish a good society and said we must endeavor for the benefit of others for the society. I don't know for what reason he has been accused, but we know his character of loving peace. I think he is too pure and benevolent to commit inhumane acts.

Your Honor the President, please take into your consideration that he was forced to go to the front of that cursed war and that his actions were severely bound by his heavy responsibility. At his home are his wife and son who are waiting for him to come back. If you allow him to go back to his country he will be a strong support for his wife and son and, at the same time, he will be sure to strive as a good citizen for the establishment of a democratic peaceful Japan.

Your Honor, the President, please have consideration for us who are looking forward to his return, and I beg you to allow him to return.

5 December 1946

ROJIMA, Aiko
sister-in-law of FURUKI, Hideaaku,
2-chome, Naka-machi,
Takata-shi, Niigata-ken.

To: The US Military Commission of the Marianas Area.

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

EUGENE E. KENNICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 8a"

CERTIFIED TO BE A TRUE COPY
James T. Keany Lieut. USN

PETITION

I would like to lay a statement respectfully before Your Honor, the President.

Since the termination of the war, we have prayed that he would be back soon. During the war, he fought as a man according to the orders of his superiors. I am very sorry for this position of his, because I know that he is upright man and he will behave faithfully according to his circumstances. In his native village, he was good and honest and was a model young man. At his home, he has been a filial son to his father since he was very young, and he was also a mild husband and a benevolent father as he grew older. I am realy surprised and am in deep sorrow to hear that he is to be tried as a war criminal.

He always wished to establish a good society and said he must endevor for the benefit of others for the society. I don't know for what reason he has been accused, but we know his character of loving peace. I think he is too pure and benevolent to commit inhumane acts.

Your Honor, the President, please take into your consideration that he was forced to go to the front of that cursed war and that his actions were severely bound by his heavy responsibility. At his home are his wife and son who are waiting for him to come back. If you allow him to go back to his country he will be a strong support for his wife and son and, at the same time, he will be sure to strive as a good citizen for the establishment of a democratic peaceful Japan.

Your Honor, the President, please have consideration for us who are looking forward to his return, and I beg you to allow him to return.

5 December 1946.

KOJIMA, Haru
2-chome, Naka-machi,
Takata-shi, Niigata-ken

To: The US Military Commission of the Marianas Area.

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

EUGENE E. HENRICH, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 9a"

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

PETITION

I would like to lay a statement respectfully before Your Honor, the President.

Since the termination of the war, we have prayed that he would be back soon. During the war, he fought as a man according to the orders of his superiors. I am very sorry for this position of his, because I know that he is upright man and he will behave faithfully according to his circumstances. In his native village, he was good and honest and was a model young man. At his home, he was been a filial son to his father since he was very young, and he was also a mild husband and a benevolent father as he grew older. I am really surprised and am in deep sorrow to hear that he is to be tried as a war criminal.

He always wished to establish a good society and said he must endeavor for the benefit of others for the society. I don't know for what reason he has been accused, but we know his character of loging peace. I think he is too pure and benevolent to commit inhumane acts.

Your Honor, the President, please take into your consideration that he was forced to go to the front of that cursed war and that his actions were severely bound by his heavy responsibility. At his home are his wife and son who are waiting for him to come back. If you allow him to go back to his country he will be a strong support for his wife and son and, at the same time, he will be sure to strive as a good citizen for the establishment of a democratic peaceful Japan.

Your Honor, the President, please have consideration for us who are looking forward to his return, and I beg you to allow him to return.

5 December 1946.

KOJIMA, Atsuki
2-chome, Maka-machi,
Takata-shi, Niigata-ken

To: The US Military Commission of the Marianas Area.

I certify the above to be a true and complete translation of the original petition of KOJIMA, Atsuko, to the best of my ability.

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

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 20n"

PETITION FOR MAJOR FURUDI

I am a petty officer in the navy who was saved from starvation together with several thousand of my comrades through the efforts of Major Furudi when we were to die on Jaluit, which was isolated.

Hearing that Major Furudi is to be tried I am requesting the following for this fine person.

I first came to know Major Furudi who was the battalion commander when I came in contact with the army units on Jaluit. Our commanding officer who was the commanding officer of the naval units was a fine person and he had our highest respect. Major Furudi was just as fine a man and he would do anything for his country. He was very righteous in doing anything. He would always set the example, and his sense of responsibility was very strong. We the petty officers of the naval units were very much surprised at the care and caution which he displayed in his training and the way this army officer, Major Furudi, set the example for his men. On the other hand he was very considerate of his men, very courteous and in whatever he did he always made a distinction between official and private affairs.

He was a person who had no greed, was very humane, and his feeling for research was very strong. He was also very religious. As for the natives, he was very grateful to them and loved them very much. I have heard from other people how when he made a tour of inspection of the outlying islands he would listen to any complaints there were to be heard and how he took care of them. Because there was such a fine person on Jaluit, there was no disorderly strife between the superiors and subordinates. The fact that unity was maintained even while they were suffering together was because of his efforts. There were times when bad feeling was about to break out between the army and the navy, between officers, noncommissioned officers and enlisted men. But we would be struck by fineness of Major Furudi, and it would be stilled. As stated he was a person who was respected by the several thousand men of Jaluit, like a parent. How can a crime be committed by him, if there was one I believe it must be a mistake. Your Honors, understand this fairly and judge him carefully. That we the several thousand people of Jaluit did not die of starvation was due to his timely decisions. Without him several thousand of us would not be alive. He is the father of our lives. He is the saviour of Jaluit. We cannot see the saviour of our lives being sentenced. It is hard for me to judge why a person who one hand saved so many lives should be punished on the other. I am convinced he is a person who cannot but think righteously . I think he acted because he was convinced it was righteous. Your Honors, please understand his real character, his truthfulness, and judge him wisely. Please sympathize with his wife and child, brothers and sisters and his parents who have awaited his return for so many years.

Your Honors, together with seeking out his true character, I ask your understanding of what I have stated, I ask your fair, humane and lenient judgment as the worlds most civilized nation.

1 March 1947

SUGAHARA, Toshio

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

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

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

"Exhibit 11a"

I am writing this petition that our former battalion commander, Major Furuhi, Hideomi be acquitted. I am very sorry to hear that the battalion commander with whom we shared life and death was confined on Guam awaiting trial. The way he loved his men was as if he had loved his own children. What a noble character he had could be seen from the following. Previously when I was on Jaluit and sick in bed Major Furuhi came by himself to visit me and said "Yamatani how are you feeling? Yes, I see your complexion has improved." Saying this he placed his hands on my back and bolstered me up. My sick ward was a dugout with dirt piled on top and was so low you could not stand straight up. I can still retain the image of Major Furuhi crawling in through the entrance. A short time after he had left his orderly appeared bearing a large plate with a big lobster on it. According to the orderly the battalion commander would not touch it himself, but said to give it to Yamatani to eat. Tears of thankfulness came to my eyes as I partook of it. Even afterwards whenever there was a delicacy he would have the orderly bring it to me. This is but a part of his goodness. I can not image why this kindly battalion commander has to bow his head in shame before the law and spend his post war days in confinement on Guam. Please understand the feeling of this soldier who is petitioning from the bottom of his heart for the great character of Major Furuhi. I am writing for the safe return of my former battalion commander.

15 December 1946

Formerly of the 2nd Battalion,
YAMATANI, Hiroshi.

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

EUGENE E. KERRICK,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Keady Lieut. USN

"Exhibit 126"

AFFIDAVIT

Your Honor the President of the commission. I am a person who is asking that a sympathetic, fair and lenient judgment be given the accused, Major Furuhi, in this Jaluit native incident, for he is a humane and righteous person with a lofty character.

Compared to the other islands Jaluit is the smallest island. I do not know why, but the American planes always regarded Jaluit as his eye sore and bombed and strafed it. Almost all of the provisions, which were the most important thing on Jaluit, were blasted to bits. But we, the two thousand people of Jaluit were able to live through due to the graciousness and plans of the commanding officer and Major Furuki. We worked silently and diligently on a plan for defense and self support from native foods. The native foods consisted of one coconut and sore grass soup a meal which later was cut down to one and a half coconuts for three meals.

The conditions at that time of the officers and men cannot be explained in a few words. There were many times when we thought we would die. Many times have I seen the commanding officer and Major Furuhi going among the men and encouraging them with words when death was staring them in the face under bombing and strafing. There were times when I thought I could lay down my life for them. There was no difference between what the commanding officer, Major Furuhi ate and what the noncommissioned and enlisted men ate. There was a time when sore fish was sent to the commanding officer and Major Furuhi from an outlying island. He stated "I cannot eat this by myself" he handed the orderly the fish, had him take it to the galley where we partook of fish soup. At a time when food was so scarce and it was an effort to walk even a short distance without feeling dizzy, many were the times he inspected the outlying positions from North to South. Whenever he heard that a bomb had made a direct hit he would always go to the spot. There was no place that the battalion commander did not go. This was how much he thought about his men. It was the same with the natives. Then the Americans tried to starve out the Jaluit garrison and started its kidnaping tactics of the natives of the outlying islands. Major Furuhi was very worried, because the lives of the two thousand men of Jaluit would be endangered if the natives deserted. The following were the instructions he always gave the guards who were to go on guard. Make all efforts to prevent the American forces from sneaking in. Pacify the natives.....Never create bad feelings among the natives, in case of air raids make them take shelter in an air raid shelter so that they would not be hurt." He always stated this over and over again until we were tired of hearing it. Every time we were to go out as guards the instructions would be to pacify the natives. Always it would be this. Also he organized plays and camp shows and he gave recommendations and rewards.

There are the following six points which everyone thought of him highly for doing.

1. Transferred the Leper patients to an island where there was food.
2. Despatched doctors to combat sickness native to the islands (on the island where I was stationed, Elizabeth Island, doctor, first lieutenant Shimazu, came and treated 34 natives.)
3. Organized camp shows.
4. Had the soldiers build air raid shelters for the natives.
5. Gave rewards and recommendations.
6. When the natives of Ai Island deserted and left two blind natives behind Major Furuhi instructed the soldiers to look after them.

CERTIFIED TO BE A TRUE COPY
James F. Keady Lieut. USN

"Exhibit 13a (1)"

In acting as a leader he made no distinction between the army and navy. The way he worked was as if he were driving away his own flesh and bones. He is a gentle person, he is not such a bad person who would kill. Notwithstanding the fact that under these difficult and miserable conditions on Jaluit there were natives who planned to murder and escape, against the wishes of Major Furuki, who assisted the commanding officer, he loved his men, made all efforts toward pacifying the natives, self support in food, and defense.

Major Furuki is not a person about whom anything bad can be said. He is a person who has great insight and not a person who can do a bad thing. Your Honor, please give the accused, Major Furuki, a fair, merciful judgment.

29 February 1947.

NISHIDA, Hitoshi

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

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

CERTIFIED TO BE A TRUE COPY
James O Kenney Lieut. USN

"[illegible] 23a (2)"

[redacted]

Formerly I was attached to the second battalion, First South Seas Detachment. The second battalion commander who was my direct superior was Major Furuki. I was a helper in the defense section of Jaluit Defense Garrison and the head of the defense section was Major Furuki. Until the end of the war I handled defense section work under Major Furuki. Major Furuki was a very patriotic person and his feeling of righteousness was very strong. In all matters he was not a person to leave all the work to his officers and men but did them himself. To all persons who entered the hospital owing to malnutrition or wounds, whether they were in the army or navy he would come to visit them and try to cheer them up. I respect and believe in Major Furuki who is courteous and loves his men. As a person he had a fine character and very humane. He especially protected the natives and was very grateful for the labor done for the Jaluit Garrison. Major Furuki was very religious. I think it was through the efforts of Major Furuki that we the several thousand men of Jaluit Defense Garrison were able to live through when death stared us in the face. I think the Jaluit Defense Garrison was able to band together till the end of the war, without the strife which came up between superiors and subordinates, because we had such a fine character as Major Furuki, as one of the high ranking leaders on Jaluit. Major Furuki is the saviour of we, the several thousand men of Jaluit, and our benefactor. Why is Major Furuki, who is such a great benefactor to us, going to receive punishment? I cannot help but be sorry from the bottom of my heart for him who is going to take punishment. Major Furuki's actions were not through malice. He acted because he sincerely believed it was righteous. I ask your Honor that you take Major Furuki's fine character into consideration, and give him a fair judgment. I ask that you will have sympathy for his wife and child, his aged parents, who have awaited his return for several years.

Your Honor, please understand the true character of Major Furuki together with your understanding of what I have stated above and I ask your fair and lenient judgment as the most civilized nation in the world.

1 March 1947.

TANAKA, Mitsuru

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

EUGENE B. KERRICK, Jr.,
1Lieutenant, USMC,
Interpreter.

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

"Exhibit 2/a"

0699

PETITION

Your Honor, the President, I would like to express my deepest gratitude that you have been serving in the Military Court as a fair judge which is based upon moral standards of civilized society. I am one of the subordinates who was under the command of Major Furuhi at Jaluit Atoll.

The accused, Major Furuhi, was upright and humane; he was the man I most admired during my military life.

He is a man who never thinks or does other than what is right. He is a man who cannot do anything against righteousness.

Jaluit was left isolated from 1944 on. We had no provisions. Our physical strength fell to a low ebb and it was hard even to walk. Besides, all the news we received was our defeat, and the air raids were tense every day, so that the military discipline of our guard unit was going to decline. We suffered from a shortage of food and were about to abandon ourselves in despair. But he encouraged us and kept us united together. We could carry out many things rapidly and steadily after the termination of the war. I believe it was the noble character of commanding officer Masuda and Major Furuhi that enabled us to do so.

When someone, whether he is a military person or not, died in action or from illness, he never failed to go to console the soul. He often visited injured or sick people at their rooms to encourage them.

When he heard that some native was ill, while he was inspecting the islands of Jaluit, he at once visited and consoled him, and thanked his family for his exertion.

The above mentioned facts are only a few aspects of the great character of Major Furuhi.

Soldiers on Jaluit planned self support earlier than any other base of Marshalls and carried it out. This is due only to the great exertions of Major Furuhi. We owe the fact that we could escape from starvation on Jaluit to the appropriate plans of commanding officer Masuda and Major Furuhi. If we had not had the two officers, we should have been dead.

Major Furuhi is the benefactor of our lives, the saviour of Jaluit.

We cannot bear the fact that our benefactor is about to be punished and I really do not understand why Major Furuhi, the benefactor of thousands of lives, a man who was always thanked for the cooperation of natives and did well for them, ought to be punished. I cannot but doubt what is right in law.

At the home of Major Furuhi, his wife and child are looking forward to his return.

Your Honor the President, I beg you will penetrate deeply into his true character, understand what I have just mentioned and make a fair, humane, lenient judgment as in the trial of civilized states.

1 March 1947

JINNO, Shigeru

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

[illegible]
Exhibit 190

CERTIFIED TO BE A TRUE COPY
James P Kenney Lieut. USN

0700

PETITION

I cannot write well, but I am writing this petition.

Former Major IJA, Furuhi, Hidesaku, who is now confined on Guam as a suspect in the Jaluit native incident is a person of high character unusual in the Japanese service. He was always gentle in dealing with his men and the natives. He was a person who was loved by everybody who knew him as a kind person. Everyone who knows him can tell you that his character is not one that will let him commit crimes.

At home there is his wife and child and the many relatives who awaited his return so long. They are relying on him spiritually and economically and are awaiting his return home with great anguish.

Please have sympathy for his family and give him a lenient mitigation of sentence or acquittal. Hearing that he had not yet returned and because I dosery the loss of this high character I am writing this petition.

10 December

OKADA, Norihide

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kerry Lieut. USN

"Exhibit 260"

PETITION

Ki Masashika

Your Honor the President, I would like to express my gratitude for your endeavors in this trial every day. I was a seaman in the navy who shared life together with Major Furuki at Jaluit Atoll.

I can not help wondering at hearing that Major Furuki whom we admired most is to be tried, and I feel somewhat lonely at the same time.

At Jaluit Atoll, Major Furuki was

1. a really admirable military man (superior) and
2. of a very fine character as a man.

I would like to show you some good examples.

We were in a hard position on Jaluit. We had terrible air raids every day. In such circumstances he saved us from starvation by his great effort and righteousness. He was try a father of our lives and our benefactor. Anyone who was on Jaluit is sure to thank him. He visited those who died or were injured in action or fell ill without fail. I was an orderly of the Major and I know that he had abdominal trouble, but he had never had anything other than coccunts. We were always thankful to him because he shared the hardships with us. When we talked to him on private matters, he was a very gentle person.

Your Honor, the President, I don't understand why this fine person is to be tried. I cannot help thinking that it is a mistake. Really, I'm sure it is a mistake. Major Furuki is our benefactor. I beg you will save him. If he is punished, I shall be unable to believe in the fairness of a trial. I am sure he is not guilty.

Your Honor, the President, I humbly beg that you will save our benefactor by your sacred, benevolent and lenient judgment.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James A Kenny Lieut. USN

"Exhibit 276"

A petition for the acquittal of former Major, Imperial Japanese Army, Furuki, Hidesaku.

He is a person of noble character with a warm and gentle heart. He is a true example of a human being from the standpoint of ethics. Therefore he is not a person to commit a crime.

I am listing two or three examples of my experiences with him.

1. On Jaluit Island when I was sick not matter how busy he was he would always come to visit me once a day. This was true not only of myself, but with all of his men.

2. Whenever one of his men was killed in action he would always go to the spot and offer his prayers. If it was too far away and he could not go he always prayed before their ashes. He always held burial ceremonies for persons who died of wounds or were killed in action or died through sickness. He even did this for animals and fish.

3. There were many times when he gave away his personal necessities to his men and foreigners.

From by the few examples I have listed above it can be seen that he was a fine person and of high moral character. The above are facts that I have experienced in my three years together with him as one of his men. Therefore I ask his acquittal.

5 December 1946

FUJITANI, Mano

I certify the above to be a true and complete translation of the original petition of FUJITANI, Mano to the best of my ability.

EUGENE R. HENRICH, Jr.,
Lieutenant, USNR,
Interpreter.

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

[redacted]

I am a person who was formerly an Jesuit Atoli.

Hearing that former Major, Imperial Japanese Army, Furuhi, Hideomi, is to be tried, together with my prayers that he be found not guilty I am writing this letter in petitioning your Honor the President of the commission that he be found not guilty.

He is a person of noble character, he had no greed, he was fair, open, and was very kind to people and looked after them well.

I have spent many years in military service, but I have never seen a person of such high character. No matter what, I cannot think of this person who prayed for peace, as a person who would commit a crime. He always made a distinction between official and personal affairs. Toward his men and civilians his attitude was one of love. He was very greatly respected by the civilians. It is not in his character that a religious person like him could commit crimes. I stress strongly the fact that his is a noble and humane character and he could not commit any crimes. I ask from the bottom of my heart that he be acquitted.

I am praying that after your esteemed consideration you shall give him a fair judgment.

10 December 1946

KAWAGUCHI, Kenichi

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 39a"

Major Furuhi from the time he arrived to take up his duties on Jaluit in the latter part of 1943, worked under severe bombardment and took orders from Rear Admiral Masuda. There was no distinction made between the army and navy. I was a member of the navy, but it was almost as if I was one of Major Furuhi's men. Major Furuhi was a soldier with a very strong spirit of loyalty and if it were the orders of a superior officer he would never hesitate to go through bullets or fire. He was a person who did throughly what he thought was right. Again he loved his men greatly and whenever he heard that someone had entered the hospital or that someone had been wounded, he made no distinction between army and navy, always going to see him and cheer him up. On Jaluit there was no distinction made between regular military personnel, gunsekus, and natives, we all lived in the same way. The ammunition was low, there was nothing to eat and starvation conditions prevailed. I believe that it was through the efforts of Rear Admiral Masuda and Major Furuhi that we were saved from this living hell. I wonder why the benefactor of our lives is to be sentenced. I sincerely believe that the actions taken by Rear Admiral Masuda and Major Furuhi on Jaluit were never wrong.

If Major Furuhi is sentenced I would doubt the righteousness of justice.

Major Furuhi has parents, a wife and child. How they must be awaiting the return of Major Furuhi. Your Honor, the President of the commission, please believe in the character of Major Furuhi. Please try to understand what I have been trying to say. I request the fair and honest judgment of one of the first nations of the world.

2 March 1947

MIYAZAKI, Yutaka.

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

EUGENE R. HENRICH, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Keaney Lieut. USN

"Exhibit 20"

[redacted]

I think I am a man who knows Furuhi, Hidesaku better than anyone else. When he was in the middle school he was living in my home. He was mild and benevolent, never quarreled with others and was sincere and earnest.

I am very much surprised to hear that he is still remaining on Guam as a war criminal.

He is not a brutal person. I believe that God will know this well. It is said that your country is the most humane and benevolent one in the world. Please believe him and save him after your careful examination about his character.

At his home, his wife and son are looking forward to his return. Their living condition is really a miserable one. They have no income while the prices are exceedingly high at present. So they sell their properties one by one and can hardly maintain their livelihood.

I beg you to save this pitiable mother and son. In order to save them, please repatriate Furuhi to Japan. I beg the benevolent members of the Marianas from all my heart that you will allow him to go back to Japan as soon as possible.

4 December 1946

HASHIZUME, Tsuchiko
1-chome, Ogi-machi, Takata-shi,
Niigata-ken.

To: The US Members of the Commission of the Marianas Area.

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

EUGENE E. KERRICK, jr.,
lieutenant, USNR,
Interpreter.

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

"Exhibit 23"

0706

[redacted]

Your Honor, the President and Members of the Commission; many thanks for your efforts in giving a fair trial. I was an army private, a subordinate of Major Furuki. I once thought that we should starve at Isolated Jaluit, but I could be relieved, with other thousands of comrades, from starvation, by the exertions of Major Furuki. I have heard that he is to be tried, and I would like to state the following for our noble major.

Major Furuki, my battalion commander and commanding officer Masuda were really fine persons at Jaluit. I paid my utmost respect towards Masuda, but Major Furuki was also as fine as he. Major carried out anything difficult if he thought it good for the country. We took the initiative in any tough jobs. He was full of a sense of responsibility and righteousness, was kind to his subordinates and polite. We could find no fault in his deeds.

He was free from avarice; he drew an exact line between official and private matters; he was thoughtful and benevolent; he always believed in God, thanked and loved the natives. I heard that, during the war, when he visited natives on the islands of the atoll, he used to listen to what natives desired, looked after them kindly and did various things for their comfort.

We had such a fine officer at Jaluit that we have had no conflicts, such as "army v. navy" or "officers v. enlisted men." Any superiors and subordinates shared hardships together and we could keep our unity. These are all due to the efforts of Major Furuki.

He was also called father of the thousands at Jaluit, and was loved and adored as if he had been their father.

Can such a man of noble character commit crimes? I think he has been placed in a false position.

Your Honor, the President and Members of theCommission, I beg you will try him fairly and carefully.

We, the people on Jaluit; owe the fact that we were relieved from starvation to the appropriate management of Major Furuki. If it had not been for him, we would have starved. He is the father of our lives, our benefactor.

I cannot bear the fact that Major Furuki, our benefactor is to be punished. I can not understand why the benefactor of thousands of people ought to be punished. I affirm that he thought and did only what was right. He believed it right, so he did it.

I beg you will have consideration on his personality, his upright character, and that you will deal fairly with him. I hope you will have sympathy for his parents, brothers, wife and child who are looking forward to his return.

Your honor, the President and Members of theCommission, I think you can understand the upright character of the accused and beg you will fairly, benevolently and leniently try him in the court of the first nation of the world.

28 February 1947

AKIZUKI, Masumi

To: Your Honor, the President.

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

[redacted], Jr., [redacted]

CERTIFIED TO BE A TRUE COP
James M. Kenny
Lieut. USN

0707

[redacted]

Your Honor, the President and Members of the Commission, we are all thankful for your efforts to give fair trials to war criminals according to the moral standards of civilized society.

Major Furuki who has been accused was formerly an indispensable first-rate leader of the garrison at Jaluit Atoll. I was then attached to the headquarters and he guided us kindly both in official and private matters.

I heard that he is to be tried, and I would like to mention the following for the sake of this fine person.

During my time of more than three years on Jaluit since I arrived there, he was the most respected officer I had ever seen. He was upright, intelligent everything responsible, kind to his men and polite. He was a religious man. He earnestly believed in God. He was a close research worker. He loved and thanked the natives.

He was a man of such a noble character that our garrison could unite well. Army, navy, civilians and natives cooperated together and there were no conflicts or disorder among them. Can a man, whom every person at Jaluit respected as a man of noble character, commit crimes? I think it is a mistake that he has been accused. I beg you will try him carefully according to your fair judgment.

We, thousands of people on Jaluit, owe the fact that we were relieved from starvation to the appropriate management of Major Furuki. Without him, we would have been dead. He is father of our lives, saviour of Jaluit. We cannot bear to see our saviour about to be punished, and wonder why the saviour of so many people ought to be punished. Does the righteousness of law mean to punish such a fine person? I beg your fine judgment concerning this point.

He thought and did nothing but what was right. If he thought it right, he is sure to do it. I hope you will understand the truth of his character.

I also beg your kind sympathy for his parents, brothers, wife and child at home who have been looking forward to his return for several years.

Your Honor, the President and Members of the Commission, I beg you will understand his character in what I have mentioned above and fairly, benevolently and leniently try him as a court of a civilized state.

WAKABATSU, Mimoru.

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

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

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 230"

PETITION

I would like to present this petition for clemency in behalf of Furuhi, Hideaaku who is now in your custody as a war criminal suspect.

The place where Furuhi, Hideaaku was born and received education was near the castle of Uesugi, Kenshin, a righteous warrior in the Civil War Era of Japan, who offered his enemy warrior salt, from the shortage of which they were suffering, and moved the heart of the warrior. He received the education of humanity and chivalry, so that I believe that he never ill-treated the enemy prisoners during the war.

His father died in June last year. He was a benevolent, kind man and was loved and admired by his village men. Furuhi, Hideaaku is his son, and was benevolent since he was very young.

As he is not at home now, the life of his family is very miserable. His wife borrowed a room of a snowy hillside house, where she looks after her sick mother and brings up her young child. I cannot but shed tears when I saw here.

If he committed the crimes, I think they were not committed of his own accord but by the order of the General Headquarters. Christ said that he hated crimes, but not the men who committed them. I beg you will deal leniently with him because of this affectionate thought of Christ. I beg you will sympathize with the actual condition of his miserable family and forgive him.

5 December 1946

KOYAMA, Genichi
Nishiaatsunagi, Sangoaura,
Nakakoijo-gun, Niigata-ken.

To: The US Military Commission of the Marianas Area.

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

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

CERTIFIED TO BE A TRUE COPY
James A. Kenney Lieut. USN

"Exhibit 216"

AFFIDAVIT

1 March 1947
IMKI, Tanemori

To Your Honor, the President and the Members of the Commission: Members of the Commission, I would like to express my deepest gratitude for your endeavours day by day and for your life spent without any comfort of people in general, in studying theories of law and in meditating upon the comfort of humanity in order to establish peace and justice in the world. Owing to your exertions the dawn of peace and justice has come. At least, we Japanese can see it. We would like to express our delight for the peace of the world and for ourselves, and, at the same time, to congratulate you.

I am one who fought at Jaluit during the war as a subordinate of Major Furuki who has been accused in your honorable court. I have heard that he is to be tried. I, as one of the subordinates who know him most, would like to state what I believe before you, for his sake and for the sake of justice, and I have the honor to entreat you to fairly and leniently deal with him.

Members of the Commission, Major Furuki was the model military officer. He had never failed to discharge his duty toward his fatherland at anytime and in any thing. If he had been born in American as an American, he would have been faithful to his duty to American. If he finds out what is not just, he dares to resist even to his superiors at the risk of his life. If he thinks it right, he took the initiative. He was always saying, "Never compel others to do what you do not want to do." Whenever he gave an order tohis men, he did it first. He paid his respect to the character of his men. He never scolded his men before many other soldiers. He always tried not to shame his men when others were looking on. We were always taught, "You must treat your men as if you were their father." If his men died in action he never failed to attend the funeral in spite of his illness. He also was sure to visit and console his patients.

Members of the Commission; he was a man of noble character and also a humane person. There was a great difference between when he was on duty and when he was at a private talk. To those who were either older than he or who had better knowledge in their special field, he showed respect and begged them politely to teach him. He was taught religion from privates whose former occupations were Shinto or Buddhism priests. He begged an officer who studied literature when he had been in the University to teach literature. Thus, you can imagine how he was religious and earnest. In his private life he was so broad-minded that every man under his command respected him as his teacher. When our provisions came to be short, he ate coconuts as his subordinates did though he was then suffering from abdominal troubles. If his doctor advised him to eat other soft meals, he ate the same meal as his men until the termination of the war. He was also a religious person. He believed that he could maintain the lives of his men on Jaluit as well as the life our country by praying to God and always made a constant effort to improve himself. Besides, his reliance on thankfulness to the natives were beyond our imagination. It was our principle under the command of the Admiral: "Natives are the treasure of Jaluit and the benefactors of our lives. We must thank and love them." Major Furuki was the very person who faithfully carried it out. When he inspected the islands of the atoll, he always visited patients and prayed for their health. He had such a deep consideration for the cooperation of natives that he never received their gifts. If they forcibly gave gifts to the major, he gave them to other natives who had them not. He never kept these gifts himself.

Members of the Commission; Such a noble character as his had a great influence on the officers and enlisted men at Jaluit. Since the Guard Unit at Jaluit was composed of various kind of troops, we were afraid some conflict might arise among them. But the noble character and instruction of the Major gave them no room for conflict and we could avoid conflict between officers and enlisted men or between military personnel and civilians which were then frequent on other bases of Marshall Islands. We owe that we were saved from starvation to his exertions for our self support. Our farming went on well. If he had not been at Jaluit, we should have been dead. He is the benefactor of thousands of men at Jaluit, it was he who saved Jaluit.

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

"Exhibit 29a (1)"

Members of the Commission; can you believe that such a man of noble character, the Saviour of Jaluit is a criminal. I can not believe so on my account. I cannot help thinking that he was upright, a man of noble character and a benefactor who exerted himself to rescue Jaluit from starvation.

Members of the Commission; he is sure to be not guilty. I think that by any fair discernment of you sacred members you will understand his innocence. I beg you to find out the truth in him with your sacred eyes as judges. Thousands of people who were once at Jaluit are praying for your benevolence.

Members of the Commission; please remember that his dearest wife and a child who does not yet know his face are looking forward to his return in a snowy country home under a terrible food shortage. I beg you will have sympathy for his wife and pitiful child.

Members of the Commission; please understand truth, in him, by removing every hindrance. I beg you'll judge him with the fairness and sympathy of civilised states for peace and justice in the world.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

PETITION

6 December 1946

From: Sympathisers of Furuki's native village:
Nishimatsunoki, Sengomura, Nakakeijo-gun, Niigata-ken.
To: The US Military Commission of the Marianas Area.

Furuki, Hidesaku was born and reared in our village. He was mild and kind, and we never have heard that he did mean things. He was diligent and kind, and was loved by people. His family is now suffering from hard living. There is no was to help them but his return. Therefore, we jointly beg you to repatriate him.

Signed and stamped by:

SEKIHARA, Katsuji
ITO, Kimi
ITO, Seiichi
ITO, Toki
FUNADA, Terumichi
FUNADA, Hisano
KOYAMA, Tatsu
FUTANO, Fumi
SEKIHARA, Ritaro
SEKIHARA, Kazui
YONDO, Takeo
WATANABE, Shizu
KOYAMA, Hisao
SEKIHARA, Matsu
WATANABE, Tane
WATANABE, Chii
WATANABE, Matsumi
WATANABE, Hideo
WATANABE, Eii
WATANABE, Hide
WATANABE, Isamu
WATANABE, Isao
HIRAI, Juji
HIRAI, Kise
HIRAI, Yasume
HIRAI, Teru
HIRAI, Hideji
ASANO, Seiji
KATAYAMA, Takeji
KATAYAMA, Shoji
KATAYAMA, Rui
KATAYAMA, Yuji
KATAYAMA, Koto
NAKAMURA, Sadaji
NAKAMURA, Koji
NAKAMURA, Tome
NAKAMURA, Eiji
NAKAMURA, Mitsuru
NAKAMURA, Kimi

NAKAMURA, Fumiko
KOSE, Masaji,
KOSE, Mitsuru
KOSE, Tenji
KOSE, Kiyo
KOSE, Masahira
KIMURA, Kazuyoshi
KOYAMA, Chiyoko
WATANABE, Tamao
ITO, Nami
ITO, Benji
ITO, Motoji
HINOMIYA, Chiaki
FUNADA, Terukame
FUNADA, Kimiko
FUTANO, Chuichiro
HINOMIYA, Tomonari
SEKIHARA, Kito
SEKIHARA, Junji
FUTANO, Chuichi
NAKANO, Jisaku
SEKIHARA, Sadakichi
SEKIHARA, Toki
ASANO, Ryushoro
ASANO, Sadaji
ASANO, Hisao
ASANO, Nane
ASANO, Kiyo
ASANO, Nobuko
ASANO, Hisako
ASANO, Keiji
ASANO, Shigeo
ASANO, Shoji
ASANO, Tamiko
ASANO, Nui
ASANO, Masanao
ASANO, Ichiro
ASANO, Hideo
KAMIKADO, Natsuko

KAMIKADO, Kimiko
SEKIHARA, Masahisa
SEKIHARA, Masaichi
SEKIHARA, Shigeru
SEKIHARA, Kikuno
SEKIHARA, Toshiko
SEKIHARA, Mitsu
SEKIHARA, Bunji
KATAYAMA, Yasuharu
KATAYAMA, Yoshiharu
KATAYAMA, Satsu
KATAYAMA, Yoshi
KOBAYASHI, Gosaku
KOBAYASHI, Kosaku
KOYAMA, Saburo
OGURA, Kino
KOYAMA, Toku

I certify the above to be a true and complete translation of the original petition of the above named persons to the best of my ability.

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

"Exhibit 2Cn"

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

0712

[redacted] FOR FURUDI, HIDEHARU, MAJOR, IJA

Major Furudi was born in a benevolent family and was brought up in a plain hillside village. He is gentle, humane, and affectionate to others. When he does anything at all, he is fair and always acts impartially. When he commanded his men, his watchword in leading them was "righteousness." He never commanded his men by his superiority of rank or threat. With a gentle smile and with love and right, he took the initiative in his unit, so that his unit was as cheerful as a family and he was loved as if he were the father of the men.

He was thankful, of high virtue, and very religious. He was such a humane gentlemen that he could never commit crimes.

At his home, his helpless wife and young child are looking forward to the day when he will return. They can hardly subsist, but I am afraid that they will soon suffer from starvation.

The situation is as such. I, as one of the subordinates of Major Furudi, hereby place this petition so that you will give your kind consideration and he will return to Japan after being found innocent.

7 December 1946

FUKATSU, Takeo,
1st Lieutenant, IJA,
Ex-1st South Seas Detachment.

To: Your Honor, the President of the US Military Commission of the Marianas Area.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James I. Kenny Lieut USN

[redacted]

0713

[redacted]

The President and the members of the commission; I wish to thank you for the strenuous work and attention you have shown since the opening of the trial, in spite of the scorching heat of Guam.

I wish you would take into consideration a few instances which I shall relate about former Major Furuki, Hidesaku now on trial, and give him the most lenient judgment.

For more than 9 years and a half, I was attached to the Battalion Headquarters and as I had served directly under him, I had come into close contact with his daily life and speech. I know him as a man who never falls behind the others. What I am going to say about him, might be a subjective view, but I am convinced you will be able to understand his character.

He is gentle, sincere and pureminded. He does not expose his aroused or emotional feelings. He is a man of deep thought and never acts rashly and inconsiderately. Whenever he does anything, his attitude is most careful and he scrutinizes it without overlooking the smallest detail, when he is confronted with a problem, he makes a thorough investigation, studies the various teachings and references as much as possible and always is ready to listen to the opinion of others, even that of a lowly soldier. He would always carefully look over and correct even an unimportant document and never stamp his seal on an unread document.

He is a shrewd, discreet observer, always ready to grasp the important point of an issue. "Man is not almighty, but we endeavour to look at the main issue of the thing and never abandon ourself to be little-minded and prejudiced." These are the words of Major Furuki. When I recall the orders he had given to me and others under various circumstances, and examine the results, I find there is not a single one that had been unreasonable.

The self-possessed, cool attitude may convey a conservative character; but in reality he is a man of strong and positive will. His unsurpassed power of observation, especially in grasping the main issue of the problem, enables him to predict the future and judge with preciseness.

Based on this power of judgment, every preparatory step is materialized with all possible speed. But when once his determination is made, he is a man of stern will who heeds no difficulty, nor alters his determination under the influences of other; a man of firm belief who holds absolute confidence in his principle and never ceases until he has fulfilled it; a man of practice who exerts all his power and mind, carries out it with full responsibility.

Both introspective and extrovertive natures are present in him evenly balanced. He does not possess that bluntness, peculiar to a soldier, but is willing to compromise and a man of common sense. He was never reluctant in meeting someone. He was not talkative but always self-possessed and all who came in contact with him felt a deep inner nature in him.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 20a (1)"

Major Furuki is a man of sincerity and all of his daily conduct is adhered from it. His official and private life is governed by righteousness, humanity and love. He was a devoted soldier and performed his duties faithfully. There was not a speck of selfishness in him and he always exerted the utmost effort. He was not the mere Commanding Officer of the battalion, but as Major Furuki of the Jaluit Garrison, he did not spare himself in assisting Admiral Hasuda; this fact has been well known among the members of the Garrison.

"Happiness can be found when we are satisfied with the circumstances in which we are placed, regardless of the time, place and condition. I believe, Christ had died smiling on the cross and Socrates with a smile had drunk the poison. We should not look above for there would be no limit, but we should always know that our countrymen are continuing under conditions far worse than ours. It is a pleasure to be able to work under conditions such as we are in now. Therefore I am happy." These were the words and mental state of Major Furuki, who had been experiencing unimaginable hardship at that time in Jaluit.

He was strict about military discipline, his teaching and supervision concerning discipline namely "Absolute obedience to superior's orders", were thorough. If this was not obeyed he would not stand for it in the least. "Officers should be above all the first in maintaining discipline. You should make it your second nature." This was what he was always impressing upon his junior officers. It was always by his initiative, by his setting the example and by his teachings that the officers were encouraged, under that hopeless condition, when everyone was apt to become desperate. At that time, when Jaluit was on the verge of death, any slackening of discipline meant self-destruction so in order to maintain the existence of the army, discipline was especially demanded.

Major Furuki was fair in everything. He strictly enforced the rule, "justify the right and punish the wrong," regardless of whether they were officers, petty officers or soldiers. He was not prejudiced against, military personnel, civilians or natives, in fact he dealt more leniently with the latter two.

He always took the initiative. Whenever he demanded something from his officers he himself experienced it first of all. He showed us how to utilize the natural resources of the island and always was sure to confirm his practice. I would like to explain a few examples.

He visited the outlying islands by himself when the situation permitted. He did everything in guiding and encouraged the self-support of the Garrison. Often his life was endangered (by storm), but he would never give up. Every day he would tour the various troops and inspect their training, fortification and sanitary situation.

He would always be present when there was schooling, as to the handling of rifle and artillery. He would take them up and teach.

When self-supporting became an urgent and inevitable matter, the civilians and natives were taught how to collect teddy. He, himself joined

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

in this course and climbed trees to learn. When scabies and ringworm spread throughout the various units, he did not leave the situation to the doctor, but made a tour with the doctor and directly inspected the patients by himself. Every morning he would don his protectors and practice fencing with the soldiers in front of the headquarters. As clothing became short, he was worried about the soldiers appearance who looked like beggars, but he always wore clothes which had been mended over and over again.

Major Furuki was a man of faith and religion. "Without peace of mind we shall always be unsatisfied and complaining" he would say and meditate. We who were in contact with him know that he had always been praying.

Major Furuki is a man of stern integrity and was strict to himself. It was well known among the members of the Garrison that he had satisfied himself in eating indigestible food supplied from natural resources, and never violated the food consumption rule; though he held the most important position in the garrison and was suffering from stomach trouble.

He always respected the right of others. He never placed an unjustified restraint on the liberty of his officers, nor ignored their character nor exploited them; this can be said with greater emphasis.

Major Furuki was a man of love. "The basic principle of command lies in sincerity and love." He would always say this in educating his officers. It is evident fromthe preceding examples that under all circumstances he treated his subordinates and people by this principle.

He disapproved private punishment and the exercising of brutality. He demanded this of his officers also.

One day one of his subordinate warrant officers assaulted a soldier for violating the food consuming restriction and punished him. Hearing this, he called the warrant officer to the headquarters and said to him: "There is an old saying 'Though there are many children, my child, I love thee most.' It is real paternal affection to love one's child and even more, if it should be mentally deficient. An officer who is entrusted with the lives of his subordinates should always have this love of kinsmen in mind, in treating him. Therefore, to strike ones subordinates is inexcusable."

When Major Furuki was a captain and serving as commanding officer of the artillery company of No. 16 regiment at Toyohashi, there was a certain soldier who had several criminal records against him. Even after he came into the army, his criminal habits still should no sign of ending. One day he was confined in the brig. Captain Furuki talked with him all through the night with him in the brig, so that he might find the right way. After he was released Captain Furuki invited him to his home whenever the soldier was on liberty. He spoke to him and finally made him see and thereafter he became the outstanding soldier of the company. (I heard this directly from Major Furuki.)

He would always pay a regular visit to the sick bay and comfort the patients. Whenever one of his subordinates were to die in action, he would drop everything and hastening to the spot, with his own hands touch

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

"Exhibit 20a (5)"

the bodies which had been bombed or bombarded and console their souls. In his eyes were tears. This act of humanity he not only showed to the military personnel and civilians, but also to the natives for whom he always sought happiness and advantages.

In January 1945, when the conference of Commanding Officers of the outlying islands was held, he delivered the following speech, "In order to command or administer people, it is not the best way to perform it by oppressing them by military force or absolute power nor by flowery speech. The basic principle of command and rule lies in 'sincerity' and 'love'. If each of the Island Commanders treats the natives with sincerity and love they will obey you gladly."

When he had finished investigating and was to let the natives who were connected with the native criminal case return to the island, he would meet them when not previously occupied and gave them tobacco and other things valued highly at that time, and cautioned them about the future.

He exerted all efforts to mitigation the native criminals. He tried hard to fulfil the demands and opinions of the natives. He built an air raid shelter in the native village, thought of a way in which to relay the air raid alarm without delay and had them put it into practice.

As to food rationing, he distributed it equally among the military personnel, civilians and natives; but the sick and infants were entitled to special ration.

To promote the living conditions, he often sent medical doctors to look over the sick and carried out health examinations for all of the natives. He did everything to enlighten the natives with health ideas. He encouraged the natives to use "heads" and built schools for the native children to promote culture. He encouraged them to make and use substitute clothing. He always considered recreation for the natives and sent puppet shows and other entertainers.

As to labor, he established the system of labor administrators and endeavoured to equalise the labor of the military personnel, gunsoku and natives. In order to express his gratitude for the work and cooperation of the natives he gave them appreciation papers and coupons exchangeable for goods (which was promised to be fulfilled after the war.) When the war ended and the natives no longer came under the administration of Japan, he stated, "We must express our gratitude for the cooperation shown to us by the natives," and with the consent of Admiral Masuda, he distributed special ration of rice and exchanged the coupons for goods. Whenever he went out to the other islands, he asked about the native's living conditions, thanked them for their cooperation and went into the house to visit the sick.

The character of Major Furuki is as I have described in the preceding paragraphs.

It was due to the noble character of Admiral Masuda and to the able assistance of Major Furuki, that Jaluit was able to escape from the chaos of living hell (riot, starvation, etc.) which occurred in other bases of Marshall Islands and maintain discipline and regulation until the end of the war.

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

"Exhibit 20a (4)"

If I could figuratively speak of Admiral Masuda as an electric generator that light up Jaluit whose dark door of dusk was about to fall, Major Furuki was the accelerating oil. Thousands of lives which were on the verge of death had been saved by this noble character. The same respect and confidence shown to Admiral Masuda by all military personnel, gunsekus and natives were extended to Major Furuki. This person who had saved thousands of lives is now standing in court for trial. Why does a person with such noble character, who cannot do anything apart from "righteousness", "humanity", "love", as Major Furuki, must stand in court and receive punishment. I am beginning to doubt the righteousness of law. Taking into your kind consideration the points I have explained above, I beg your wise and impartial judgment.

At home, his loving wife who was obliged to live apart from him due to the war and his baby Yadae who has not seen his father yet, are trying to find their way in war-torn Japan. They are worrying about him and waiting his return. For the sake of his loving wife and child who is hoping to see their father, I beg you your lenient judgment based on impartiality and humanity.

KADOTA, Itsuro

28 February 1947.

I certify the above, consisting of five (5) pages, to be a true and correct copy of the original petition of KADOTA, Itsuro, to the best of my ability.

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

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 20a (5)"

PETITION

6 December 1946.

From: FURUKI, Shigu-Nishimtsunagi, Sanguemura, Nakakoiju-gun, Niigata-ken.
To: The U. S. Military Commission of the Marianas Area.

FURUKI, Hidesaku, is my brother-in-law. I am very thankful to have the chance of stating before the U. S. Military Commission about his character and family, and beg you will understand what I am going to say.

When I see his diary, I can know his life in the Middle school. He always loved Nature and grew up in Nature. He adored the morning, and prayed in the evening. His diligent and sound life laid the firm basis for the man.

He lived in religion. He hated every evil and tried to live in the world of eternity. I was sometimes told by his subordinates, "My commanding officer is very benevolent and kind," or "My commanding officer loved me very much," etc.

As he always said in his letters, he believes that God and Buddha protect every creature in the world, and he tried to tell his soldiers what he felt at the front. I think this is because he loved Nature from the time he was a boy and he was brought up in nature.

He was a poet, too. He lived in odes and poems and played in poems. I could find the world of poetry in the letters which he sent to me. Also, he wrote in his letter a very polite salutation. "Elder sister, thank you very much for your trouble both at school and home." I thought this was written during a short leisure time beneath a coconut tree. His sadness when he saw his son dead could be imagined through his letters. I believe this is the life of him who lives in a religeous and poetical world.

After his marriage, he left his son of a few months, and his wife, and went to the south where he spent several years. I think he missed these two lovely figures. Of course he was prepared to die at the front. But his bereaved family who unexpectedly cannot have him back is disappointed spiritually, physically and economically. I am every sorry to see them working at an inexperienced job. Therefore, I beg you, the U. S. Military Commission, to understand what I have stated so that he will be repatriated.

Respectfully.

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

RUBENE E. KEPPICK, JR.
Lieutenant, USNR,
Interpreter.

"Exhibit 29a"

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

6 December 1946.

From: INAMURA, Eiichi - Yotsuya-ku, Kasetsu-machi, Niigata-ken.
(Born on 9 October 1918)
To: The Members of the U. S. Military Commission of the Marianas Area.

PETITION

FUKUKI, Hidesaku, who is now confined in the Guam stockade as a criminal suspect of the Jaluit natives case, is my brother-in-law.

As I am living in the far distant place, I cannot know the details of the case, but, as a man who knows his character, I cannot think that he is a criminal.

I beg you will hold a fair trial as your catchword of liberty, righteousness and charity implies, and hope that he will be able to come back to his native place where his lonely wife and child are waiting for him. I also beg you will deal leniently if he is found guilty. I beg you with all my heart to give him the chance to take part in the reconstruction of peaceful Japan.

As a man who knows his character, I would like to state how he was in the past. He was loved by the elder people and admired by the younger people. He was really honest and mild. If he will be able to get a peaceful job not as a military man, I believe he is a very man that is necessary for Japan now.

At his home are a boy of five years old and a wife who are lonely, spending days without any pleasure under circumstances of a shortage of materials. His fine son is looking forward to the day when he will be back. I beg you, the members of the commission, that you will repatriate him as soon as possible and give these three, parents and a son, the chance to have a happy life for the reconstruction of peaceful Japan.

I am sorry to have used many impolite words, but this is my only desire during my life. I shall be very much pleased if you will kindly listen to what I want to say.

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

EUGENE S. KERBECK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 30"

PETITION FOR EX-MAJOR FURUKI, HIDESAKU

When he was in the Amanohara National school, Sangomura, Nakakoi jo-gun, Niigata-ken, I was the teacher of his class between his first year and third year. He was very honest and clever, and never forgot anything he had once heard. When he was at home, he studied hard, helped in household affairs, and was filial to his parents, so that he had a very good reputation. He was obedient to his elder brother and sisters, affectionate and kind to his younger brothers. He was called "monitor" (because he was a monitor of his class) and was respected by his classmates. Although he was young, he had benevolent humanity, and looked after his friends well when he found them in distress. As he grew up, his humane character became finer. I hear that he is to be tried, but I think when I recall his childhood that he cannot do any thing to hurt others. He is sure, in the face of poor people, to do anything he can do for them withhis benevolent feeling. He has a wife and a child at his home who are waiting for him to be back. His wife, as well as he, is famous for her benevolence. She is praying for the luck of her husband for her child. I beg you for a fair trial and you will deal leniently with him.

6 December 1946

NAKAJIMA, Yasu

5-chome, Dai-machi, Takata-shi.

To: The U. S. Military Commission of the Marianas Area.

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

EUGENE E. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

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

PETITION

12 April 1947
SUETSUGU, Sanjiro

To: Your Honor, the President and legal officers concerning the case.

I would like to petition you by this statement for the case of Major FURUKI, and in this opportunity I would like to express my deepest gratitude for your hard work in investigation and trial in this hot weather.

Major Furuki was gentle and noble in character, a model of human beings and loved and admired both by his superiors and subordinates.

Especially, he was a very pious man. He was kind not only to his superiors but also to his men.

For instance, at the front, he always consoled those who were wounded or fell ill during the battles. I often saw him shed tears before those who died. He sighed deeply retretting their death. Really, he is to be called a noble, benevolent man.

He was also impartial to the natives as well as to Japanese. Naturally he was always kind to them but he gave them special distributions of food or priority for receiving the delivery of food. He was always advocating that we had to return thanks for our earnest efforts of the natives.

At home FURUKI has a wife and two children. They will suffer from hardships of living without him.

I have never doubted that the fairest trial is now being held by the efforts of your Honor, the President, and the members of the commission. But I hope your kind consideration and sympathy for the fair findings and hereby place this petition before you.

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

EUGENE B. KERRICK, JR.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 32a"

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

I am one of the persons who have been able to observe at close hand the virtues of Major Furuki. From the time in January, 1944, when the First South Seas Detachment was stationed on Jaluit, I was attached to the headquarters of the Naval Guard Unit.

I have heard that he is about to be tried and I would like to request the following from the bottom of my heart for this fine person.

Major Furuki was a personification of righteousness. What he always spoke about was intense patriotism and righteousness. He was a very religious person and was always reading books on Buddhism. He made no distinction between the burial ceremonies of regular military personnel and gunsoku. He always attended whether he was sick in bed or not. He was a humane soldier and a courteous one. He is a fine person, of good character whom we of the Naval Base Guard Unit look up to and believe in as a person who practices what he preaches, is religious, humane, and righteous.

The fact that several thousand of us did not starve though the provisions and supplies were negligible owing to the fierce bombings of Jaluit and the fact that order was maintined was because the God-like Admiral Masuda, was the C. O., and the fact that we were able to do so was because Major Furuki was available as his right hand.

After the end of the war, I have heard about the miserable conditions of the other Garrisons and I can not help but be thankful for the timely efforts of the C. O. Masuda and Major Furuki. In a way they are the saviours of the lives of the several thousand people who made up our defense garrison and they are our benefactors. This Major Furuki who saved our lives and because of his sincerity in doing so is being tried. To us gives the feeling as if our lives were becoming shorter and shorter and again I cannot but doubt the righteousness of justice.

We ask that the members of the commission will sympathise with the truth about the saviour of our lives, Major Furuki, and that you will judge him fairly on the basis of righteousness.

I ask again that you will take heed of this request which comes fro the bottom of my heart.

1 March 1947.

TSUNAKI, Kenichi
Lt., I. J. N.

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

EUGENE E. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

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

PETITION

From what I have heard, Major Furuhi, Battalion Commander of the Second Battalion, First South Seas Detachment, is to be tried concerning the execution of natives.

From the bottom of my heart I am petitioning your Honor the President of the commission, as a former subordinate of the Major's.

At that time when we had the duty to defend Jaluit, the Major administered the military, civilians and natives with righteousness, benevolence and as a parent. There was not one person who was not moved by his noble character, fairness, his lack of greed and his parental feeling. I can still hear his voice leading the men who at times near the end of the war were apt to be violent saying, "Respect the rules of international morals. Stand and face the issue of world humanitarianism." No matter what, I cannot think that the Major could commit a crime against humanity. Please discern the true facts of this incident and ask your unmistakenable judgment.

15 December 1946

Formerly attached to the 7th Co.
2nd Battalion, 1st South Seas
Detachment. Attached to the
Southern District Jaluit Defense
Garrison.

Former 1st Lt.

SADAMORI, Fusatsugu

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

EUGENE E. KERWICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 346"

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

PETITION

Your Honor, the President: I am deeply grateful for your efforts everyday in order to give a fair trial.

I was a petty officer in the Japanese Navy, who served at Jaluit Atoll for four years. On hearing that Major FURUKI is to be tried, I would like to submit this humble petition for clemency.

Major FURUKI was an Army Battalion Commander, but he was also the highest commanding officer of the Guard. He was the best subordinate of Commanding Officer MASUDA. He was respected and relied upon by Army and Navy personnel, civilians and natives.

Our Battalion Commander took the lead in any tough jobs, was full of sense of responsibility and the model of a military man. He was very affectionate not only to Army personnel but also to the Navy men, civilians and natives. When we had dead or injured from air raids, he used to go to them and console them or their souls. We could not help but be moved with deep emotion when we saw him do so.

Major FURUKI was also the Saviour of Jaluit. As you all know well, Jaluit was then in a miserable condition on account of terrible air raids and starvation. If it had not been for self-support and defense plan of the Major we should have starved on the Atoll.

I cannot understand why our Saviour, the benefactor of thousands of men on Jaluit ought to be punished. I beg your fair judgment on this point.

I also beg you will have kind consideration for his parents, brothers, wife and a child who are looking forward to his return home, and that you will leniently deal with him.

26 February 1947

INOUE, Katsumori

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

EUGENE R. KERWICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 35a."

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

6 December 1947.

To: The President and the Members of the Commission, Commander Marianas Area.

From: IMAMURA, Sayo (age 27)
Iotsuya, Hasetsu, Niigata-Ken, Japan.

PETITION

FURUKI, Hidesaku, is my elder brother. Knowing him as well as I do, I was surprised to hear that my brother has been a war-crime suspect in the "Jaluit native Case." As one of his relatives I beg from the bottom of my heart that you will acquit him and let him return home.

When my brother was a child he had a strong love for righteousness and always cared for us, his brother and sister. Like myself, he has a little boy of 5 years old.

I recall a certain day 5 years ago when his day of departure to war was drawing near, he was bathing his child which had just been born saying that he was doing so because this might be his last chance. My brother who strived to be righteous also had this gentle side.

His wife is now living in the country and has brought up the child without the pleasure of having her husband see him. Sheis living alone with her child now and thinking of her husband who may not return for years.

I beg you will take the above situation into consideration. I cannot imagine why such a gentle brother has become a war-crime suspect. Please deal leniently with him and return my brother soon to the poor lonely child who is waiting for him.

I certified the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE K. KERWICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 36a"

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

PETITION TO THE HONOURABLE LUDGE

OF THE MILITARY TRIBUNAL OF THE MARIANA AREA

Sir:

Hereby the undersigned beg most humbly to tender to you a petition for your sympathetic consideration in behalf of SHUSAKU FURUKI.

Knowing his personaility the way we do, we are most grieved to learn that he is now in detention on Guam as a war criminal, and is shortly to be tried as such in the Military Tribunal.

As a student in Takada Middle School, Niigata Prefecture, he is remember to have been a model student, gentle, kindly, pure of heart, and well beloved of his friends and teachers.

Knowing him as such, we trust that it will not be contrary to reason if we should be extremely chary of believing that he should have committed inhuman acts of cureity in the War. If, however, some cases should be brought to light against him before the court, we firmly believe that they were not motivated by his own will, but that there existed some compelling circumstances created by his superior's orders, the stringence and finality of which never could be questioned by the subordinates in the Japanese Army.

"Exhibit 37a(1)"

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

If, therefore, our supplication born of this conviction be kindly acknowledged by Your Honour, and an investigation be conducted into these circumstances, and if thereby some mitigating conditions be found which will prove themselves worthy of your lenience, our gratitude will indeed know no bounds.

Sir, we beg leave to bring it to your notice that we have been accelerated in our petition by the sight universal in its appeal---- the sight of a wife and a child who believe the innocence of a man that has been to them a loving husband and an affectionate father (i. e. Shusaku Furuki), and who are trembling at the same time for anxiety about his fate because of the seriousness of the accusation brought against him, and are praying day and night for the happy and earliest possible reunion with him.

Date: December 6, 1946.

Signed	Signed:
CHIKARA KAWASHIMA	ISAO SEO
CHIKOTA ISEKI	SHIUICHI HIROTA
SEIICHI FUKAISHI	KENJI SAKAYANAGI
SAKUJI SATO	TAKENORI ISHINO
TAKUMO OKADA	IKUZO HIKI
JUNKAN YOSHIKAWA	MASATAKE SHINODA

"Exhibit 97a(2)"

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

TADAO WAKAI	DAISHO SATO
SUSHI SAITO	TARO MACHIDA
MINORU SAKUMA	YOSHIMARO SATOH
MOBUJI KATO	HURIO HIRANO
KUSUO IWASAKI	SEIGI TOBA
MASARU MAYASHI	YOSHIRA HIRAMATSU
JARUSUKE UCHIO	MOTOE FURUMI
KIOSAKU TAKEUCHI	SHISUHOSAKA
YOSHIHID NIYOMURA	YUZURU WATANABE
KIICHI NAKAZAWA	YUTAKA SATO
ISAO HOJIMA	TAKASHI SHIOHAMA

The foregoing signers are all faculty members of Takada Middle School.

"Exhibit 37a(3)"

CERTIFIED TO BE A TRUE COPY
Edward Kennedy
Lt USNR

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

I am a member of the naval units isolated on Jaluit Atoll after 1944. Through the efforts of Major Furuki everyone on the Atoll was able to live through the miserable starvation conditions. I am one of them. This Major Furuki is now standing trial and I would like to request the following for this fine person.

The Army Battalion Commander, Major Furuki, was a man of fine character and he may have been a better man than Masuda, the Commanding Officer of Naval Units, but never a lesser one. He is a very righteous person, a deep thinker, and a very careful person. In every matter he always set the example and was a very responsible person. We, the petty officers of the Navy, were very much surprised by the Army Battalion Commander, Major Furuki's strick attitude toward training. He was a person of indomitable spirit. On the other hand he was a humane person who always though about his men. He was a well mannered man who was always making a distinction between personal and official affairs. Again he was a religious person who prayed for the safety of Jaluit and also to better himself. Major Furuki's attitude toward the natives was one of love and gratitude. I have heard many times how Major Furuki inspected the outlying islands and looked after them. Because he was of such fine character there was no trouble between superior officers and their men. There was no disorder among as the other islands even though Jaluit was isolated, and this was why we were able to keep our unity.

How can such a fine character as Major Furuki commit a crime? I cannot help but question why it is that this person who is the saviour of my life and who saved several thousand people from starvation is to receive sentence. Members of the commission, he is a very righteous person. He can do nothing but righteous acts.

At Major Furuki's home waiting for his return are his parents, brothers, sisters and his wife and child. Please have sympathy for them. I request that through the fair and honest judgment of the members of the commission, he shall be cleared of all charges.

February 28, 1947.

MORIURA, Fukio

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

EUGENE R. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

5 December 1946.

From: AOKI, Matsuhei - 2chome, Terue-machi, Takata-shi, Japan
To: The U. S. Military Commission of the Marianas Area.

PETITION

I hear that FURUKI, Hidesaku is now confined in the stockade as a criminal suspect of the Jaluit native case. I would like to beg your lenient judgment so that I shall write about his character, etc., as follows:

1) The relation between FURUKI, Hidesaku and AOKI, Matsuhei:

FURUKI was a pupil of the Amanohara school when AOKI was the President of the school.

2) My plan of the education of pupils as the president of the Amanohara School:

I posted up a notice of the five articles of my school in the playground: "Be faithful," "Be kind to anybody," "Be courteous," "Study hard and play hard," and "Always be bright." I chose righteousness and humanity as a standard of benevolence, the center of the education and the articles for pupils to practice, and tried every day to carry them out.

3) Concerning FURUKI, Hidesaku.

1. His character. Mild, of few words, kind to friends, led younger pupil well, chivalrous, helped weak pupils, when quarrel occurred he tried to stop them. His school record was very good, and he was respected by his classmates.

2. His father, Kosa. Died a few years ago, was the chief of the credit association, mild, sincere and reliable.

3. His brother. Both his elder and younger brother are the teacher of the Takata Middle School and are much relied upon by students.

4) Petition.

There is a saying: "The child is the father of the man." The character of childhood, whether good or bad, will never change, so that in Japan the education in the primary school is thought very important. As FURUKI was benevolent, humane, sincere and chivalrous, I cannot believe that he did cruel deeds against the natives. I beg your consideration concerning the character of FURUKI, Hidesaku, his late father, and brothers, and you will deal leniently with him.

Respectfully.

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

EUGENE E. KERRICK, JR.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

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

"Exhibit 39a"

PETITION

Your Honor, the President and Members of the Commission.

Many thanks for your efforts in giving a fair trial every day. I served as a subordinate of Major Furuhi at Jaluit Atoll. I hear that he will be tried. I would like to submit my humble petition for clemency for the major whom I admired and believed to be God.

Major Furuhi was admired and relied upon not only by me, but also by the thousands of military men, civilians, and natives on Jaluit and was respected as God.

Major Furuhi was an upright, benevolent person; both as a superior and as a man he was of most admirable character. Even now, I can recall exactly how he gathered scattered pieces of bloody flesh of the air raid victims and tearfully prayed before them. He touched the bloody corpses of dead subordinates and prayed for the consolation of their soul. Is there any Battalion Commander who is as noble as he?

He was then suffering from abdominal trouble. When his doctor advised him to eat rice soup, he refused saying, "I can not eat precious rice, because all my subordinates are living on coconuts." Then he continued to eat coconuts which were hard to digest even for healthy man. He gradually grew thin on account of that, but he never intended to eat rice.

He was always thankful for the natives, and the natives yearned for him saying, "Battalion Commander." We owe the fact that he could survive on Jaluit under the most tense air raids and starvation to the efforts of Major Furuhi. If it had not been for his deep affection and appropriate management of strategy and self support, many of our thousands on Jaluit would have starved as those on the other islands of the Marshalls. Major Furuhi is our benefactor of life who saved us by his affection and appropriate management.

He was very pure, upright, and religious, too. I do not understand why our God, our benefactor ought to be tried. I think it is a mistake. He was worshipped as God by thousands of military men and natives of Jaluit. Of course he never committed crimes nor did his acts violate the law. I beg you will understand the noble, divine character of Major Furuhi, and I request that you take into your kind consideration his wife and child in the snowy country of Japan waiting, in this terrible food crisis, for him to be back. I beg you will fairly and benevolently judge him.

February 1947

FUKATSU, Tadashi

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 408"

PETITION FOR CLEMENCY IN THE CASE OF EX-MAJOR FUKUDE, HIDEHARU

Commanding officer Fukudé was born and bred in a hillside village. He was benevolent and affectionate to others, impartial and never did a wrong deed. In assuming the leadership of his men, he always taught them what is right, never drove his men by his superiority of rank, and he took the initiative in everything so that our unit was like a pleasant family and he was loved by every member of his men.

He was thankful in everything and had a strong belief in God. He is such a humane, fine person that he would never commit a crime. His wife and a young child are awaiting the return of their father and husband.

I beg your kind consideration on what I have just mentioned and that you release him and repatriate him.

15 December 1946

ex-corporal of 1st South Seas Unit
ISHIKAWA, Fumihei

To: Your Honor, the President of the Military Commission.

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

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

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

5 December 1946

From: KOBAYASHI, Tetsuji.
To : The US Military Commission of the Marianna Area.

I am one of the relatives of FURUKI, Hidesaku. I felt very much surprised and sorry to know that Hidesaku is now confined in the Guam Stockade as a criminal suspect of the Jaluit natives case and is to be tried soon.

He was born in a grassy farming village and was brought up there in a plain manner. He was full of a sense of responsibility, plain, honest, kind, and fair to others. He was a clever pupil at school when he was young, and was very much trusted both by his teachers and classmates. After finishing the course at primary school, he entered the middle school where he was appointed to be a monitor. Once he was absent from school for about a year because of illness, but he was promoted to the next grade. After graduating middle school, he determined to be a military officer and tried the examinations of both Naval and Army Academy. He passed them both. I think that this shows well that he was popular among his teachers and comrades and that he was very excellent at his study. The reason why he entered the Army Academy after he graduated from middle school was he tried not to burden his parents with the expenses of his education.

After he determined to be a military officer, he, as all the other Japanese did, served his country faithfully, obeyed any order of his superiors and endeavored in the establishment of military discipline. He had a consistent military spirit. I do not know about the details of the Jaluit case. If Hidesaku is guilty in this case, I think that a part of the responsibility, or the great part of the responsibility of the crime lies upon not Furuki, Hidesaku himself, but a military man Furuki. I am very surprised at this, and, at the same time, I feel very sorry.

Hidesaku has a wife and a child. His lonely family, without a husband or father, is suffering from a hard life. They are looking forward to his return so that he will open their way of life.

It is quite natural, that, if Hidesaku committed the crime, he ought to be fairly and severely punished. I have no complaint about that. But I beg you will have kind consideration concerning what I have just said when you judge him. Please understand what I mean to say.

Respectfully.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Leary Lieut. USN

"Exhibit 42a"

[redacted]

6 December 1946

From: FUKUKI, Yoshiko - Nishinatsumogi, Sangomura, Nakakoiji-gun, Niigata-ken, (Japan).
To : The US Military Commission of the Marianas Area.

My uncle is a very gentle and kind man, so please repatriate him soon. And his son Tadao is looking forward to the day when he will return so please repatriate him.

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

EUGENE R. KENWICK, jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 430"

0735

[redacted]

6 December 1946

From: FURUKI, Yasuo - Nishinatsuncki, Sangomura, Nakakeijo-gun, Niigata-ken. (15 years old.)
To : The US Military Commission of the Marianas Area.

Furuki, Hidesaku is my uncle. He went to the southern front when I was very young, so that I don't know about his character in detail. But by the post cards he sent, I could know his character. He said, "This world must be built by young people." I knew from these words that my uncle's character was as bright as a young man and that his heard was as upright as a young man.

My grandfather said, "We kept geese years ago. Hidesaku loved them, and used to go to the stream in front of our house and played with them." From these words, I can also see that my uncle was bright and upright.

At his home, Tadao is looking forward to his father's return.

I beg that you will understand the character of my uncle in trying him, and hope that he will be back soon.

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

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

CERTIFIED TO BE A TRUE COPY
Jondo P. Keady Lieut. USN

[redacted]

0736

[redacted]

6 December 1946

From: FURUKI, Shigeo - Nishimatsunogi, Sangenma, Nakakoji-gun, Niigata-ken.
To : The US Military Commission of the Mariana Area.

Furuki, Hideomi is my younger brother. I am very thankful to have the honor to state his character and his family condition before the US Military Commission. I humbly beg that you will understand Hideomi, and hope that he will be found not guilty and allowed to return.

He has loved literature since he was young, and desired to be a literary man. As the social system of Japan at that time was an incomplete one, genious of the countryside village often had no opportunity to develop their gifted character. He was also one of them. He had so excellent an integrity and feeling that he was influenced by the propaganda of the government in the emergency at that time. He resolved to work for his country and became a military man. He had no brutality in this motive. It was his sincerity that made him such.

From the battle field he often sent me letters. In his letters I could find that he maintained a pure mind although he was in a desolate battle field. This was because he loved literature since he was aboy, and his attachment to literature became his character and ruled him even when he was in a bloody front.

Letters from his subordinates informed me that though he strongly fought in the reality of battle he never forgot to shed tears for the lost lives.

As a military officer who seizes in his hand many lives of other people, his faith was thorough with the virtues of all human kinds.

His remaining family, his young wife and son are suffering from hardships of life both spiritually and physically. I beg the kind consideration of the US Military Commission, and pray that he will be back soon.

Respectfully.

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

EUGENE B. FERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

"Exhibit 456"

[redacted]

I would like to place this humble petition before Your Honor, the President of the US Military Commission.

Furuhi, Hidesaku has been sincere since he was very young. For six years from the time he entered primary school till he graduated from it, he was an honor pupil. Not only was he excellent at his studies, but also his behavior was very gentle. He was so much gentler and milder than other pupils that he was the model pupil.

After he entered middle school until he entered the Army Officers School, he received mark "A" for his behavior. Concerning his character he was the best student among his classmates.

After graduating from the Army Officers School, he took part in the Sino-Japanese incident. During that time, he showed his noble character and firmness of a sense or responsibility, and was the model among others. Any superiors or friends who were at that time with him prove this fact. Summing up the above, I beg Your Honor, the President to understand that he is a man who would never commit crimes. Besides, in his home, his sick wife and his young son are looking forward to the day when he will be back. If he will be unable to go home, there will be no way for his wife and son to maintain their living.

Your Honor the President, I beg your special consideration and you will deal leniently with him.

NOKTO, Seiichi
Nephew of Furuhi, Hidesaku
1-chome, Tera-machi, Takata-shi,
Higata-ken.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

[redacted]

[redacted]

I beg you will deal leniently with Furuhi, Hideomi.

He is of noble character and does not like what is unjust. He is honest. He is not a man who would commit a crime. He was kind to others and an obliging man. At home, he has his wife and child who are physically weak. If he will not be able to work for them it will be hard for them to live. I am especially sorry for his wife because she is too physically weak to work.

6 December 1946

NAKAJIMA, Fuji,
sister of Furuhi.

Kanayamamura, Nakakoiji-gun.

To: The US Military Commission of the Marianas Area.

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

EUGENE E. KENRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 470"

[redacted]

By the following reasons I humbly petition you to deal leniently with Furuhi, Hideomiu, who is now confined in the Guam Stockade.

1. His character.
   He loved righteousness since he was young and especially hated what was wrong.
2. His nature.
   He was mild and modest, friendly to his comrades and full of a sense of responsibility, so that he was often praised by his neighbors and school teachers. Considering his nature, we can not think that he should commit any crimes.
3. His family.
   Since both of his wife and child are physically weak, they can not maintain their life without him. They are now under the care of their relatives and acquaintances, so that lives of his wife and child depends upon whether he will be back or not.

December 1946

NAKAJIMA, Kiyoshi,
brother-in-law of Furuhi.

Mukohashi, Kamoyamura,
Nakakoiji-gun, Niigata-ken,
Japan.

To: The US Military Commission of the Marianas Area.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

[redacted]

0740

PETITION

To: The US Military Commission of the Marianas Area.

From: UMEKAWA, Tame, relative of FURUKI, Hidesaku.-Imaike, Sangomura, Nakakoiio-gun, Niigata-ken, Japan.
KOBAYASHI, Gunjiro, relative of FURUKI, Hidesaku. - 3-chome, Minamijo-machi, Takata-shi, Niigata-ken, Japan.

We, relatives of Furuki, Hidesaku, are now in deep sorrow to hear that he is now confined in the Guam stockade as a war criminal suspect. We can not imagine that righteous Hidesaku should commit any crimes, even if it were during the war. We expect that he will have a fair trial, found not guilty, repatriated to his wife and child who are waiting for him and then endeavor hard for the reconstruction of new Japan. But, on the other hand, we are very anxious for his fate when he might be found war criminal because of obedience to the order of his superior.

He was brought up under the deep affection of his parents, so that everyone knows that he is a gentle person who does not know the bad side of the human beings. We can never imagine that he committed any cruel crimes. But at the same time we think that we might not be able to deny it if he was forced to do so by a military order to which anyone can not help but obey. Since the Meiji Restoration western civilization was introduced to our country, and such thought as to honor individuality in the social system appeared. But, it was nothing but an imitation of the surface. Especially in the military service, the authority of the superior was absolute. No one could criticise orders, and orders ought to be carried out immediately. In dividuality was entirely disregarded. Of course you will know about that, but we hope you will again consider the strictness of orders to the Japanese Army and we petition you to deal leniently with him.

Respectfully.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James A. Kenney Lieut. USN

"Exhibit 498"

To Your Honor the President of the Military Commission,

[redacted]

We certify that Furuhi, Hideomi, the 2nd Battalion Commander of the 1st South Seas Detachment did no inhumane deed and beg you will deal leniently with him.

His former subordinate

OHNISHI, Gengoro
692 Shinchiwa, Kawatehimura, Umagun,
Ehime-ken, Japan.

INOUE, Akira
Higashimachi, Nishiwamachi, Umagun
Ehime-ken, Japan.

TAKEHARA, Yukimasa
TAKAHASHI, Minoru
Kamimachi, Nishiwamachi, Umagun,
Ehime-ken, Japan.

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

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

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

"Exhibit 90a"

[redacted]

To the President Military Commission, H.I.

I was very much surprised to hear that Furuhi, Hidemaku was to be tried as a suspect in the Jaluit native incident. We are writing this petition in the hope of his acquittal or mitigation of sentence. Furuhi is said to be a person who is very benevolent and his sense of sacrifice is very strong. I do not know the details nor the facts about this incident. I have heard that it was because he had striven day and night to feed his men that the several thousand men had been able to return home from the far isolated island where the food had been extremely scarce. I do not know what crimes he committed, but from what I judge from his character, he must have taken the responsibility as the commanding officer for his men, because he loved them and again that other people would not be involved. Many people talk about benevolence and sacrifice, but Furuhi, who went forth and took the responsibility to be tried before a military commission, for heaven knows what, is the kind of a person who is needed in the building of a new Japan.

Please your Honor the President of the commission, please keep this point in mind and I ask that he be acquitted or his sentence mitigated.

10 December 1946

Signed by:

NAGATA, Hasuo
ONOKI, Tame
TAKEUCHI, Sue
OTOCHI, Yoshiko
YAMASHITA, Sueni.

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

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

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

"Exhibit 52a"

PETITION

I have heard that Furuhi, Hideomin is to be tried, as a suspect in the Jaluit Native's incident. I am submitting this petition asking that his sentence may be mitigated.

Furuhi, Hideomin, was a gentleman abounding in benevolence and had a strong moral sense.

I do not know the events of this incident, but, that several thousand were able to return home from an isolated island where food was extremely scarce was all due to Furuhi and my whole family is grateful to him.

Furuhi especially is not a person to commit an inhumane act. I do not know what crimes Furuhi may have committed in this case, but I think it was because of his love for his subordinates or that other persons would not be involved, or he took the responsibility as the commanding officer and offered himself as sacrifice.

Many people preach benevolence, and sacrifice, but I wonder if it is not Furuhi who is the true moralist, taking the responsibility and standing trial before a military commission when he does not know why they shall call him to account. 25K

I think he is a man needed in the new Japan, especially with his morals.

Your Honor, the President of the commission I plead that you keep this point in mind and acquit Furuhi. 25R

9 December 1946

CHO, Tokumatsu

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

EUGENE R. KENNICK, JR.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 25R"

PETITION

To Your Honor, the President of the Military Commission:

Furuki, Hidesaku, the 2nd Battalion Commander of the 1st South Seas Detachment is now going to be tried in the Military Court. I would like to state for your reference his kindness and benevolence toward us in his daily life, and to beg your kind consideration for his trial.

In order to carry out his duty as a Battalion Commander he always set an example even in our trifling daily affairs. He was full of a sense of responsibility, too. He was always so anxious for the personal matters of his men that he used to summon his men kindly to his room and ask about their family condition. He also used to call on sick men at the dispensary and ask them one by one if they had any pains or inconveniences or gave them nice fruits. He was always so benevolent that he was loved as if he had been their father. We could not find in any respects that he was a man at the front. I certify that he is not the man who injures those who are innocent. Though I can show you his numerous good points as one of his subordinates, I would like to make them brief. Anyhow he is a very important man for the reconstruction of new Japan. Your honor the President, I beg, from all my heart, that you will deal leniently with him.

20 December 1946

MIYO, Yoichiro

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

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

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USA

"Exhibit 530"

Petition for Major ISA FUNUKI, Hideoshu.

I have learned from a person who had recently been demobilized from the Pacific area that former Army Battalion Commander Furuhi was to be tried before an American Military Commission for an incident concerning the natives of Jaluit Atoll. I do not know the facts in the case nor the details, but I who know the everyday life of the man who was a senior person, who lived righteously and who was a man of few words. I am writing this petition from the bottom of my heart that you may know his character.

Furuhi was born on a farm just outside of the city of Takata in Niigata Prefecture. When I visited his home in the autumn of last year I was very much moved by what I heard directly from his neighbors. I was surprised that I know so little about him after all.

1. Many different persons were saying the same things about him such as Hideoshu was not a person to do a crooked thing.
2. He looked after his parents well. No body ever saw him defy his parents.
3. Brothers and sisters were very close and never had arguments. His elder brother is a gentle man, gentle and is a high school teacher.
4. He was easily moved and he would give away his precious things or belongings to his poor friends or people. He never showed that he took pride in giving to them.
5. While he was away in school he came back for vacation. As soon as he finished his studies he would go out in the fields and help out. I have listed the above very simply, but he did what ordinary people could not do without showing either worry or pride. That is where I believe a persons true character shows. I am deeply convinced that whatever Furuhi did, it was not done unreasonably and without feeling. I ask that he may come home as soon as possible.

5 December 1946

SUGIURA, Natichi

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

[redacted] H. KENNICK, jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 24a"

[redacted]

I am very sorry to hear that Furuki, Hideomi, is now confined in the Guam stockade as a criminal suspect in the Jaluit natives case.

I am living in his village and have known him well since he was very young. He was very cordial toward his friends and others, and was very benevolent toward his inferiors. As he grew up, he volunteered to be a military man. As a young officer, he was a man of integrity, and was trusted both by his superiors and his subordinates. He was called "Benevolent Officer" and was a model among the officers of his unit. I am very grief-stricken to hear that a man of such a humane character was arrested as a criminal suspect. I am convinced that he is the man of such character that he could never commit any crimes.

I am especially sorry to think that he might be unable to attend the establishment of a peaceful Japan. At his home, his wife with his son is living a very miserable life. She is looking forward to the return of her husband. Their state of living is too miserable to see.

I petition you with all my heart that you will have special consideration for him.

December 1946

ARAI, Sadashiro.
Oaza-shimoyatsuya, Sangosura,
Nakakeijo-gun, Niigata-ken, Japan.

To: Your Honor, the President of the US Military Commission of the Marianas Area.

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

EUGENE B. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

"Exhibit 55a"

PETITION

I respectfully place my petition before Your Honor, the President.

I would like to beg your pardon in that we Japanese committed crimes against humanity by disturbing the peace of the world and troubled the people of your country very much.

I am surprised to hear that Furuhi, Hidesaku is to be tried as a criminal suspect as committing inhumane acts.

Hidesaku was the representative of the followers of the Shinsenji Temple of Rengenji-sect of Buddhism. His family was well acquainted with us for long years. Owing to the strict instruction of his parents, he has a noble character and a high moral thought, and is a very fine model of our village. Therefore, I am sure that he did not commit any crimes. If he committed acts of which he has been accused, I am firmly convinced that he did it against his will.

At present, his family is hard put to live without him. His family is now in a miserable condition looking forward to his return. I am one of those who are waiting the return of Hidesaku who is admired by his neighbors as a good husband and a good father. I believe that he will strive for the world as a man who loves peace when he will return.

I beg you will take into your consideration what I have just mentioned and you will deal leniently with him.

[redacted], Chiechi
Buddhist priest of the Shonenji Temple
Nishimatsunoki, Sangomura,
Nakakeijo-gun, Niigata-ken.

To: The US Military Commission of the Marianas Area.

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

[redacted], jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 96"

[redacted]

Your Honor, the President:

We have been admiring Major Furuhi as a "saint of our solitary island" who, on Jaluit Atoll, islands of starvation, loved right and humanity, was honest and upright and took initiative in cutting a way through the hardships we met.

I really can not understand why this man of great character, whom we admired as a saint, should be tried.

I affirm that there was no mistake in the deed of the saint and no stain in his heart. If there be anything for which he ought to be accused, I think it is his affectionate love of human beings in order to protect the lives of thousands of people on Jaluit. In fact, we could have hardly escaped from starvation except by his appropriate management and could hardly have survived up till now except for it. Major Furuhi is the benefactor of the lives of 4,000 military personnel and natives on Jaluit.

Your Honor, the President; could this saint have intended to commit crimes? I think you will understand his great love of humanity.

I saw him touch the corpse of his subordinates who had died in action or from illness. I saw him gather the scattered pieces of flesh of his subordinates who died by bombing and prayed tearfully in front of them - these scenes looked as if they had been sacred pictures on desolate islands of Jaluit.

He had been sick on Jaluit, but he never ate the fruits or delicious foods sent from his subordinates, and he gave them to the patients in his unit. It is unnecessary to say that these patients prostrate themselves with tears before him.

Whenever he visited the other islands of the atoll, he consoled sick natives; and whenever he sent his doctor to these islands, he ordered him to treat them.

Your Honor, the President; the deep affection of Major Furuhi toward his subordinates and natives was really far beyond description.

Once, Major Furuhi and I visited an island of the atoll where we had chow together with natives. Then we found on our plates nice roast chickens. (Such food was rare and luxurious then at Jaluit, and I think that this shows how natives admired the saint, Major Furuhi.) Then he shared the roast chicken with natives and we had a nice pleasant meal.

At another island he also was served special food. Then he called the native who served it and said, "Can I alone eat such a good meal? Do you forget that our food here is always coconut toddy and a coconut?" He never touched his special dish.

Can one who had such deep affection toward natives commit crimes?

Your Honor, the President; I beg you with just the same feeling as when we worship Gods, that you will fairly and leniently judge Major Furuhi.

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

"Exhibit 97a (1)"

At his snowy countryside home in Japan, his dearest wife and child are waiting him to be back.

Your Honor, the President and Members of the Commission; I believe you truly love righteousness and humanity and I beg you will save this saint in behalf of God.

1 March 1947

MORIKAWA, Shigeru

To Your Honor the President of the Military Commission, Commander Marianas Area.

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

EUGENE S. KENRICK, JR.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Kenny Lieut. USR

"Exhibit 97a (2)"

[redacted]

I hereby place this petition respectfully before Your Honor the President of the US Military Commission of the Marianas Area, hoping that Your Honor is well.

I hear that Furuhi, Hidesaku, Ex-Major, IJA, is accused as a war criminal suspect in the Jaluit case. But he is pure, upright and humane so that he could not give an inumane, brutal order to his men. He is religious, polite and loyal, and as a member of the society he is a fine gentleman.

I beg your deep lenient benevolence for him and you will save a man of such fine character.

Respectfully,

20 December

FUJITA, Fukusuki.

To: Your Honor of the US Military Commission.

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

EUGENE R. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

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

"Exhibit 38a"

PETITION

Furuki, Hidesaku, who is a war criminal suspect before your military commission in the case of Jaluit is a friend of mine with whom I shared hardships for more than three years.

Furuki, Hidesaku, loved his men as if he were their father. His knowledge and virtue were perfect, and he was very honest and benevolent. Everyone knew the fact that he laid most importance upon friendship with the natives. His family is peaceful. I cannot count any fault of his, both in his official and private life. I believe that he is not a man who would commit a war crime.

I hereby petition the clemency of his punishment.

December, 1946.

KANEMOTO, Shinichi
11 of 3 Nishinigi-cho, Suwiyoshi-ku
Osaka

TO: The Members of the Commission of the Marianas Area.

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

EUGENE N. KENDRICK, JR.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 99a"

CERTIFIED TO BE A TRUE COPY
James P. Keaney Lieut. USN

PETITION

I would like to present this petition as a friend of FURUKI, Hidesaku, who is now confined in the Guam stockade as a criminal suspect of the Jaluit Native case.

FURUKI was mild and sincere in nature, affectionate to his friends, had a strong moral heart, and was trusted by his friends. After he entered the Army, he led his men with righteousness and humanity. Although I cannot affirm that he had no fault in commanding and supervising his subordinates in the confusion after the termination of the war, I am certain that he never did inhumane acts of his own accord.

His wife and child at home are suffering from hard living in the economical confusion after the termination of the war, but they believe that their husband is right and continue their miserable life praying for his return. I cannot forbear seeing them as one of his friends.

I beg you kind consideration concerning his character and the miseries of his family and you will deal leniently with him.

6 December 1946.

WAKAI, Saburo
friend of FURUKI

TO: The U. S. Military Commission of the Marianas Area.

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

EUGENE E. KERRICK, JR.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 60a."

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

PETITION

Major Furuki is gentle, charming, and a person who does not think about himself. He made no class distinction in associating with people. It was always with kindness and warmth; in leading his men, his attitude was always gentle, and he preached righteousness and humanity. He was very strict on doing wrong and in teaching his men he always set the example. He never tried to subdue a person with his rank. He always looked out for the health, the persons family, and was a very good battalion commander. He was like a brother and he was respected by us as you would your father.

Major Furuki was very religious, and his sense of obligation very strong. What ever he did or said it was never contrary to the laws of humanity. He was a true, gentle man who loved peace. I cannot think that he would commit a crime.

The wife and child of Major Furuki are awaiting his return. As they are not sick, I think they must be spending dark and miserable days with cold and hunger. It is as I have stated above. As a former subordinate of Major Furuki, I ask your Honor that he may be acquitted and that he will be able to return to his country as soon as possible.

14 December 1946.

Former Corporal attached to the
1st South Seas Detachment.

SAKAKIHARA, GITCHI

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

EUGENE K. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 61a."

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

PETITION

I swear that Mr. Furuki, Hidesaku, the Second Battalion Commander of the First South Sea Detachment, is a man who never violates international laws nor has he done any inhumane deeds. I beg you'll deal leniently with him.

20 December 1946.

INOUE, Tahei
1068 Nishimamachi,
Umagun, Ehime-ken, Japan

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

EUGENE E. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY
James P. Keady Lieut. USN

PETITION

Your Honor, the President and Members of the Commission, I would like to express my deepest gratitude that you are endeavoring to give fair trial every day.

Major FURUKI who has been accused was my Battalion Commander. From the long time that I was a PFC until I was promoted to sergeant, I was attached to the Battalion Hq. and was his immediate subordinate. I received his instructions during that time. He was really a fine officer. He possessed, in his heart, righteousness and love.

Members of the Commission, as you know, Jaluit was really a living hell, and island of death, after the fall of Kwajalein. We lost our hope entirely and our daily life could be compared with leaves blown away by wind. In such a desperate condition there were men who gave us light and life. They were Commanding Officer Masuda (who has died already) and our Battalion Commander. When ever I recall our lives of Jaluit, I think, we owe what we are today to Commanding Officer Masuda and our Battalion Commander.

This is not only my feeling but also that of those who bore many hardships at Jaluit. He only did what was loyal and did what Japanese should do. He had no selfish motive in his duty, was full of a sense of responsibility and was obedient. He had every virtue of the sword man, but he was not only a good officer but also very affectionate.

When he was at drill, he was strict in attitude, but at other times he was humane. Once, I entered the hospital on account of a tropical ulcer for ten days. He visited me and consoled me twice. He did so not only to me but to any person whether they were military personnel, civilians or natives. When I was on duty at an island in the Atoll, I underwent an inspection by our Battalion Commander. Then he assembled the natives and thanked them that Japanese troop there could live owing to kind efforts of natives. I was there on the spot and was much moved.

Our unit at Jaluit was confronted by death on account of heavy air raids and starvation. Without the counter-plans of our Battalion Commander, we should have been dead. When I recall our life at Jaluit and think of my Battalion Commander in the stockade who is going to be tried, I feel as if my body were torn by sorrow.

Why should a benefactor who saved thousands of lives be tried?

Why ought a man who knows only justice to be punished?

I beg you will try him fairly.

At his home, his wife and a child who does not know his father have been waiting for his return for several years. He showed me the photograph of his child many times, and said with a smile that he named him Tadao because he hopes he will be loyal to His Imperial Majesty.

Your Honor, the President, I humbly beg you to release him so that Tadao can see his father.

28 February 47
UTSUNOMIYA, Hirosuke

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

EUGENE E. KERRICK, JR.,
Lieutenant, U. S. Naval Reserve,
Interpreter

"Exhibit 63a"

CERTIFIED TO BE A TRUE COPY
James P. Keaney Lieut. USN

PETITION

Furuki, Hidesaku has been mild since he had been young, loved by everybody, clever and was the model of pupils. He was kind to young people, respectful to elder people, so that everyone praised him. He is not a man who would commit a crime.

In his family he has a young sick wife and a child. Their life grew hard after the termination of the war, and they can hardly maintain their livelihood by the sympathy of relatives. Especially his son of five years old is looking forward to his return.

Your Honor, the President, I beg your kind consideration concering that what I have just mentioned and you will deal leniently with him.

HONYO, Nagi
elder sister of Furuki.

1-chome, Tera-machi,
Takata-shi, Niigata-ken.

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

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

CERTIFIED TO BE A TRUE COPY
James F. Keany Lieut. USN

"Exhibit 64a"

[redacted]

Furuki, Hidesaku is the second son of my relative, and I have known him well since he was a child, so that I hope you will listen to what I humbly am going to state.

1. About his noble character.

He is mild in nature, of perfect character, generous and noble, so his speech and behavior are mild and modest.

In the autumn of 1941 when it was feared that a war might break out between the United States and Japan, he came back to his native village. Then he stated that it is disadvantagious to begin war against the United States. He especially cited the abolishment of our seclusion because of Perry, and explained that Japan owes much of what she is today to the United States, and advocated peace.

He also pointed out the evils of militaristic and bureaucratic system which we felt unpleasant, and told of the necessity of constructing a democratic society. He was really a man of upright character which was rare among military men.

When he was in the military service, he had a strong sense of responsibility, was honest to his duty, respected his superiors and loved his men, so that he was relied upon both by his superiors and his men and was friendly among his comrades.

2. He is of humane character and never could commit any crimes.

I think it can not be that he is confined as a war criminal when I hear of it. He is of such a character as I have stated above that he hates inhumane acts. Naturally he is easily moved to tears, passionate and affectionate. Therefore, I am convinced that he would never kill innocent people or commit atrocities.

Once a cat which he kept at home fell ill. Then he tended it without taking his meals and sleep till at last it became all right. He was a young man who was affectionate to animals. Still less could he order his men to commit atrocities or do it himself.

Otherwise, I am able to think, that he took the responsibilities of the crimes of other people, because his sense of responsibility is so strong.

3. His family will suffer without him.

He has a wife and a son. As he had no property, his family had been living upon his monthly income. His wife is physically weak and can not work. The father of his wife is dead, and she has only an aged mother who is also poor. Therefore she can not help their livelihood. At present, it is very hard for them to maintain their living. I can not help but shed tears when I think how they will be living from now on. I am really sorry for them.

In short, when we see his character, he is a man who will do much in the future for the friendship of the United States and Japan, and anyone who knows him will never think that he could commit crimes. When we think of his family, he is really a miserable man. I beg you from all my heart that you will deal leniently with him.

CERTIFIED TO BE A TRUE COPY
James P. Kenney Lieut. USN

"Exhibit 65a (1)"

Respectfully

4 December 1946

HASHIZUME, Torajiro
1-chome, Daimachi, Takata-shi.

To the US Military Commission of the Marianas Area.

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

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

CERTIFIED TO BE A TRUE COPY
James F. Kenny Lieut. USN

"Exhibit 69a (2)"

PETITION

I would like to petition you for the clemency for Furuki, Hideoaku, who is now confined in the Guam stockade as a criminal suspect in the Jaluit natives case, and to state what I am thinking about him.

My relation to Furuki is that of a teacher and a pupil. Between the time he was a third year pupil until he became a sixth year pupil, I taught him as a teacher. He brings back wonderful memories for me, and he is a man I most respect.

He was so pure and earnest that I learned more things to be taught from him than I taught. When he was a boy, he was honest, mild and clever. He was never proud of himself. He showed to his classmates what to do and taught and led them kindly.

When he was the fourth year pupil, he lost his mother. When I read his composition concerning it, I found how sorry he was. How often I wept when I saw the composition.

The lonely boy who lost his mother offered wily chrysanthemum before her and consoled her sole. Even now, twenty years after that time, I recall his figure clearly.

I really can not understand why he, a man of such a character is now in the stockade.

He was physically weak when he was a boy. I saw in his letter sent to me when he was in the middle school that he was trying to strengthen his body so that he would be able to do much for his father. He was unhappy that he had volunteered to be a military man. But the reason why he did so was that he thought it filial to his father.

I know he was a humane, benevolent man when I recall him kindly calling on me at my sick-bed and he consoled me. If the stockade in which he is now confined were near me, I would visit there and state that he has a noble personality and a humane character and he can not commit crimes. I really can not think that such a fine man should have killed natives. I beg your kind consideration concerning what I have said above and hope you will deal leniently with him and give him a happy life.

TANAKA, Suekichi
Teacher when he was in the
primary school.

To: The US Military Commission of the Marianas Area.

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

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

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

"Exhibit 66a"

6 December 1946

From: Teachers of the Sango National School, Sangomura, Nakakeijo-gun, Niigata-ken, (Japan).
To : The US Military Commission of the Marianas Area.

PETITION

We humbly place this petition in order to beg your lenient judgment for Furuki, Hideomku who is now confined in the Guam Stockade.

Our school is the primary school (now, national school) of Furuki, where he studied for six years. We have heard that he is to be tried as a criminal suspect in the Jaluit native case. We are especially grieved, because we are working at his home school.

When we see his educational record we find that he made good marks from the first year till the sixth year. His behavior was gentle and he was a boy far above the others.

According to what his classmates and friends say, he was mild, honest and kind, respected elder pupils and loved younger ones, and as a monitor he had a great confidence among his comrades.

If we cite his brothers, his elder brother is the teacher of the Prefectural Takata Middle School and is relied upon by his students; his younger brother is a student of the school and has a very good record. Therefore, both of his brothers have been well educated and have fine characters.

Then, thinking from the above facts, we can not at all imagine that he dared to violate the cause of humanity even if it was in time of war.

In his family, his virtuous wife and a lovely child are looking forward to the day when their husband and father will be repatriated after he will be released.

We beg your kind consideration concerning what we have above mentioned and you will deal with him leniently in your benevolent trial.

Signed by:

SONE, Giichi
YUKAWA, Toshimasa
SAITO, Chuji
YAZIMA, Taiso
ARAKAWA, Hikoji
MATSUBARA, Miki
SATO, Miyoko
MASUKO, Fumiko
USHIGI, Bunnoshin
WATANABE, Toshi

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

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

EUGENE E. KENRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 67a"

1 March 1947

PETITION

SAKUDA, Sawaaki
Ex-Jaluit Guard Unit.

To Your Honor, the President:

I would like to express my deepest gratitude that you are endeavoring to mete out fair justice on this hot island.

Upon hearing that Major FURUKI who, under the command of Rear Admiral MASUDA, discharged his duty with righteousness and humanity and saved the people on Jaluit from starvation is to be tried, I would like to state that he is a man of noble character and that he is not a person under the category of "criminal."

I had been in close contact with the Major on duty since September, 1944. When we spoke of him, we always kalled him "pop." Naturally, it was our delight to be able to call him "pop," though we are in the Navy. Still more soldiers of the Army loved and admired him as if he had been their father. Anyone thought that he was willing to risk his life if he were with the Major. It was not a hostile feeling toward the enemy, but a simple expression of easiness and hope when we found a man reliable in our despair on the desolate ruins without any comfort and in front of the coming of our death. It was just like a navigator who thanks the lighthouse in a dark stormy night or a traveller on desert who is delighted when finding an oasis.

Our isolated life of two years under starvation and air raids on Jaluit increased the violence of our two thousand. But when we yearned after Admiral MASUDA and Major FURUKI as our pops and when we heard them console us, we could escape from our self-abandonment. Truly, Major FURUKI is the benefactor of our lives. We are all waiting for him to be back acquitted as if children are waiting his father's return. We believed that God will help this man of great character.

Our "pop" has a wife, who has no one to rely upon, and a child. In Japan, under the terrible shortage of food, and when everyone is occupied in his own living, I think you can imagine with what feeling and in what condition they are looking forward to his return.

I am looking forward to the day when Major FURUKI, the benefactor of our lives, a man of most honorable character, will be found not guilty and released after the fair judgment of the members of the commission.

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

EUGENE E. KERRICK, JR.
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 68a"

CERTIFIED TO BE A TRUE COPY
James P. Keany Lieut. USN

PETITION FOR CLEMENCY OF FURUKI, HIDESAKU

I am really sorry to trouble you when you are busy, but I would like to place this humble petition before you, the Members of the US Military Commission.

We village men were entirely astonished to hear that Mr. Furuki, Hidesaku was arrested as a criminal suspect in the natives case. We can not help saying, "Why Mr. Furuki, that good man?"

Furuki, Hidesaku was mild and sincere in nature, did everythig in earnest and had a pure mind. His fine character is far beyong my expression. I am firmly convinced that he has never committed acts for which he had to be alleged as criminal suspect.

Furuki lost his mother whenhe was a child, and he has only a wife and a child in his family. His wife is working very hard in order to bring up her child in the terrible hardships after the war. How delighted she will be if her husband will be repatriated! My delight also will be too much to express by words. She is looking forward to the day when she will be able to see her husband who will be surprised at the growth of his child.

By what I have above stated, I think I can express only a few of his noble characteristics. I beg you from all my heart that you will deal leniently with him.

My regards to everybody.

Respectfully,

6 December 1946

To the US Military Commission of the Marianas Area.

KOSE, Sueno

Oaza-Nishimatsunogi, Sangosura,
Nakakeijo-gun, Niigata-ken

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

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

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

"Exhibit 69a"