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U. S. War Department

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WAR CRIMES OFFICE

Judge Advocate General's  
Office

File No. 48-34-1  
Sub. INQUE  
NAVY CASE  
PART 1

See also Nos. ....

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U. S. GOVERNMENT PRINTING OFFICE 16-42276-1

0766

U. S. War Department

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WAR CRIMES OFFICE

Judge Advocate General's  
Office

File No. 48-34-1  
Sub. INOUE  
NAVY CASE  
PART 1

See also Nos. ....

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ADMINISTRATIVE ASSISTANT TO  
THE ATTORNEY GENERAL

100-2-X  
A-5-1

Department of Justice

Washington  
August 28, 1947



ENCLOSURE

No 226880

FROM

Department of Justice

War Crimes Division  
War Department Special Staff  
Department of War  
Room 4 B 914, The Pentagon  
Washington 25, D. C.

Gentlemen:

We are transmitting herewith three copies of  
a report, Military Commission Order No. 38, from Rear  
Admiral C. A. Pownall, Commander of the Marianas Area,  
which was apparently misdirected to this Office.

Sincerely yours,

*S. A. Andretta*

S. A. ANDRETTA  
Administrative Assistant  
to the Attorney General

Inclosure No. 226880



4945

0767



Department of Justice

Washington  
August 28, 1947

100-2-1  
1-2-A

Dear Sir:  
The Department of Justice  
has received information  
from the Federal Bureau  
of Investigation that  
you are a member of the  
Communist Party, U.S.A.

It is requested that you  
advise the Department of Justice  
of the results of your  
investigation of the  
above information.

Sincerely yours,

Very truly yours,  
J. Edgar Hoover  
Director

Enclosure

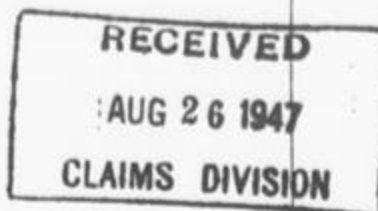


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13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

18 AUG 1947



MILITARY COMMISSION ORDER NO. 38

(In re INOUE, Fumio, former Captain, IJA)

1. INOUE, Fumio, former captain, Imperial Japanese Army, was tried during period 23 April 1947 to 5 June 1947 by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947 at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGE I - MURDER (Two specifications).

<u>Spec.</u>	<u>Nature</u>	<u>Place</u>	<u>Date of Offense</u>
1.	Kill seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Kill one unarmed native inhabitant of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

CHARGE II - VIOLATION OF THE LAWS AND CUSTOMS OF WAR

<u>Spec.</u>	<u>Nature</u>	<u>Place</u>	<u>Date of Offense</u>
1.	Unlawfully punish as spies seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Unlawfully punish as a spy one unarmed native of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

FINDINGS: The Commission found:

"The first specification of the first charged proved."  
"The second specification of the first charge proved."  
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the first charge guilty."

"The first specification of the second charge proved."  
"The second specification of the second charge proved."  
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the second charge guilty."

SENTENCE: The commission on 5 June 1947, sentenced the accused as follows:

"The Commission, therefore, sentences him, Inoue, Fumio, captain, Imperial Japanese Army, to be confined for the term of his natural life."

2. On 18 August 1947, the Convening Authority (The Commander Marianas Area), subject to certain remarks took the following action:

0769

\*\*\*\*\* The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

INOUE, Fumio, former captain, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

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

Copy to:

Commander in Chief, Pacific and U. S. Pacific Fleet (3).  
Judge Advocate General, U. S. Navy (3).  
Supreme Commander for the Allied Powers (3).  
Commanding General, U. S. 8th Army, Japan (3).  
National War Crimes Office, Washington, D. C. (3).  
Commanding Officer, Marine Barracks, Guam (3).

AUTHENTICATED:

*H. D. Vanston*  
H. D. VANSTON  
Flag Secretary.

0770



NAVY DEPARTMENT  
United States  
COMMANDER MARIANAS  
OFFICIAL BUSINESS

NATIONAL WAR CRIMES OFFICE  
WASHINGTON, D. C.



0777



0772

WAR CRIMES BRANCH, CAD  
Intra-Office Routing Slip

DATE 29 AUG 1947

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	I. P. S.	
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REMARKS:

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4945

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FWA/AL7-10/  
13-JUN-47

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 16952

18 AUG 1947

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, was ordered convened 1 March 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet (CinCPac conf. serial 0590, of 8 March 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas; and the Judge Advocate General of the Navy (JAG Secret despatch J11730 July 1946). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued 13 March 1947 and served on the accused on 13 March 1947. The trial was held under authority of Naval Courts and Boards, except that the commission was authorized by the precept to relax the rules for naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, dated 5 December 1945, as necessary to obtain justice.

Attention is invited to the fact that this case involves questions of jurisdiction similar to those involved in the case of FURUKI, Hideoaki, former major, IJA, previously tried by this commission and reviewed and approved by the Commander Marianas Area, 1 August 1947.

The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

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

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

To: Commander in Chief, Pacific and United States Pacific Fleet.  
Re: Record of Proceedings of Military Commission - case of  
INOUE, Fumio, former captain, IJA.

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

0774



Case of  
Inoue, Fumio,  
captain,  
Imperial Japanese Army.  
April 23, 1947.

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

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G.C.M. SECTION

VOLUME I

159116

#38

0775

Case of  
Iron, Pumps,  
cabinets,  
Imported Japanese Army.

Info for T/Rene  
there.

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OFFICE OF ROADS  
ARMY CORPS  
WASHINGTON

VOLUME I

0776

Captain Inoue, Fumio, Imperial Japanese Army,

Trial by Military Commission

at Guam

Marianas Islands.

April 23, 1947.

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James P. Kenny

ATTY., USNR.

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*James P. Kenney*

LIEUT., USN.

0778



Al6-2/FF12/  
13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 3785

21 February 1947

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

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

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

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

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

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

CERTIFIED TO BE A TRUE COPY

*David Bolton, Lt. JG*

0779

A16-2/FF12/  
13-JDM-cn

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 3785

21 February 1947

Subject: Precept for a Military Commission.  
-----

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

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

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

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

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

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

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

Certified to be a true copy:

*David Bolton*  
David BOLTON,  
Lieutenant, U. S. Navy,

0780

FF12/A17-11/(WC-2)  
13-JDM-rhj

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 11380

22 Apr 1947

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. Robinson, U. S. Navy,  
President, Military Commission, Guam.  
Subject: Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy -  
relief of.

1. Subject officer is hereby relieved as a member of the Military Commission of which you are President, convened by my precepts of 15 October 1946 and 21 February 1947, upon the completion of the trials already begun and except in the event of revision of cases already tried. *OK*

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Comdr. R. J. Wallenborn.  
Judge Advocate, Military Commission.  
Judge Advocate, General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kexxy*

WIPET., WNW.

"B"

0781

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/117-11/(WC-20)  
13-JDM-rhj

Serial: 11381

22 Apr 1947

From: The Commander Marianas Area.  
To: Rear Admiral Arthur G. Robinson, U. S. Navy,  
President, Military Commission, Guam.  
Subject: Commander Charles E. INGALLS, junior, U. S. Navy -  
relief of.

1. Subject officer is hereby relieved as a member of the  
Military Commission of which you are President, convened by my precept  
of 21 February 1947, upon the completion of the trials already begun  
and except in the event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Comdr. C. E. Ingalls, junior.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

WITNESSED, USN.

"C"

0782



UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/117-11/(WC-20)  
13-JDM-rhj

Serial: 11405

22 Apr 1947

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. Robinson, U. S. Navy -  
President, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Colonel Vernon M. Guymon, U. S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Lieut. Col. A. A. Poindexter.  
Col. V. M. Guymon.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*

LIEUT., USN.

0783

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

FF12/A17-11/(WC-20)  
13-JDM-rhj

Serial: 11445

23 Apr 1947

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. Robinson, U. S. Navy,-  
President, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Major James H. Tatsch, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, hereby relieved.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy.

cc:  
Lieut. Col. A. A. Poindexter.  
Major J. H. Tatsch.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

*James P. Kenney*

LIEUT., USN.

"E"

0784

ARGUMENT IN OBJECTION CONCERNING THE APPLICATION OF THE LAW DELIVERED BY  
AKIMOTO, YUICHIRO, TOKYO, JAPAN

Original document in Japanese prefixed to the original record.  
Certified translation prefixed herewith marked "G."

0785

ARGUMENT IN OBJECTION CONCERNING THE APPLICATION OF THE LAW DELIVERED BY  
AKIMOTO, YUICHIRO, TOKYO, JAPAN.

Gentlemen of the Commission,

The charges of this case mistake the application of the law. That is, Specifications 1 and 2 of the Charge I, Article 199 of the Japanese Criminal Code is applied, and Specifications 1 and 2 of the Charge II allege the violation of the laws and customs of war. Both of these applications of laws are mistaken. Therefore, I object to these illegal applications.

The first point to which I object is the application of Article 199 of the Japanese Criminal Code to this case. The Judge Advocate, in the case of FURUKI, Hidesaku who was tried before in this court, asserted as follows, and, as the scope of legal aspect of this case is entirely as same as the foregoing one, I would like to cite his previous assertion and take a stand against it:

The Judge Advocate stated:

1. The Marshall Islands were occupied on 14 August 1945 by the American Forces, and have been under the jurisdiction of the American Forces since then.
2. The Japanese government surrendered to the United States government on 2 September 1945, and no peace conference has yet been settled between the two governments.
3. At the Cairo Conference on 1 December 1943 the following was decided:  
"Japan shall be deprived of her islands in the Pacific which she has occupied since the beginning of the World War I in 1914."
4. The Potsdam Declaration announced on 26 July 1945, especially Article 8 of which states: "The terms of the Cairo Conference shall be put in effect, and the territory of Japan shall be limited within Honshu, Hokkaido, Kyushu, Shikoku and other small islands which are admitted to be proper."
5. According to the Imperial Ordinance No. 26 concerning the judicial affairs of the South Seas Islands which was issued in 1923 and amended in 1933, the effective criminal law on Marshall Islands at the time when the offenses of this case were committed was the Japanese Criminal Code which is still now effective as a local law.

Also the witness Clarence Winecoff, Captain, USN, the deputy commander of the Military Government of the Marianas Area, testified:

1. Since the occupation of the Marshalls by the US Forces, the administrative and judicial authority of the area has been under the jurisdiction of the US Occupation forces.

"G(1)"

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*James P. Kenny* Lieut. USN

LIEUT., USN.

0786

2. Japan lost her sovereignty over the occupation area.

3. The Criminal Code of Japan still exists and is effective in the area. Therefore, it is lawful to punish those who violated the Code by applying the provisions of the Code. It is lawful to apply Article 199 of the Japanese Criminal Code in this case.

According to the above, what the Judge Advocate wants to assert is clearly understood. That is in short:

1. Japan lost her sovereignty over the area of Marshall Islands.

2. The area of Marshall Islands was occupied by the US Forces on 14 August 1945, and has been under the jurisdiction of the United States since then.

3. By the Imperial Ordinance No. 26 of 1923, the Criminal Code of Japan has been enforced in the area, and it still now exists and is effective as local law. Therefore, it is lawful to apply the Code in the Charges of this case.

According to the assertion of the judge advocate, it seems to me that the loss of Japanese sovereignty over the area is based upon the Cairo Conference of 1 December 1943.

However it is very clear and unnecessary to state that the scope of the efficacy of the law of a country is limited within the scope of her sovereignty. If a country loses her sovereignty, the laws of the country will naturally lose their efficacy in her lost territory. However, the judge advocate stated that the Japanese laws are effective in the area of Marshall Islands although Japan lost her sovereignty over the area. His assertion is really inconsistent and illogical.

If, as the judge advocate stated, the loss of Japanese sovereignty over the area is based upon the Cairo Conference of 1 December 1943, the Japanese Criminal Code already should have lost its efficacy as the effective law at the time when the incident of this case happened, namely in March and April of 1945. Then what is the reason for applying this law to this case? Isn't it quite nonsensical to apply the Japanese Criminal Code by the ex post facto principle? How can the judge advocate explain this clear inconsistency? Even if we assume that the judge advocate withdraws his assertion that the time of the loss of Japanese sovereignty is based upon the Cairo Conference and states that it is based upon the occupation of the US forces and applies the Japanese Criminal Code which was effective at the time of the incident, it is still inadmissible to state that the Japanese Criminal Code is effective now in Marshall Islands. It is simply natural that the Japanese criminal code lost its efficacy at the time when Japan lost her sovereignty over the islands, so it is quite inconsistent to state that it is still effective as local law.

"G(2)"

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*James P. Kenney* *Lieut. USN*

LIEUT. USN.

0787



Then no matter how much the judge advocate insists upon this point the Japanese Criminal Code is not actually now in effect in the area. The Japanese Criminal Code is purely a foreign law in the court of the United States.

This court is undoubtedly an American court. It is not admissible in any of the judicial systems of civilized states to apply foreign criminal law in their criminal trials. It is the principle in criminal cases that foreign criminal laws are inapplicable in the criminal trial.

Page 612 of "Theories on the Japanese Criminal Code" written by MAKINO, Eiichi, the professor of the Tokyo Imperial University, Doctor of Law, states it in the same way.

Of course, concerning the civil law which provides for personal affairs, foreign laws must sometimes be applied in such cases as transactions and contracts among foreign persons. Therefore, it is proper from the nature of the civil law that foreign laws are sometimes applicable in civil cases. But as the criminal trial is the exercise of the authority of a country, it is absolutely inadmissible and unlawful to apply foreign laws in the criminal trials.

I must state further concerning the ex post facto principle. Now that the United States Forces has occupied the Marshalls, they can exercise jurisdiction over the area. But the American laws can be applied only to the offenses committed after the occupation, and it is a violation of the ex post facto principle to apply them to the offenses committed before their occupation. Therefore I can admit that the reason why the judge advocate applied the Japanese Criminal Code to this case was that he obeyed the ex post facto principle. But I would like to ask the commission to pay attention to the fact that the ex post facto principle is one which is used in the trial when a law of a country is applied to the offenses committed with that country. Therefore, the ex post facto law is not a principle to be applied to the offenses of a foreigner committed in a foreign land such as this case. This is the act of a Japanese done against the natives, Japanese subjects, on Jaluit Atoll, Japanese territory. That is, for the United States, the place where the act of this case was done is a foreign land; the person who did the act is a foreigner; and at the time when the act was done, the place was under the control of a foreign country. If this act is a crime, it is entirely the crime of other country. It is just as if a foreigner committed a crime in a foreign country and has escaped now to American territory. In this case, the jurisdiction over the crime lies upon the foreign country to which the criminal belongs, and the country can request the United States, according to the international contract to deliver the criminal. The United States has no jurisdiction whatsoever. If she has, it is entirely an infringement upon her sovereignty. It is inadmissible to infringe upon the jurisdiction of another country and punish other nationals at her own decision. Concerning this point, I shall state later in my objection of the jurisdiction of this commission. Anyhow, it is unlawful to try this case in this court, an American court, and also as I stated before it is inadmissible to apply the Japanese Criminal Code in this case. There is no room for the problem concerning the ex post facto principle to arise.

"G(3)"

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*James P. Henry Secy. USK*

0788

Therefore, it is clearly unlawful to apply the Japanese Criminal Code, a foreign law, in this case.

The second point that is objected to is, Charge II, which alleges that he violated the laws and customs of war, which is international law. By the laws of war it must refer especially to the amendment, Articles 29-30 on land warfare, of the Hague Convention, 18 October, 1907. It is clear through the assertion of the Judge Advocate in the previous trial, of the FURUKI case, that the Hague convention was not ratified by Italy and Bulgaria, who were members of that convention, therefore it has no efficacy as international law. Therefore, even though the regulation was violated, it would be a different matter if the nation was being held responsible for its moral responsibility, but it is natural that an individual of that nation could not be held for criminal responsibility. Presuming that this regulation has efficacy, in interpreting these rules, unless we can understand the principle behind the rules, we cannot know what those rules are. Up to the present in case law, there is a case. This case is tried and as a result a ruling is obtained this is considered the law, and if a same kind of case occurred again, this ruling is applied and there may not be any mistakes. But in code law, occurrences of certain cases are foreseen and the principles to be applied to this is drawn up; therefore, its scope becomes very large. Unless clear thinking and consideration is given on all points, the spirit of violating the law, grammatical interpretation, deduction, and analogical construction or a mistake in the interpretation of the law may occur. It is not as simple as the application of case law. Especially the spirit of the law is the prime factor. In the first place we must consider what was the spirit behind article 29 and 30 of land warfare. In all countries there are domestic laws concerning spies, but there laws were principally concerned with its own citizens and it should be left up to its domestic law. But in times of war, when there are cases of spying by an enemy citizen or of a neutral country, there was a tendency to enlarge the scope of spies, through feelings at the time of hostility and the spies were severely punished. It can clearly be seen by Article 29 itself, that these regulations were made to restrict and prevent this. Especially in Article 30 of the same law it is stated "A spy taken in the act shall not be punished without previous trial." What can this mean? Is there any law system of any civilized nation that states that a person could be punished for a crime without a trial? Absolutely there is not. It is natural that a person be tried before, he is punished. Therefore the fact that this natural function was stated separately can only mean that it was for the above reason and was in reference to citizens of enemy or neutral countries, and this special rule was made. No matter what the laws of punishment for its own citizens may be there can be no reason for the interference of international law.

If the above article is read calmly and carefully this can clearly be understood. However the Judge Advocate stated that from the wording of the above article the words citizens of an enemy country or neutral country. Was not used therefore it included both citizen of its own country and that of enemy countries. This is a dangerous argument. It can be said he may be mistaken in his understanding of how to interpret code law or a dangerous argument based on a forcible interpretation of the law and can never be sanctioned from the standpoint of

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*James P. Kenney* Lieut. USN

WITNESSES

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interpretation of the law.

Also this case, a case in which a native, who is a citizen of Japan, violated the Japanese Criminal Code and so a simple domestic national crime and is not a case to be thought of in terms of the above rules and regulations of land warfare.

By the above reason it is clear that it is unlawful to charge that the laws and customs of war were violated in Charge II of this case. I request the commissions consider this carefully.

By the above reasons the Charges I and II are unlawful. Therefore the charges should be rejected. I therefore make the above objection.

I certify the foregoing, consisting of five (5) pages, to be a true and complete translation to the best of my ability.

EUGENE E. KERRICK, JR.,  
LIEUTENANT, U. S. NAVAL RESERVE,  
INTERPRETER.

"G(5)"

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*James A. Henry Capt. USN*

LIEUT., USN.

0790



Objection to the charges and specifications in the case of Captain INOUE, Fumio, Imperial Japanese Army, delivered by Commander Martin E. Carlson, U.S.N.R. Defense Counsel on April 23, 1947, before the Military Commission convened by the Commander Marianas Area at Guam, Marianas Islands.

The accused, Captain INOUE, Fumio, Imperial Japanese Army objects to the charges and specifications on the following grounds:

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

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

Section D-14 Appendix D, Naval Courts and Boards requires that the record of this court be "transmitted to the Judge Advocate General of the Navy to be revised and recorded." It is therefore necessary that the requirements of Section D-13 of Naval Courts and Boards be complied with in this present case and the specifications be amended to show jurisdiction.

The accused further objects to specification 1 of Charge I because seven separate offenses are charged in one specification. We ask that this specification therefore be amended and seven specifications be drawn up one for each offense. Under Section 199 Criminal Code of Japan translated by William J. Sebald this ruling is set forth: "Even when murder is committed as a result of one single resolution, as many cases of murder are formed as there are victims" 35 S.C. 3587.

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*James P. Kanny*  
LIEUT. JEN.

0791

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

The accused objects on the same grounds to specifications one and two of Charge II. We hold that there should be eight specifications under Charge II.

The accused further objects to all the specifications of Charge II on the ground that the offenses alleged are said to be that the accused Captain INOUE, Fumio, did, "punish as spies,....killing.....native inhabitants of the Marshall Islands ....., this in violation of the laws and customs of war." We hold that these specifications are not in good form in that the specific laws and customs of war are not set forth verbatim, but now in this second charge no such law or custom is set forth. It is not enough to simply allege that the offense is in violation of the laws and customs of war. This is too vague and uncertain to fully acquaint the accused with the offense with which he is charged. Section 27, Naval Courts and Boards requires: "whenever the offense comes directly under any other enactment (foreign laws, municipal ordinance, or local ship or station order) the same shall be set forth verbatim in the specification and proved like any other fact."

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

At this time we reserve the right to further object to the charges and specifications for any errors in substance. This right to object is guaranteed by Section 398, Naval Courts and Boards and may be made at any stage of the trial that it manifests itself.

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

"H(2)"

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*James P. Kenney*  
Lieut. J.S.N.

0792



OBJECTIONS TO THE CHARGES AND SPECIFICATIONS IN BEHALF OF THE ACCUSED. HOUR.  
FURIO. DELIVERED BY SUZUKI. SAITO.

Original document in Japanese prefixed to the original record.  
Certified translation prefixed herewith marked "J"

0793

Suzuki  
J(1)

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS

IN BEHALF OF THE ACCUSED, INOUE FUMIO

DELIVERED BY SUZUKI, SAIZO

If it please the commission:

In Charge I, the accused is charged with the crime of murder and in Charge II with war crime as violating the Laws and Customs of War. But when we compare Specification 1 of Charge I with Specification 1 of Charge II, we find at a glance on the face of both specifications that both deal with entirely the same acts of the accused. This is apparent because the persons killed, the time and place alleged in both specifications are entirely identical. The same thing can be said as regards Specification 2 of Charge I and Specification 2 of Charge II. In short, the same acts and incident in which the accused Inoue killed eight Marshallese, is indicated in Charge I as a crime of murder provided in Article 199 of the Japanese Criminal Code and in Charge II as an act violating the Laws and Customs of War on the ground that the accused had punished and unlawfully killed as spies, without previous trials.

It can be considered that there are some cases, where one act violates several provisions of law simultaneously. But, even then, we must bear in mind that there are two variations to it. The first is when a person throws a stone at another person and wounds him, and at the same time destroys another person's things. In this case, two crimes exist, that is the crime of wounding another person and the crime of destroying the other's things. Under such circumstances, it may be permissible to draw up two charges for each crime of the same act. But it must be noted that, although an act simultaneously violates a number of provisions of law, from the standpoint of its nature, one provision should exclude the other. For instance, I shall explain this with the crimes provided in the Japanese criminal code, Article 90, paragraph one of the Japanese Criminal Code reads: "Article 90. Every person who has used violence or threats against the Sovereign or President of a foreign power staying within the Empire shall be punished with penal servitude for not less than one year nor more than ten years."

While concerning general acts of assault Article 208 of the same, provides as follows: "Every person who has used violence against another person without wounding (injuring) such person shall be punished with penal servitude not exceeding one year, a fine not exceeding fifty yen, detention, or a minor fine."

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*James P. Kenney*  
Sgt. Maj.

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J(11)

Moreover, as to general acts of threat, Article 22 of the same reads:  
"Every person who has threatened another person with injury to his (her) life, person, liberty, reputation, or property shall be punished with penal servitude not exceeding one year or fined not more than 100 yen.

"The same (punishment) applies to every person who has threatened another person with injury to the life, person, liberty, reputation, or property of a relative of such (latter) person."

Therefore, if a person used violence against a sovereign of a foreign power staying in Japan, he would be committing the crime stipulated in Art. 90 of the above Japanese Criminal Code and as an abstract idea, simultaneously this act of violence or threat against a sovereign of a foreign power, would be violating Articles 208 and 222 of the said code, which stipulates crimes of violence and threat. In this case, would such an act of violence and threat constitute a crime provided in Art. 90 of the same code and also at the same time constitute a crime of violence provided in Article 208 or crime of threat mentioned in Art. 222? A crime of simple violence or threat would not exist. Merely, a crime of violence or threat against the sovereign of a foreign power, which is provided in Art. 90 of the said code, would be constituted.

I firmly believe that this logic in jurisprudence is also acknowledged in American Criminal Law. Therefore, in such case, the act could be indicted as a crime of violence and threat against a sovereign of a foreign power and it would be erroneous to charge in addition to it a crime of general act of violence or threat.

Now, let us scrutinize the instant Inoue case. Charge II alleges that the accused, Inoue, did wilfully, unlawfully and without previous trial, punish and cause to be punished as spies, assault, wound and kill the Marshallese natives mentioned in Charge I. Therefore, it is easily understood that Charge II includes the act of murder alleged in Charge I. In other words, the crime murder alleged in Charge I is the same act of murder referred to as the execution of Marshallese as spies, without previous trials in Charge II.

Therefore, the relation between murder in Charge I and murder as an act of execution of spies alleged in Charge II, is the same as the relation between the crime of violence and threat against a sovereign of a foreign power provided in Article 90 of the Japanese Criminal Code and the general act of violence stipulated in Art. 208 or threat mentioned in Art. 222 of the said Code, which I have already stated. Since an act is already indicted as a crime of violence against a sovereign of a foreign state, then in addition to it, the act should not be allowed to be charged with the crime of general violence because it would be unlawful duplication of charges. Likewise, in the instant case, since the act of killing the Marshallese has been indicted and alleged in Charge II as an

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James P. Kenny

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

0795

J(111)

act of illegal execution without previous trial, as spies, then I believe, it would be an unpermissible duplication of indictment to charge the act of killing in addition to the crime of ordinary murder.

If such duplication of charges is permissible, then a person killing a POW without justifiable cause should be accused of war crimes in violation of the Laws and Customs of War and simultaneously indicted with ordinary crime of murder for his act. And, we should find numerous cases of such duplication of charges in the prosecution of Japanese war criminals. But, on the contrary, we do not know of any such examples of duplication of charges. I believe that the reason for this is not that in spite of its not being permissible from the point of view of jurisprudence, it was not ventured to be tried, but that it has been already confirmed that such duplication of charges is not justified from the point of jurisprudence.

At this period, I would like to reiterate my point for the sake of avoiding misunderstanding. We do not contend that it is illegal to draw up separate charges for each crime when a single act simultaneously violates several laws or customs of war and constitutes different crimes. In this sense it would be permissible from the point of view of jurisprudence and also a legitimate indictment. But in the instant case, the same act of murder is charged in Charge I as an ordinary murder in violation of Article 199 of Japanese Criminal Law and in Charge II as war crime. This clearly is an alternative charge and an unpermissible duplication of charges.

Therefore, the accused objects to these Charges and Specifications and requests the careful consideration of the commission.

I certify the foregoing, consisting of three (3) pages, to be a true and complete translation, to the best of my ability.

Eugene E. Kerrick, junior,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

"J(3)"

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*James P. Kennedy*  
J.P.K.

0796



Kenny  
K(1)

REPLY TO OBJECTIONS BY THE ACCUSED TO THE CHARGES AND SPECIFICATIONS,  
BY LIEUTENANT JAMES P. KENNY, USN

If it please the commission:

Mr. Akimoto, a defense counsel, objected to the application of the criminal law of Japan to this case as alleged in Specification 1 of Charge I. In answer to this the judge advocate states that, in regard to Charge I, this commission is not sitting as a tribunal foreign to the local law of Jaluit but rather as an exceptional local military court. It is therefore proper to charge a violation of the "lex loci" which in this instance is the Japanese Criminal Law. We believe that Mr. Akimoto's objections are, like many of the other objections made by defense counsel, not directed at the form and technical correctness of the charges and specifications but rather are arguments in objection to the jurisdiction of this commission and should be properly made as a plea in bar of trial. They do not relate to the requirement of section 398 of Naval Courts and Boards. Further objection was made by defense counsel on the ground that since the prosecution had argued in a previous trial that there was no Japanese sovereignty of the Marshall Islands at the time of the alleged crimes, it therefore should not be alleged that these crimes were violations of Japanese law. The judge advocate wishes to point out that it is not contradiction to argue that Japan had no sovereignty in the Marshalls at the time these crimes were committed but that the local effective law in the islands at the time was the Japanese law.

It is further argued by the defense that Charge II is improper in that it alleges a violation of laws and customs of war which are based upon the Hague Convention. Defense counsel is of the opinion that since all the powers did not sign this document, as provided by its terms in order to become operative, then its terms are not the law of nations. We point out that the articles contained in the Convention are merely a crystallization of what had already become the common law of nations. When Japan ratified this convention she merely acknowledged an obligation which already existed on all members of the international family of nations.

Mr. Suzuki objected to a duplication of charges, claiming that Charge I and Charge II relate to the same acts of the accused. In reply, the judge advocate quotes section 19 of Naval Courts and Boards, which states that "the law permits as many charges to be preferred as may be necessary to provide for every contingency."

Commander Carlson of defense counsel argued that the charges and specifications do not comply with the provisions of Section D-13 of Appendix D of Naval Courts and Boards in that they do not on their face show jurisdiction. We content that since this commission is sitting as a local court of the Marshalls area as well as a military court, it is apparent that the charges

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*James P. Kenny*  
LIEUT., USN.

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K(11)  
Kenny

and specifications do, on their face, show jurisdiction. He further contended that it is improper pleading to charge the accused with seven murders in one specification. Since these mass murders occurred as one incident, we feel that this is proper pleading and that the accused is in no way prejudiced thereby.

The necessary technical requirements of charges and specifications and the form thereof merely require that the accused be acquainted in simple language with all the essential elements of the offense charged and this has clearly been complied with by the prosecution in Charge I and Charge II and the specifications thereunder. The objections of the accused relate to the jurisdiction of this commission to hear the pending case and will be argued by the prosecution when properly presented as a plea in bar of trial.

JAMES P. KENNY,  
Lieutenant USN  
Judge Advocate.

"K(2)"

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*James P. Kenny*  
Lieut., USN.

0798

make card for  
Katiejap, putting  
all first names  
on card.

Charge.

0799

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

AL6-2/FF12  
13-JDM-ro

Serial: 4445

13 Mar 1947

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

Subject: Charges and Specifications - in the case of:

101-2270 Captain INOUE, Fumio, Imperial Japanese Army.

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

CHARGE I

MURDER

SPECIFICATION 1

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion at Jaluit Atoll, Marshall Islands, did, on or about 8 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, seven unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, and did, therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, died on or about 8 April 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

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

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*James P. Kenny*  
JANET, USN.

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0800



CHARGE I (continued)

SPECIFICATION 2

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 13 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, one unarmed native inhabitant of the Marshall Islands, exact name to the relator unknown, but believed to be Ralimo, and did therein and thereby, then and there, inflict mortal wounds in and upon the body and head of the said inhabitant of the Marshall Islands, of which said mortal wounds the said inhabitant of the Marshall Islands believed to be Ralimo, died on or about 13 April 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

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

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*James A. Keaney*

1947, W.H.

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0801

CHARGE II

VIOLATION OF THE LAWS AND CUSTOMS OF WAR

SPECIFICATION 1

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 8 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, seven unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, this in violation of the laws and customs of war.

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*James P. Kanay*

LIEUT. GEN.

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0802



CHARGE II (continued)

SPECIFICATION 2

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 13 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, one unarmed native inhabitant of the Marshall Islands, exact name to the relator unknown, but believed to be Ralime, this in violation of the laws and customs of war.

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

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*James P. Kenney*  
Lieut. USA

"3(4)"

0803

米國太平洋艦隊  
「マリアナ」方面司令部

昭和二十三年三月十三日

發「マリアナ」方面司令部

宛「マリアナ」方面司令部軍法委員會附法務官

米國海軍大尉「アイランド・ホーランド」

米國海軍大尉「ミッドウェイ・アイランド」

或ハ法務官トシテ、貴官等、後任者

記

大日本帝國陸軍大尉 井上 文 夫

前記、貴官等法務官タル軍法委員會ニ於テ  
後記、起訴並ニ罪狀項目ニ付キ裁判セラルベシ  
貴官ハ裁判長ニ之ヲ通告シ被告ニ裁判、  
日時ヲ通告シ原告並ニ被告兩側、全證人  
ヲ集合セラルベシ。

"(E)"

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James P. Kenny

LIEUT., USN.

0804



第一起 諸  
殺 人  
罪状項目 其 一

「マーシャル」諸島「マール」環状珊瑚島、大日本帝國  
軍南洋第一支隊第三大隊付トシテ勤務中、  
大日本帝國陸軍大尉(當時)井上文天ハ「マール」  
合衆國トシテ屬領及ニ其同盟諸國ハ大日本帝國  
ト戦争状態ニテ昭和二十年四月八日頃「マーシャル」  
諸島「マール」環状珊瑚ニテ意思的ニ違法的ニ企圖  
ト悪意ヲ以テ正當ナ理由モナク武装セザル「マーシャル」  
諸島ノ島民七名「ラリィヤップ」「ラリィヤップ」妻、  
「ネーベット」「アンチヨウ」「オチラ」「シロ」「ラゴシリク」  
(生殺者ニ確實ナ姓名不明)ナルモ前記ノ者ト  
思ハルヲ器具即チ危險ヲ武器(詳細不明)ヲ以テ  
襲ヒ殺害集又殺害セシメ同時同所ニテ上記「マーシャル」  
諸島ノ住民「ラリィヤップ」「ラリィヤップ」妻、  
「ネーベット」「アンチヨウ」「オチラ」「シロ」「ラゴシリク」  
ノ身體及頭部ニ致命傷ヲ負ハセソシテソコテ  
前記ノ致命傷ニヨリ前記「マーシャル」諸島ノ住民  
「ラリィヤップ」「ラリィヤップ」妻、「ネーベット」  
「アンチヨウ」「オチラ」「シロ」「ラゴシリク」ト思ハ  
ル者ハ昭和二十年四月八日頃死亡セリ右行爲ハ實地

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Jane P. Kenny

LIBRARY

100

0005

第二起訴 罪狀項目 其、一 (續キ)

中、法令特ニ日本刑法第二九條ニ違反タルモ、ナリ  
本法、應本左記、如シ  
「人ヲ殺シタル者ハ死刑又ハ無期若クハ三年以上  
ノ懲役ニ處ス」

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James P. Kenny

DEPT. OF JUSTICE

"TB4)"

0806

第一起訴 (續)

罪狀項目 其ノ二

「マーシャル」諸島「アルト」環状珊瑚島、大日本帝國  
軍隊南洋第一支隊第二大隊付トシテ勤務中、  
大日本帝國陸軍大尉(當時)井上文夫、「アメリカ」  
合衆國トソノ屬領及シ其同盟諸國が大日本帝國  
ト戦争状態ニアリシ昭和二十年四月十三日頃「マー」  
諸島「アルト」環状珊瑚ニテ意思的ニ違法の  
企圖ト悪意ヲ以テ正當ナ理由モナク武装セザル「マー」  
諸島ノ島民一名「フリメ」(吾等者ニハ確實ナ姓名  
不明)ナルモ前記ノ者ト思ハレルヲ器具即チ危険ナ  
武器(詳細不明)ヲ以テ襲ヒ殺害又殺害セシト  
同時同所ニテ上記「マー」諸島ノ住民「フリメ」  
ノ身体及頭部ニ致命傷ヲ與ヘシソシテソコデ前記  
ノ致命傷ニヨリ前記「マー」諸島ノ住民「フリメ」ト  
思ハレル者ハ昭和二十年四月十三日頃死セリ右行為  
ハ實施ノ法令特ニ日本刑法第九九條ニ違反シタルモ、  
ナリ本法ノ騰本左記ノ如シ

「人ヲ殺シタル者ハ死刑又ハ無期若クハ三年

以上ノ懲役ニ處ス」

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"T(6)"



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James P. Kenny  
Lieut., USN.

"T(5)"

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第三起訴(續)  
罪狀項目 其、二

「マニラ」諸島「ヤ」環狀珊瑚島、大日本帝國軍隊南洋第二支隊第三大隊付トシキ勲務中、大日本帝國陸軍大尉(當時)井上文夫「マニラ」合衆國トシ、屬領同盟諸國が大日本帝國ト戦争状態ニ入り昭和二十年四月十三日頃「マニラ」諸島「ヤ」環狀珊瑚島ニ「マニラ」島民達ト對テ裁判ヲ行ハセサル「マニラ」諸島、島民一名告發者ニハ確實ナ姓名不明ナル「マニラ」ト思ハル者ヲ「マニラ」トシテ殺害即チ危險ナル武器(詳細不明)ニテ殺害死セシメ之ヲ罰シ罰セシメタル事、戦争法規並ニ慣習ニ違反シタルモノナリ。

「マニラ」地、司令官  
米國海軍少將「マニラ」

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James P. Kenny

1977. 11. 11.

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**EXHIBIT**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Wednesday, April 23, 1947.

The commission met at 2:15 p.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Reese, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Carbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tutash, U. S. Marine Corps, members, and  
Lieutenant David Dalton, U. S. Navy and  
Lieutenant James P. Hany, U. S. Navy, judge advocates.

Erin S. Moore, sergeant, U. S. Marine Corps, entered with the accused  
and reported as provost marshal.

The judge advocates introduced Robert R. Miller, yeoman first class,  
U. S. Navy, and Joseph Kane, junior, yeoman second class, U. S. Navy, as  
reporters and they were duly sworn.

The judge advocates introduced Lieutenant Eugene H. Kerrick, junior,  
U. S. Naval Reserve, Mr. Isamu Ueda, and Mr. Shigeo Yamashita as interpreters  
and they were duly sworn.

The accused, Captain Fumio Inoue, Imperial Japanese Army, requested that  
Commander Martin E. Carlson, U. S. Naval Reserve, Mr. Tadashi Akinoto and  
Mr. Seizo Suzuki, both of Tokyo, act as his counsel. Commander Carlson,  
Mr. Akinoto and Mr. Suzuki took seats as counsel for the accused.

The judge advocates read the precept and modifications thereof, copies  
prefixed marked "A", "B", "C", "D", and "E".

An interpreter read the precept and modifications thereof in Japanese.

The judge advocates informed the commission that an oral stipulation had  
been entered into by the defense counsel and the judge advocates under the  
terms of which, when classified dispatches are referred to during the course  
of the proceedings of this commission, reference only to the content and  
substance of these dispatches will be made in open court. No reference to  
the date time group, or other means of identification of classified matter  
will be made, but defense counsel represented by Commander Carlson, U. S.  
Naval Reserve, will be given full opportunity to verify the accuracy and the  
authenticity of any statement regarding the content of such dispatches. The  
reason for this stipulation is primarily one of cryptographic and communication  
security. Counsel for the defense have all, individually and jointly, agreed  
to this procedure.

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*James P. Hany*

LIEUT. J. HANY.

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The commission announced that the above was approved.

The judge advocate did not object to any member.

The accused objected to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, as follows:

The accused objects to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, because he sat as a member of the Military Commission which tried Major Furuki, Hidesaka, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense, in this present case, is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Commander Bradner W. Lee, junior, sat as a member of the Military Commission which tried Major Furuki, Hidesaka, and heard the testimony of the accused as a witness in that case, we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. Lieutenant Commander Bradner W. Lee, junior was and/or is also a member of the Staff of Director of War Crimes, Pacific Ocean Area, investigating war crimes. We charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Lieutenant Commander Bradner W. Lee, junior, has personally investigated the charges in this case and that he has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The judge advocate replied as follows:

The judge advocate wishes to point out that in this case we do not have a situation that falls under the provisions of Section 385(a) of Naval Courts and Boards which states that a valid ground for challenge is when the challenged member "sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial." No member of this commission sat on a court which tried or investigated charges based on the same transaction for which the accused, Inoue, is now on trial. It is true that the facts and circumstances might be similar, but this is not a valid ground for challenge. Such a situation exists in civil criminal courts where the same judges sit on numerous cases in the course of a year wherein the facts and circumstances are similar.

Before the challenged member replies, the judge advocate, with the permission of the commission, wishes to make it known that he has two dispatches relating to the challenge of members of this commission. Since it has been stipulated that such classified material will not be read in open court, it will suffice to state that the first dispatch is from Commander Harrison to Ruler, J2, requesting permission to relax, in these war crime trials, the rule stated in Section 385(a) of Naval Courts and Boards and the second is a reply in the affirmative.

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*James A. Keady*

TEST. WEN.



The certified true copies of the two dispatches were presented to Commander Carlson, counsel for the accused, and to the commission.

The challenged member replied as follows:

I, Richard W. Lee, junior, state that I have not previously investigated the charges nor expressed an opinion thereon and that I have not formed a positive and definite, or any, opinion as to the guilt or innocence of the accused. That I have never seen these charges and specifications, dated 13 March 1947, until the afternoon of 22 April 1947, relating to the accused. That I have never heretofore seen the accused, Inoue, Fumio, except when he appeared as a witness in the case of Major Furuki, and that I have never talked to Captain Inoue. Furthermore, I admit that I was a member of the commission which tried the previous case, just completed, of Major Furuki. However, I firmly believe that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience. JK

An interpreter read this reply of the challenged member in Japanese.

The commission was cleared. The challenged member withdrawing.

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

The accused objected to Lieutenant Colonel Victor J. Carterino, Coast Artillery Corps, United States Army, as follows:

The accused objects to Lieutenant Colonel Victor J. Carterino, Coast Artillery Corps, United States Army, because he sat as a member of the Military Commission which tried Major Furuki, Hideoaka, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Colonel Victor J. Carterino sat as a member of the Military Commission which tried Major Furuki, Hideoaka, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Lieutenant Colonel Carterino has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Lieutenant Colonel Victor J. Carterino, did serve on the commission to try the Furuki case and I recall Captain Inoue appearing as a witness. However, I believe I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for trial, the customs of war in like cases and my own conscience.

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*James P. Keany*  
LIEUT. COL.

The accused waived the right to have the reply of the challenged member read in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused is not sustained.

The accused objected to Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States Army, as follows:

The accused objects to Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States Army, because he sat as a member of the Military Commission which tried Major Furuki, Hidemasa, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plan to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Colonel Henry E. Roscoe, sat as a member of the Military Commission which tried Major Furuki, Hidemasa, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Lieutenant Colonel Roscoe has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Lieutenant Colonel Henry E. Roscoe, acknowledge having participated as a member of the commission in the trial of Furuki, however, it is my firm belief that I can truly try without prejudice or partiality the case now pending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

The accused waived the right to have the reply of the challenged member read in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

The accused objected to Rear Admiral Arthur G. Robinson, U. S. Navy, as follows: JK

The accused objects to Rear Admiral Arthur G. Robinson, U. S. Navy, because he sat as a member of the Military Commission which tried Major Furuki, Hidemasa, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is

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*James P. Kenny*

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based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Rear Admiral Arthur G. Robinson, sat as a member of the Military Commission which tried Major Furuki, Hidesaku, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Rear Admiral Arthur G. Robinson has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Rear Admiral Arthur G. Robinson, acknowledge that I sat as a member of the military commission that tried Major Furuki, but I should like to state unequivocally that I have formed no opinion as to the guilt of Captain Inoue in this present case. I wish to solemnly assure you that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

The accused waived the right to have the reply of the challenged member read in Japanese, with the understanding that the translation will be read to the accused at a later date, as will the translations of the replies of the previous challenged members.

The commission announced that in view of the fact the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

The judge advocates and each member were duly sworn.

The accused stated that he had received a copy of the charges and specifications preferred against him, both in English and Japanese, on March 13, 1947.

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

The accused replied in the affirmative and read a written statement in Japanese, prefixed marked "F."

An interpreter read the English translation, copy prefixed marked "G."

The accused further objected and read a written statement in English, prefixed marked "H."

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

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*James P. Hickey*  
LIEUT. COL.

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

An interpreter read the English translation, copy prefined marked "J."

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

The commission then, at 4:15 p.m., took a recess until 4:44 p.m., at which time it reconvened.

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

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

The judge advocate made a reply to the objection of the accused, prefined marked "L."

The accused waived the right to have the reply of the judge advocate read in Japanese in open court at this time, provided the accused be furnished a copy at a later date.

The commission was cleared.

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

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

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

The commission was cleared.

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

The commission announced that the request of the accused was granted.

The commission then, at 5:18 p.m., adjourned until 9 a.m., Monday, May 2, 1947. JPK

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*James A. Kennedy*

WITNESSES



**SECOND DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands,  
Monday, May 5, 1947.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Reeves, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatech, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kane, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

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

The commission then, at 10:13 a. m., took a recess until 10:28 a. m.,  
at which time it reconvened.

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

An interpreter read an English translation of Mr. Akinoto's objection  
to the jurisdiction of the commission over the accused, copy appended marked  
"H."

Mr. Suzuki, Saine, counsel for the accused, read a written objection in  
Japanese to the jurisdiction of the commission over the accused, original  
appended marked "O."

The commission then, at 11:25 a. m., took a recess until 2:07 p. m., at  
which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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LIEUT., USN.

An interpreter read an English translation of Mr. Suzuki's objection to the jurisdiction of the commission over the accused, copy appended marked "P."

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, copy appended marked "Q."

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

The commission then, at 3:06 p.m., took a recess until 3:24 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

The commission then, at 4:27 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 6, 1947.

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*James P. Kenney*

WIT., USN.



**SUMMARY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, May 6, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tuttle, U. S. Marine Corps, reserve, and  
Lieutenant David Dalton, U. S. Navy and  
Lieutenant James P. Henry, U. S. Navy, judge advocates,  
Joseph Rice, junior, yeoman second class, U. S. Navy, reporter,  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate concluded reading a written reply to the objection by  
the accused to the jurisdiction of the commission, copy appended marked "B."

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

The judge advocate read the letter containing the charges and specifica-  
tions, original prefined marked "C."

An interpreter read a Japanese translation of the letter containing the  
charges and specifications, copy prefined marked "D."

The judge advocate arraigned the accused as follows:

Q. Inoue, Fumio, captain, Imperial Japanese Army, you have heard the  
charges and specifications preferred against you; how say you to the first  
specification of the first charge; guilty or not guilty?  
A. Not guilty.

Q. To the second specification of the first charge, guilty or not guilty?  
A. Not guilty.

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

Q. To the first specification of the second charge, guilty or not guilty?  
A. Not guilty.

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*James A. Henry*  
JAMES A. HENRY

Q. To the second specification of the second charge, guilty or not guilty?  
A. Not guilty.

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

The prosecution begins.

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

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

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

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

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

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

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

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

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

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

The Imperial Ordinance No. 26, for the Treatment of Judicial Affairs in the South Sea Islands, enacted in 1923, and revised in 1933, and that under the provisions of this ordinance the local criminal law effective in the Marshall Islands in the period of the commission of the alleged crimes was the Criminal Code of Japan.

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*James P. Kennedy*  
DIRECTOR, JMW.



The Criminal Code of Japan as applicable to the Marshall Islands, particularly Section 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years," and Article 41 which reads in tenor as follows: "Acts of persons under fourteen years of age are not punishable."

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

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

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

and that Japan ratified and signed this convention,

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

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

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

Proclamations Number 1 through Number 7 to the People of the Marshall Islands, issued by and under the authority of Chester W. Nimitz, Admiral, United States Navy, Commander-in-Chief, United States Pacific Fleet and Pacific Ocean Area, Commanding the United States Forces of Occupation in the Marshall Islands, and Military Governor of the areas occupied by such forces; and Ordinances 1 through 5, issued under the authority of the Military Governor of the Marshall Area, particularly:

Proclamation Number 1, "Article 1. All powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me as Admiral, United States Navy, Commanding the United States Forces of Occupation, and Military Governor, and will be exercised through subordinate commanders by my direction. Article 2. The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation."

Proclamation Number 2. "By proclamation No. 1, I have assumed all powers of government of the areas of the Marshall Islands, occupied by the United States Forces under my command. In order to make provisions for the safety of the United States Forces under my command and for the maintenance of public order and safety in the area occupied by such forces, I, C. W. Nimitz, Admiral, United States Navy, Commander-in-Chief, United States Pacific

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*James A. Kearney*

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Fleet and Pacific Ocean Areas and Military Governor of the Occupied Territory, <sup>OK</sup>  
hereby proclaim as follows: ..... Article 4. "Any person who commits an  
act which violates any provision of Japanese penal law in effect in these  
islands prior to occupation by the Forces under my command or the provisions  
of native law customary in the islands, may, at the discretion of the Military  
Governor or under his authority, be brought to trial before Military Court  
and on conviction, shall suffer such punishment as the Court may direct.  
The court shall be guided by punishments customarily imposed for such  
offenses in these islands and may, in the case of offenses against native  
customary law, call upon village headmen or chiefs to sit with the Court."

Proclamation No. 4, .....

**Article II. Jurisdiction.**

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

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

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

"3. **Over offenses.** Military courts shall have jurisdiction over:

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

Ordinance No. 1, .....(4): "Sit as a court with jurisdiction over  
offenses and disputes not reserved for trial by military courts; note out  
and carry into effect punishments appropriate to the crime, not to exceed  
thirty (30) days at labor."

Ordinance No. 2, .....Part II, Section 11 "There is hereby established  
in each atoll a Marshallese Court. The Marshallese Court shall be composed  
of not less than three (3) or more than five (5) members. The Magistrate  
shall be the presiding officer of the court and shall choose the remaining  
members from among the District Headmen and Elders. In an atoll which does  
not have a Magistrate the District Headman shall be the presiding officer of  
the court." Section 12 (a) (b) "The Marshallese Court shall have juris-  
diction over: (a) All offenses punishable under the provisions of this  
ordinance, except those offenses for which the penalty is death or imprison-  
ment; (b) All violations of local atoll regulations enacted by the Atoll  
Council pursuant to section 8 hereof." Section 13: "The following acts are

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*James I. Keamy*

WIT., U.S.



criminal offenses which shall be punished as herein prescribed: (a) Murder - the wilful or intentional taking of the life of a human being without lawful justification or excuse. (This offense is tried by a military court.) Punishment: Death, or imprisonment for a period which shall not be less than ten (10) years, including imprisonment for life. Manslaughter - the unlawful taking of the life of a human being without wilful intent. (This offense is tried by a military court.) Punishment: Imprisonment at hard labor for a period of not less than one (1) year or more than three (3) years."

Directive of 10 January 1946, serial 362,...."10(d). To suits and torts, both at law and in equity, arising under local customs and involving amounts of one hundred dollars (\$100.00) or less." ..... "11(a) All other judicial matters are reserved to military courts, although the local native court may serve as court of first instance in any criminal case, and order the defendant held in confinement while awaiting a military court to take jurisdiction. Similarly, the native court shall be competent to impose imprisonment exceeding six (6) months or a fine to exceed one hundred dollars (\$100.00), or both such imprisonment and fine."

The commission then, at 10:32 a.m., took a recess until 11:10 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The accused waived the right to have the judge advocate's request to the commission to take judicial notice read in Japanese in open court at this time.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written objection to the commission taking judicial notice of the foregoing, copy appended marked "V."

The accused waived the right to have the objection of Commander Carlson to the commission taking judicial notice read in Japanese in open court.

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

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Saine, counsel for the accused, offered a further objection to the commission taking judicial notice, appended marked "W." The accused waived the right to have the objection of Mr. Suzuki to the commission taking judicial notice read in Japanese in open court.

An interpreter read an English translation of the objection of Mr. Suzuki to the commission taking judicial notice, copy appended marked "X."

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James A. Kennedy  
JAN 27, 1946



The judge advocate replied to the objections of the accused, copy appended marked "E."

The accused was furnished a copy of the judge advocate's reply which was translated to him in Japanese. The accused waived the right to have the reply of the judge advocate read in Japanese in open court.

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

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Sergeant Major, Imperial Japanese Army, Fukuoka, Tadashi.

2. Q. Are you presently confined on Guam?

A. Yes.

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

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

4. Q. Were you ever stationed with the Japanese armed forces on Jaluit Atoll, Marshall Islands?

A. I was.

5. Q. During what period were you stationed on Jaluit?

A. I arrived on Jaluit on the 19th of May 1943 and stayed there until the tenth of October 1945.

6. Q. To what organization were you attached while stationed on Jaluit?

A. It was the Second Battalion of the First South Seas Detachment.

7. Q. Was the accused also stationed on Jaluit during that period?

A. Yes.

8. Q. To what organization was he attached?

A. Second Battalion, First South Seas Detachment.

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

The judge advocate replied.

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

9. Q. In April 1945 were you assigned duty in connection with some native prisoners?

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

The judge advocate replied.

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*James P. Kennedy*  
LIEUT., USN.

The commission announced that the objection was not sustained.

A. Yes.

10. Q. What was the assignment that you received?

A. It was to guard natives.

11. Q. From when did you receive that assignment?

A. Captain Inoue.

12. Q. Will you tell this commission what you did as a result of that assignment?

A. Around the tenth of April 1945 Captain Inoue told me to go and wait in front of the Second Ammunition Dump after supper. There, Captain Inoue said they are going to be moved, watch that they do not escape. From the ammunition dump four natives were brought out and placed on the truck, the truck started out toward Ainsman, this was about 3:40 in the afternoon. When I stated four natives were brought out from the ammunition dump I made a mistake, it was three. After the truck had gone for about three thousand meters it came to the Ainsman Transmitting Station from which four natives were brought out and placed on the truck, which already contained the three natives. With a total of seven natives on it the truck went on for about five minutes and stopped. There Captain Inoue gave us the following orders. At the truck were myself, Warrant Officer Wakamatsu and Captain Jinno. He told us to keep a sharp watch to see that the natives did not escape. There were four other soldiers and it looked as if Captain Inoue was talking to them. Eventually they went in different directions. Then Captain Inoue said to take the three male natives from the truck. Myself, Wakamatsu and Jinno cooperating took them from the truck. Captain Inoue taking the three natives went into the jungle on the outer side of the reef. After they had been gone about ten minutes four to five pistol shots were heard. Just at this time Captain Jinno was down from the truck, myself and Wakamatsu were on the truck. Captain Jinno called to me to take a look and I looked in the direction of the shots, but not being able to see Inoue or the natives, I stated that I could not see anything. A short time later Captain Inoue came out toward the truck and he said to take the two women from the truck, so myself, Wakamatsu and Jinno cooperated and took them down from the truck. Taking the two women with him he again entered the jungle. I do not have a very distinct recollection of the time, but about ten minutes after I heard two or three pistol shots. A short time later Captain Inoue again returned to the truck. Next, he told us to take down the two children who were twelve to thirteen and taking the two children with him he again entered the jungle. Also about ten minutes later two to three pistol shots were heard. A short time after the pistol shots were heard, Inoue called to us three from the jungle. The three of us ran toward the jungle where he had entered, there there was a big hole with the dead natives in it and Captain Inoue was standing by the hole. Then Inoue said to us, "They were executed after investigation as spies and because they had committed murder at Hillo, they had been consulted on and examined." And he also stated that he had been ordered to do this execution by the commanding officer, and that he executed them. It sounded as if Captain Jinno was asking him did he also kill the children and Captain Inoue answered, "I could not help but kill them, I expressed my opinion many times to the commanding officer, but the commanding officer did not heed me. I can not help but shed tears. I made myself blind to the tears and executed them." Next he stated, "We are going to bury the natives, you shall help in this." He started to throw dirt in the hole. After we had

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*James A. Kenny*

LIEUT., USN.



finished, the four of us gave prayers for the dead natives and went back toward the truck. After we came back to the truck Captain Inoue called the guards who had been placed out in front and in back and after we were all assembled it seemed as if Captain Inoue was talking to the four guards and he was also bowing his head toward the jungle where the natives had been buried. At this time the three of us were on the truck. By the time we were on the truck and going back toward headquarters it was getting dark. I do not remember the exact time.

13. Q. Where was the Second Ammunition Dump located?

A. On the main island of Ruidj.

14. Q. Which of the natives were removed from the Second Ammunition Dump?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. From the Second Ammunition Dump was taken one woman of about twenty-seven to twenty-eight, one man of about thirty and a boy of about twelve to thirteen.

15. Q. Who removed these prisoners from the Second Ammunition Dump?

A. We who went as guards cooperated and brought them out.

16. Q. At what location on Ainsman Island were the other natives confined?

A. It was the Transmitting Station which was built as strongly as the ammunition dump and its position was about three thousand meters or so from the main village of Ruidj.

17. Q. Which prisoners were removed from the Transmitting Station?

A. There was one man of about forty, a woman of about forty and another man of about thirty and a girl of about twelve to thirteen. Their ages are just a guess from what I saw and I may be mistaken.

18. Q. Was the jungle into which the accused took the natives located on Ainsman Island?

A. Yes.

19. Q. You stated that "Inoue called from the jungle to the three of us." Who were the three referred to?

A. The three were Captain Inoue, who was at that time a first lieutenant, Petty Officer Wakamatsu, and myself.

20. Q. Where were the four other guards located while this was going on?

A. They were some distance in front of the truck as we did not hear their instructions I did not remember how far out they were, but I do remember seeing them go north and south.

21. Q. When the accused entered the jungle with these natives was he armed?

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

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Lieut., U.S.N.



The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. He had a pistol.

22. Q. When you saw the bodies of the dead natives did you notice any wounds on their bodies?

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

The judge advocate withdrew the question.

23. Q. You have testified that you saw the bodies of the dead natives in the hole. Will you describe their appearance?

A. On their faces and hands there was some blood and some were lying face down, some with their face up, but the direction of their heads were all the same.

24. Q. You have testified that Captain Inoue stated that he executed these natives on the order of the commanding officer, did he give any reason for the executions?

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

The judge advocate withdrew the question.

25. Q. Did the accused in addition to his statement that he had executed the natives on the order of the commanding officer state anything else at that time?

A. He stated that they had been investigated and they had come to say and that they had committed murder on Hille and as a result consultation had been held on them and they had been ordered executed by the commanding officer.

The commission then, at 3:40 p.m., took a recess until 3:55 p.m. at which time it reconvened. JRK

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

26. Q. Did you receive any other assignment to guard some native prisoners later in the month of April in 1945?

A. About three or four days after the tenth of April to which I testified before, I received an assignment to guard natives.

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*James A. Kennedy*

J. A. K.

27. Q. From when did you receive this assignment?

A. From Captain Inoue.

28. Q. Tell the commission what you did as a result of this assignment.

A. After supper I was ordered to go to the Second Ammunition Dump, I went to the Second Ammunition Dump and there Captain Inoue came and brought out a native from the dump. He stated that we were going to take this native toward Hailor. Myself and Captain Inoue placed the native on the truck. The truck went through Ainsman toward Hailor. After the truck had been going for about twenty-five to twenty-six minutes the truck stopped about one hundred meters before the crematorium and we took the native down from the truck. Captain Inoue said "You stay here and let no one go through here toward Hailor." Captain Inoue took the native with him and went down the road toward Hailor. As the road was not straight and was winding I could not see. Twelve to thirteen minutes later I heard two to three pistol shots. A short time later I was called to in a loud voice so I ran toward the voice. When I ran toward the voice Captain Inoue was standing by a hole which the native was in. When I went there Captain Inoue said that this person came here to say and that he had committed murder at Hillo, he was the worst one among them and by the orders of the commanding officer he was executed. He said we are going to bury him, so help me, so we buried the native. After he was buried prayers were offered. Captain Inoue said we are going back to headquarters, so we walked back toward the truck and we went back toward headquarters. By the time we were going back it was getting a little dark.

29. Q. What was the sex of this native prisoner?

A. It was a male native of about thirty-two to thirty-three years of age.

30. Q. The location where the truck stopped and Captain Inoue took the prisoner with him, was that located on Ainsman Island?

A. Was it the place where the truck stopped?

31. Q. Yes.

A. It is at the end of Ainsman Island.

32. Q. Describe the appearance of the body of this native as you observed it.

A. I remember he had a wound at his temple and he was lying sideways in the hole.

33. Q. Did Captain Inoue say who had performed the execution?

A. He said, "I just executed him by the orders of the commanding officer."

Cross-examined by the counsel:

34. Q. You stated that on April tenth seven natives were executed and two or three days later another native was executed. If you know the reason for this please tell us.

A. This native escaped during the investigation and this was why his execution was later.

35. Q. You stated that this native's execution was delayed because he escaped during the investigation. Due to his escape do you know what events occurred?

A. It was getting a little dark when this native escaped and the commanding officer ordered a general search by the military and gendarmes to capture him. Guards were placed on all places on the island.

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*James P. Henry*  
JAMES P. HENRY



36. Q. When was this?

A. As I recall it was the night before the seven natives were executed.

37. Q. You stated that the native who escaped was looked for everywhere. Was he also looked for in the sea as well as on the land?

A. I know he was looked for on land, I have heard that he was looked for by canoe on the outlying islands, but I do not know about the sea.

38. Q. Do you know who was in charge of the search?

A. Naturally I think it was the commanding officer, Harada. JK

39. Q. Do you know who directly took charge of the search?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial and had no bearing on the issues.

The accused replied,

The commission announced that the objection was sustained.

40. Q. You testified that you went to the Second Ammunition Dump and also the Transmitting Station where the natives were confined. Did these confinements have facilities for air raid shelter?

A. The Second Ammunition Dump was a place where soldiers took shelter during air raids, as for the Transmitting Station, as it was some distance from the main island it was very rarely bombed and was considered a safe place.

41. Q. Was there any other place near headquarters where there were good air raid shelter facilities?

A. There was the First Ammunition Dump and the Command Post, that was all.

42. Q. Were these capable of withstanding bombings?

A. Both were dangerous if there was a direct hit, but for bombs falling nearby it was comparatively safe. JK

43. Q. You stated that you went to the Second Ammunition Dump on the tenth and two or three days later. Did you ever act as a guard on the ammunition dump while the natives were confined there?

A. Yes.

44. Q. While you were acting as guard there did anyone come to the ammunition dump to investigate or otherwise?

A. Usually Harikawa, Inoue and an interpreter. The commanding officer, I do not remember exactly, came about twice when Harikawa was absent.

45. Q. When the commanding officer came was there anyone with him?

A. Captain Inoue and the interpreter came along.

46. Q. What is the name of the commanding officer?

A. Rear Admiral Harada, Harada.

The witness was duly warned.

The commission then, at 4:27 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 7, 1947.

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*James P. Kennedy*

LIEUT., USN.



**EXHIBIT**

United States Pacific Fleet,  
Commander Marines,  
Guam, Marianas Islands,  
Wednesday, May 7, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry E. Rocco, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tetsch, U. S. Marine Corps, members, and  
Lieutenant David Dalton, U. S. Navy and  
Lieutenant James P. Kenney, U. S. Navy, judge advocates,  
Joseph Raso, junior, yeoman second class, U. S. Navy, reporter,  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Fukatsu, Tadashi, the witness under examination when the adjournment  
was taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Cross-examination continued.)

47. Q. When did you first see these natives that you testified about?  
A. It was around the end of March.

48. Q. Did you see them for the first time when Captain Inoue ordered you  
to go with him to the ammunition dump?  
A. Yes.

49. Q. Do you know who these natives were?  
A. Do you mean their description?

50. Q. Yes.  
A. The men were wearing white shirts with long pants, about two of them  
were wearing short pants. All the women were wearing mother hubbards. They  
were all barefooted. They all looked neatly dressed.

51. Q. Were they natives of Jaluit?  
A. I did not know.

52. Q. Had they come to spy on Jaluit?  
A. I heard this after the execution, from Captain Inoue.

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*James P. Kenney*

EXHIBIT, TRUE.

53. Q. Did they look to you as if they were spies?

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

The accused replied.

The commission announced that the objection was sustained.

54. Q. Were they different than the Joluit natives?

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

The accused replied.

The commission announced that the objection was sustained.

55. Q. Did Captain Inoue appear to be reluctant to carry out the orders, that is, regarding these natives, when he first took them on the truck with you?

A. When we first placed them on the truck, Captain Inoue said, "We are going to move the natives." I did not notice his expression.

56. Q. How did he appear to you when the first of the natives were taken off the truck and he went into the jungle with them?

A. He seemed a little different from his usual self. He looked sad.

57. Q. And how did he look when the next group were taken into the jungle?

A. When he came out to take the next group in, when Captain Jimmo asked him, "What were those shots?" he appeared as if he could not hear us and looked as if was thinking deeply.

58. Q. How did he look when he took the two children in?

A. The same as when he took the others. He looked very sad.

59. Q. You testified that he said certain things when he came out after the last time. Did he appear to be very happy?

A. He did not look happy.

60. Q. You testified that he said, "I cannot help but shed tears; I made myself blind to tears." Did you see any tears in his eyes?

A. At that time I did not look at his face, but I saw that he was very sad.

61. Q. What was Captain Inoue's general reputation?

A. As I worked together with him, I knew that he was a very serious person and not a person to do a thing by himself. As our work was the special police detail and also in punishing military personnel, he was very deliberate and very careful.

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

The commission did not desire to examine this witness.

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James P. Kearney

1st Lt., USA.



The witness was duly warned and withdrew.

Examined by the judge advocate:

A. Warrant Officer, Imperial Japanese Navy, Wakamatsu, Minora.

A. Yes.

A. I was.

A. From the 31st of October, 1941, to the 10th of October, 1945.

A. The Sixty-second Naval Guard Unit.

A. I was assigned duties.

4. I was assigned these duties by the former executive officer of the guard unit, Lieutenant Commander Shintone.

1. I think it was on the 9th or the 10th that myself, Inoue, Moriura, Mi and Hishida were ordered by the former executive officer, Shintone, to go to the Second Ammunition Dump after supper, by 3:30, to act as guards in moving natives, and to come under the command of Captain Inoue. After supper we assembled at the Second Ammunition Dump. About the same time the commanding officer, Inoue, and a Japanese civilian who looked like a gunachu came and they talked for about ten minutes and then returned. The eight persons having assembled included Inoue. Inoue ordered the natives placed on the truck. We placed the three natives on the truck. Captain Inoue then instructed us to be sure that the natives did not escape. The truck started out toward the south from Baidj. After it had gone for about two or three thousand meters, it stopped at the transmitting station where four more natives were placed on the truck. The truck again started to move and, after it had gone seven hundred to five hundred meters, it again stopped. I remember Captain Inoue sending four guards out toward the front and the rear and he told First Lieutenant Jinno, myself, and Fukutau to watch the natives who were on the truck. He also told us to take down three of the natives. Then he went toward the outer sea and went toward the right into the jungle. After about ten minutes, we heard several shots. Again Captain Inoue came back, next taking two natives, went in the same direction. After about the same time, we again heard the shots; Inoue came back and took the two remaining natives. He then came back toward where we could see him and called to us. The three of us went after him. After we had gone a distance of about sixty or seventy

James P. Kenney



neters, we came upon a good sized hole and found the natives lying in it. We were very much surprised at this time. Captain Inoue solemnly said that, "as a result of an investigation, it was found that these natives had killed a person on Mille and come to spy on Jaluit. An examination and consultation was held. I, Inoue, was ordered to execute them by the commanding officer; and I have just done so." And he also stated, "Now I am going to bury them. Assist me." At this time First Lieutenant Jinne asked him did he also execute the two children. Captain Inoue seemed very grave and he stated that, "On this I expressed my opinion many times to the commanding officer to confine them to another island, but he did not heed my opinion." He looked very low-spirited. The four of us, including Captain Inoue, buried them; and, by the direction of Captain Inoue, flowers were gathered and placed on the grave. Prayers were offered and we returned in the truck. The guards were called in.

9. Q. Do you know the names of any of these seven natives who were executed?  
A. I do not know their names.

10. Q. Describe the three natives who were taken from the Second Ammunition Dump.

A. Their hands were tied in back of them and they were blindfolded before they were placed on the truck. As for their clothes, each one was wearing a white shirt and short pants, the woman was wearing a colored one piece dress. JK

11. Q. You have stated that one of these prisoners was a woman. What was the sex of the other prisoners taken from the Second Ammunition Dump?

A. One was a man of about twenty-two or twenty-three years old; the other was a boy whose age, I guess, would be about twelve or thirteen.

12. Q. Will you describe the sex of the four prisoners who were removed from the transmitting station at Ainsman Island?

A. There were two men, one of about thirty, the other near fifty, about forty-five or forty-six, the one woman was about in her thirties, about thirty-four or thirty-five years old. The other was a girl of about twelve or thirteen. I do not remember exactly, but one or two of them were wearing long pants. The woman and the girl were wearing one piece dresses which were not white. Their hands were also tied in back and blindfolded.

13. Q. On the first trip into the jungle which of these natives did Captain Inoue take with him?

A. The three men.

14. Q. Which ones did he take on the second trip?

A. The two women.

15. Q. Which ones did he take on the third trip?

A. The two children. JK

Cross-examined by the accused:

16. Q. You stated that around the 10th of April you received orders from the executive officer, Shintone. What work was Shintone performing around that period?

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*James P. Kenney*  
Lieut., USN.

A. Lieutenant Commander Shintone was the executive officer of the Sixty-second Naval Guard Unit. He was in a position to directly help the commanding officer and was one of the head men of the Jaluit Garrison. He had many duties such as head of the land patrol, sea detail, the head of the sea patrol, the head of the transportation section, communication section and also over mines. He performed heavy and minor duties all by himself, but together with the army battalion commander he was an important man on Jaluit.

17. Q. You stated that Shintone and the battalion commander, Furuki, helped the commanding officer. Do you know if Furuki was absent when this native incident occurred?

The commission suggested that counsel establish the identity of the battalion commander before asking this question. J-K

The accused withdrew the question.

18. Q. You have just stated that Shintone, together with the army battalion commander, helped the commanding officer. What is the name of the army battalion commander?

A. Major, Imperial Japanese Army, Furuki, Hidesaku.

19. Q. Do you know if Furuki was absent from Jaluit when these natives from Mille arrived?

A. On the night before the execution of the seven natives, one native escaped and from what I remember, Major Furuki was at headquarters and together with the executive officer, Shintone, helped in the search for this native. On the day of the execution, I do not know.

20. Q. Do you know the date when the natives from Mille were sent to headquarters?

A. I do not remember the exact date, but I think it was the beginning of March.

21. Q. When you say the beginning, is it a mistake for the end of March?

This question was objected to by the judge advocate on the ground that the counsel was interpreting the answers of the witness.

The accused withdrew the question.

22. Q. You just stated that it was the beginning of March. Are you sure of this?

A. As I had no connection with the natives at that time, and two years have already elapsed, I cannot say for sure whether it was the beginning or the end. J-K

23. Q. Do you know if Major Furuki was absent from the main island from the end of March to the beginning of April?

This question was objected to by the judge advocate on the ground that it was too vague. J-K

The accused withdrew the question.

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James P. Kenny  
Jury, etc.

24. Q. Do you know if Major Furuki was absent from the island from the end of March to the second or third day of April?

A. As I very rarely visit headquarters, I do not remember exactly whether Major Furuki was there or not.

25. Q. Who was in charge of the natives?

A. As I did not look into the natives, I do not know anything about who was in custody.

26. Q. You stated that the executive officer, Shintone, and the battalion commander, Major Furuki, directed the search of the native who escaped. Do you know who directly took charge of the search and commanded the men? If you know anything about this, please tell us.

A. This materialized by the order of the commanding officer, and the army battalion commander, Furuki, and the navy executive officer, each commanded the various men and went about the search. Concerning the defense and guarding furnished, if a submarine came into the lagoon of Jaluit, all matters of guard outlooks and of patrolling was conducted by Major Furuki and the executive officer, Shintone.

27. Q. Who was guarding the places of confinement when the natives escaped?

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

The accused replied.

The commission announced that the objection was sustained.

28. Q. Do you know if any one was scolded because of a mistake he had made in guarding natives?

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

The accused replied.

The commission announced that the objection was sustained.

29. Q. While you were guarding the natives, did Admiral Masuda ever come to investigate the natives?

A. I went to guard the natives at the Second Ammunition Dump once or twice, but during my times as guard, Admiral Masuda did not come.

The commission then, at 10:27 a.m., took a recess until 10:50 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

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James P. Keany  
ATTY. GEN.



(Cross-examination continued.)

30. Q. The civilian that you testified was in this group of eight or nine people, was he a Japanese citizen?

A. Yes, I think so.

31. Q. Do you know what his name is?

A. I do not know the name.

32. Q. Were these natives from Mille?

A. I did not know until Captain Inoue told me. Captain Inoue told me after the execution that they had come from Mille. That is how I know. JK

33. Q. When did you first see these natives from Mille?

A. When we went as a working detail to the Second Ammunition Dump and when they came out.

34. Q. How long before the execution was this?

A. When I went as a work detail to the Second Ammunition Dump was about two hours before they were executed. JK

35. Q. Was this the first time you had ever seen these natives?

A. Yes.

36. Q. You testified on direct examination you were assigned duties in connection with these natives by Lieutenant Commander Shintome. When were you assigned these duties by Lieutenant Commander Shintome?

A. It was before supper on the 9th or 10th of April, 1945; therefore, it must have been around 2:40 in the afternoon. JK

37. Q. What duties did he assign you?

A. To go as a guard to watch the natives in moving them.

38. Q. Was anyone else assigned as a guard with you?

A. The guard you mean now is the men to guard the natives. Is that what you mean?

39. Q. Yes.

A. The five of us were ordered as guards, but I was the one who received the order and relayed that order to the other four.

40. Q. Were there any other guards over these prisoners?

A. There were guards.

41. Q. Do you know why these prisoners were being guarded?

A. All I remember is that there were guards in front of the ammunition dump and other to this, I do not know.

42. Q. What were your regular duties on Jaluit?

A. Do you mean by battle station or duties other to this?

43. Q. Duties other to your battle station. What was your regular duty?

A. I was a member of the special police detail and worked under Captain Inoue and I also was the senior petty officer and in my spare time I performed these duties.

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*James P. Keamy*  
JURY, U.S.

44. Q. Was Captain Inoue in charge of the police on Jaluit?

A. He was directly the head of the special police detail.

45. Q. Then how was it that Lieutenant Commander Shintone gave you orders in regard to guarding these prisoners?

A. Because I worked part of the time for Captain Inoue and the other I had duty as senior petty officer and I lived, for about a month or two, across the road from Lieutenant Commander Shintone's offices. He called me as I was going by and ordered me to go as guards with the other four.

46. Q. Did Captain Inoue know that you were ordered to guard these prisoners?

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

The accused replied.

The commission announced that the objection was sustained.

47. Q. Did you work directly under Captain Inoue?

A. Yes.

48. Q. Now, these orders that you received from Lieutenant Commander Shintone, how well did you carry them out?

A. I received the orders to act as guard in the movement of these natives. I relayed this to the others and performed my duties.

49. Q. How well did you perform your duties?

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

The accused replied.

The commission announced that the objection was sustained.

50. Q. The prisoners that you were ordered to guard, were they all taken out to be executed by Captain Inoue?

A. Yes.

51. Q. What was Captain Inoue's reputation on Jaluit?

A. He was a gentle and moderate person and in everything he did, he was careful, diligent and strove to make no mistakes. In our work he even asked the opinion of such persons as myself and these opinions were expressed to his superiors.

52. Q. You stated on direct examination that Captain Inoue looked very grave when you were at the unloading of the prisoners and just prior to it and after the execution. Did he appear to be reluctant to carry out this duty?

A. Every time he took the prisoners in and after we had gone to where the natives were, he always seemed very low-spirited looking back upon that period.

Reexamined by the judge advocate:

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*James P. Kennedy*  
JAN 27 1946

53. Q. In answer to the question by defense counsel, you stated that about April 1, the natives were taken to headquarters. What did you mean by that answer?

A. I cannot understand the question. I would like to have it repeated.

54. Q. Where at headquarters were these natives taken?

A. Was this before the execution?

55. Q. Before the execution and about April 1, at the time they were taken prisoner.

A. At that time, as I was not there, I do not know where they were taken but later I went as an outside guard and I heard that the persons inside were natives, but that was all I know.

56. Q. Was this at the Second Ammunition Dump?

A. Yes, the Second Ammunition Dump.

57. Q. Was the Second Ammunition Dump located at headquarters?

A. It was an ammunition dump which was used by the air squadron and was one of two ammunition dumps. It was located about three hundred to four hundred meters from headquarters on the island of Baidj.

Recross-examined by the accused:

58. Q. Were all eight natives taken here?

A. I do not know how many were brought.

59. Q. Do you know why they were brought there?

A. I do not know the reason for this either.

60. Q. How soon after this were they executed?

A. As I do not know the exact date when they were taken, I do not know how many days passed.

61. Q. Was it several days?

A. I do not know the number of days.

62. Q. Were all the natives executed at the same time?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. Seven were executed and one was executed later. I heard about this other execution by documents of the Jaluit Defense Garrison.

63. Q. Do you know why one was executed later?

A. Because the one who had escaped the previous night had not been caught up to that time.

64. Q. Were you responsible for the one that escaped?

A. No, I had no responsibility.

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*James L. Kennedy*  
JAN 1, 1958.



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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank and present station.  
A. Edward L. Field, lieutenant, U. S. Naval Reserve, presently attached to the Legal Staff, Commander Marianas, duties in connection with war crimes. JK

2. Q. If you recognize the accused, state as whom.  
A. The accused in this case is Captain Fumio Inoue, Imperial Japanese Army.

3. Q. Are you the legal custodian of a document pertaining to matters concerning this trial?  
A. Yes, I am.

4. Q. Will you explain to the commission how this document came into your possession?

This question was objected to by the accused on the ground that the accused has not been afforded the opportunity to know what this document is. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The document which I have in my possession was written by the accused, Captain Inoue. It came into my possession as a result of an investigation that I undertook at the stockade early in December, 1946, with Lieutenant Frederick Tremayne acting as interpreter. I interviewed personnel at the stockade from Jaluit Atoll. These personnel were all Japanese nationals and among those interviewed was the accused, Captain Inoue. At this interview he informed us that he would gladly write out an acknowledgment of what he knows concerning the alleged war crimes at Jaluit Atoll. Writing facilities were made available to him in order that he might write this acknowledgment out and he so did. This document was not written in my presence, but was later delivered to the guards at the stockade by Captain Inoue after he had written it and it was in turn delivered to my custody.

5. Q. Was any reward or inducement offered to Captain Inoue if he prepared this statement?

This question was objected to by the accused on the ground that the witness has already testified that he was not present when the statement was prepared.

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James P. Keamy  
LIEUT., JAG.

The judge advocate withdrew the question.

6. Q. Did you offer any reward or inducement to Captain Inoue to prepare this statement?

A. I did not.

7. Q. To your knowledge, did anyone at the stockade offer any reward or inducement to Captain Inoue to prepare this statement?

This question was objected to by the accused on the ground that this witness should not be allowed to testify as to whether or not any reward was offered by anyone at the stockade since he was not present when the document was signed.

The judge advocate replied.

The commission announced that the <sup>obj</sup>jection was not sustained. JK

A. Insofar as I know, there was no inducement or threats used to obtain this statement from Captain Inoue.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:06 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

The original statement in Japanese of the accused, Captain Inoue, Fusio, Imperial Japanese Army, and an English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the admission of this document in evidence as follows:

Commander Martin E. Carlson, United States Naval Reserve, a counsel for the accused, read a written objection, copy appended marked "E." JK

The accused waived the right to have the objection of Commander Carlson read in Japanese in open court.

The commission then, at 2:25 p.m., took a recess until 2:40 p.m., at which time it reconvened.

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*James P. Kenney*  
JPM., USN.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

The accused waived the right to have the objection of Mr. Akimoto, Tsuchiro, read in Japanese in open court. Appended marked "AA."

An interpreter read the English translation of Mr. Akimoto's objection, copy appended marked "BB."

With the permission of the commission, the judge advocate resumed his questioning of the witness.

8. Q. At the time that Captain Inoue offered to prepare this statement relative to his connection with the case of the Mille natives, did you have a conversation with him concerning his part in the case of the Mille natives?  
A. This statement is merely the result of our request that he write down what he had just previously told us by way of conversation orally and he said that he would.

9. Q. Does this statement in substance contain the facts as related to you by Captain Inoue in the conversation at that time?  
A. The written statement contains a synopsis of the general substance of the oral statement that Captain Inoue made to me.

The judge advocate replied to the objection of the accused to receiving the statement of Captain Inoue, Fumio, Imperial Japanese Army, into evidence.

The accused waived the right to have the reply of the judge advocate read in Japanese in open court.

The commission was cleared. The commission was opened. All parties to the trial entered. The commission announced that the objections of the accused were not sustained and that these documents would be received in evidence.

The original statement of Captain Inoue, Fumio, Imperial Japanese Army, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

10. Q. Will the witness read the English translation of this statement?

The witness read the English translation of the statement of Captain Inoue, Fumio, Imperial Japanese Army, copy appended marked "Exhibit 2."

An interpreter read the English translation of the statement of Captain Inoue, Fumio, Imperial Japanese Army, appended marked "Exhibit 1."

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*James P. Kenny*

WITNESSES



The accused did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Jimno, Shigeru, captain, Imperial Japanese Army.

2. Q. Are you presently confined on Guam?

A. Yes.

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

A. Captain Inoue, Fumio, Imperial Japanese Army.

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

A. I was.

5. Q. During what period were you stationed on Jaluit?

A. From the thirtieth of October, 1943, until the tenth of October, 1945.

6. Q. To what organization were you attached?

A. The First South Seas Detachment.

7. Q. To what organization was the accused attached?

A. Headquarters of the First South Seas Detachment.

8. Q. What battalion was he attached to?

A. He was officially attached to the headquarters, but as he was separated from the headquarters he performed his duties at the headquarters of the second battalion.

9. Q. In April, 1945, were you assigned duties in connection with some native prisoners?

A. I was.

10. Q. From whom did you receive that assignment?

A. Captain Inoue.

11. Q. Tell this commission what you did as a result of that assignment.

A. I went to the ammunition dump and as I remember I was one of the first ones there. Just as I arrived there the commanding officer, Captain Inoue, and a Japanese person who was not of the regular military came and went into the ammunition dump. A short while later they came out and Captain Inoue said, "I am going to headquarters and will be back." During this period the rest of the men arrived. Almost at the same time Captain Inoue returned and said, "We are going to move the natives now, watch that they do not escape." We placed three natives on a truck at the ammunition dump. One man, one woman and a boy of about thirteen years were placed on the truck.

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*James P. Kenney*  
LIEUT., JUDGE

The truck went forward toward Ainsman. Four more natives were placed on the truck at the Ainsman Transmitting Station and as I remember the truck went forward for about six hundred meters and then stopped. Captain Inoue got down from the truck and said for two guards each to go forward from the truck and two to go backward from the truck. Myself, Wakamatsu and Fukatsu were ordered to watch the natives at the truck. Captain Inoue at first said to take down the three men. The three of us took them from the truck. Captain Inoue took down the three natives as I remember, one in front and two in back, and went into the jungle on the outer part of the island facing toward the sea. About ten minutes after he entered the jungle five to six shots were heard. I had Fukatsu look toward the shots, but Fukatsu said that he could see nothing so I continued to guard the natives at the truck. Five or six minutes after the first shots Captain Inoue came back and said to take down two natives. Captain Inoue taking the two natives went again in the same direction. Again several shots were heard, Captain Inoue again came back to the truck. At this time I asked Captain Inoue what were those shots, I do not know if he heard or not, but there was no answer. Taking the two natives again he went in the same direction. Again the shots were heard. A short time later Captain Inoue called out, "The three guards come here." We ran toward Captain Inoue. When we reached there there was a big hole and I was surprised to see the natives lying in it. Then Captain Inoue said to the three of us, "The natives you brought today were found upon investigation that in escaping from Mille Island had killed a soldier and had sneaked into Jaluit to spy, consultation was held and I was ordered to do the executions by the commanding officer and just did it." Then at this point I asked Captain Inoue, "Did you also kill the children?" Concerning the children Inoue said, "I expressed my opinion many times that they should be confined on another island, but the commanding officer did not heed and had them executed." After this he stated that we were going to bury them, so we assisted him. The four of us buried the natives. Captain Inoue said, "Let us offer our prayers and return." We offered our prayers and we returned.

12. Q. You stated that upon your arrival at the Second Ammunition Dump certain people entered the dump. Will you please repeat the names of those people?

A. The commanding officer, Captain Inoue, and I do not know the name, but one Japanese person.

13. Q. Who do you mean when you say commanding officer?

A. Rear Admiral Masuda, Nisuke.

14. Q. You stated that these people stayed in the ammunition dump a short while. Will you estimate how many minutes you mean by that statement?

A. About ten minutes.

15. Q. After this did you immediately proceed to the transmitting station on Ainsman Island?

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

The judge advocate withdrew the question.

16. Q. Upon the return of Captain Inoue did you proceed to the transmitting station on Ainsman Island?

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

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*James P. Keary*  
LIEUT. J. C. W.

The judge advocate withdrew the question.

17. Q. Upon the return of Captain Inoue where did you go?

A. What do you mean by "Upon the return of Captain Inoue"?

18. Q. In your testimony did you not state that Captain Inoue left the ammunition dump with the commanding officer?

A. The commanding officer, Captain Inoue and the one Japanese came and went into the ammunition dump, stayed there for about ten minutes. The three of them came out. At that time Captain Inoue said, "I am going to headquarters and will be right back." The three of them went to headquarters and then Captain Inoue returned to the ammunition dump.

19. Q. For how long a period was Captain Inoue gone?

A. About fifteen minutes.

20. Q. How long after his return did you depart from the ammunition dump?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. About seven or eight minutes, as this is a recollection I can not say exactly.

21. Q. For how long a period did you stop at the transmitting station on Ainsman?

A. Less than ten minutes.

22. Q. Did Admiral Masuda accompany the group to the transmitting station on Ainsman Island?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

The commission then, at 3:43 p.m., took a recess until 3:58 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

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*James P. Kenney*  
LIEUT., USN.



Cross-examined by the accused:

23. Q. You stated that a Japanese person, the commanding officer and Captain Inoue, the three of them came to the ammunition dump and that all went back to headquarters and that Captain Inoue returned to the Second Ammunition Dump. By this time, you stated, all the people had assembled. By "all the people", who do you mean?

A. The three who assembled were Hishida, Ii, Moriura. The persons already there when the commanding officer came to the ammunition dump were myself, Wakamatsu and Inoue. There was also Fukatsu.

24. Q. You stated that you were ordered to act as guard by Captain Inoue. Do you know who ordered the others and what commands the others were under?

A. That day, as I was army and the rest were navy, I did not know, but from what I heard later the executive officer, Shintone, told them to do this.

25. Q. From whom did you hear this?

A. As I remember it was Wakamatsu.

26. Q. From what you stated previously you testified as to one execution. Were there any other executions?

A. When you mean once, do you mean on the same day or later?

27. Q. Later.

A. I do not know.

28. Q. Do you know if any native who was confined escaped or not?

A. I do.

29. Q. When was this?

A. I do not remember exactly, but as I recollect it it was around the eighth.

30. Q. Were any measures taken because of the escape of this native?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant, immaterial and that it was beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was sustained.

31. Q. Was the fact of these executions made public?

A. I think it was about one week after the natives were executed that this was made public under the name of Admiral Masuda.

32. Q. Do you know the contents of that publication?

A. I only remember the gist of it.

33. Q. Please tell the commission the gist of it.

A. The natives who sneaked into Jaluit and Chitogan in the latter part of March committed murder and spied, therefore all were executed.

34. Q. Do you know where these natives sneaked in from?

A. What do you mean by sneaked in?

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*James P. Kenney*  
LIEUT., USN.

35. Q. What I mean is, from what island they sneaked into Jaluit.

A. Also in the notice they made the execution of these natives public. It stated that the natives were from Mille and also in the notice that the one native escaped. It stated the native was from Mille Island.

36. Q. Do you know the general date when these natives, that sneaked into Jaluit, were captured?

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

The accused withdrew the question.

37. Q. Do you know generally what date the natives who sneaked in were captured?

A. Around that period I was out at the outlying islands instructing in farming and I do not remember.

38. Q. During the time that Admiral Masuda, Captain Inoue and this Japanese civilian were gone, did anything happen during that period of time while they were gone to the prisoners?

A. What do you mean "while they were absent"?

39. Q. During that interval while they were absent did anything happen to the prisoners?

A. No.

40. Q. None of the prisoners escaped during that time?

A. At that time none of them escaped.

41. Q. Did any of them escape?

A. Yes. There was one who escaped from among those who were confined.

42. Q. Did he escape prior to the time you were ordered to guard them or afterward?

A. None escaped after I was assigned duty to guard them. One escaped one or two days before that.

43. Q. How was this notice of execution you testified to published?

A. I can not say for sure because it was not under my jurisdiction, but I think it was originated from the intelligence officer, was mimeographed and was issued to the various units.

44. Q. You testified that after Captain Inoue made the executions that he stated in effect that he did not want to execute the children. Did he appear reluctant to carry out the executions before he did execute them?

A. Captain Inoue's attitude when he was taking the natives to be executed was very sad, especially when he took the children, looking at him when he went it was different from his usual appearance.

45. Q. Are you qualified to state the age of these children?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and was irrelevant and immaterial since a witness need have no special qualifications to testify on a question of age.

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*James A. Kenny*

DEPT., WASH.

The accused replied.

The commission announced that the objection was sustained.

46. Q. Can you state with a certainty how old these children were?

A. No, I cannot because I did not ask and I did not investigate them and I am just guessing this from what I saw of them.

47. Q. Could they have been more than fourteen years old?

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

The accused made no reply.

The commission announced that the objection was sustained.

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

The commission did not desire to examine this witness.

The witness made the following statement:

I do not remember exactly, but around the end of April, I was at the office of the special police detail and I was shown a document by Captain Inoue and he stated that this document had to be turned over to the different sections and told me to read it. On this document was written "judgment paper." I can only remember a portion of the contents and do not remember exactly. It may have been the end of April or the beginning of May.

The witness was duly warned and withdrew.

The commission then, at 4:27 p. m., adjourned until 9 a. m., tomorrow, Thursday, May 8, 1947.

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*James P. Kenny*

WITNESSED AND SUBSCRIBED

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**FIFTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Thursday, May 8, 1947.

The commission met at 10 a. m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United  
States Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James R. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name and rank.  
A. First Lieutenant, Imperial Japanese Army, Morikawa, Shigeru.
2. Q. Are you presently confined on Guam?  
A. Yes.
3. Q. If you recognize the accused, state as whom.  
A. Inoue, Fumio.
4. Q. During what period were you stationed with the Japanese forces on  
Jaluit Atoll?  
A. From the thirtieth of November, 1943, to the eleventh of October, 1945.
5. Q. To what organization were you attached?  
A. The First South Seas Detachment.
6. Q. What battalion?  
A. I was officially attached to the headquarters of the First South Seas  
Detachment, but on Jaluit I performed my duties in the headquarters of the  
Second Battalion.

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*James P. Kenny*  
JURY, P.W.

7. Q. Was the accused also stationed on Jaluit during this period?  
A. Yes.

8. Q. To what organization was he attached?  
A. The headquarters of the First South Seas Detachment; but on Jaluit as he was separated from the headquarters, he performed his duties at the headquarters of the Second Battalion.

9. Q. In what capacity did he serve with the Second Battalion?  
A. His duties were concerned with fortifications and training.

10. Q. In the latter part of March, 1945, were you assigned to investigate some native personnel?  
A. Yes.

11. Q. From whom did you receive this assignment?  
A. From Rear Admiral Masuda.

12. Q. On what date did you receive this assignment?  
A. As I recall, it was on the thirty-first of March, 1945. *JK*

13. Q. As a result of that assignment did you investigate the natives?  
A. I did.

14. Q. Was anybody else to work with you on this investigation?  
A. Captain Inoue was also ordered.

15. Q. During what period of time was your investigation conducted?  
A. As I recall, from April 1 to April 8, 1945.

16. Q. Did you question these natives on April eighth?  
A. I remember I interrogated them in the morning of the eighth.

17. Q. How many natives were involved?  
A. There were eight.

18. Q. What were their names?  
A. Their names were Raliejap, the wife of Raliejap, whose name I do not remember, Anchio, Ralimo, Heibet, Ochira, Lacojirik, and Sire. I think that was all.

19. Q. Were these natives confined?  
A. They were confined at the Second Ammunition Dump on Enidj and the Base Transmitting Station on Ainsman Island. *JK*

20. Q. At the time, in beginning your investigation, which of these natives were confined at the Second Ammunition Dump?  
A. Raliejap, his wife, Anchio and Heibet were the ones confined at the Second Ammunition Dump. *JK*

21. Q. Did they remain at the Second Ammunition Dump until the conclusion of this investigation?  
A. On the night of the second of April, when Ralimo, Ochira, Lacojirik, and Sire arrived at Enidj, the other natives were moved to the Ainsman Transmitting Station.

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*James P. Kennedy*  
LIEUT. J. P. KENNEDY

22. Q. Were Raline, Ochira, Lasejirik, and Sire then confined in the Second Ammunition Dump?

A. Yes.

23. Q. Who was Heibet?

A. Heibet was a child of Raliejap. JK

24. Q. During your investigation did you inquire as to the age of Heibet?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

25. Q. What was Heibet's age?

A. I forgot the age she told me when I was investigating, but from what I recall she was from ten to twelve or thirteen years old.

26. Q. Who was Sire?

A. Sire was a male child of Raline.

27. Q. What was his age?

A. His age also from what I recall was ten, twelve or thirteen years old.

28. Q. During your investigation of these natives, did you inquire as to what islands they were natives of?

A. I did. They stated they were natives of Mille Island.

29. Q. Were you the intelligence officer at that time?

A. Yes.

30. Q. After the completion of this investigation, do you know what was done with these natives?

A. I do.

31. Q. How did you learn what had happened to them?

A. On the fifteenth of April, 1945, I was called by Admiral Masuda and told to make up a letter to the following, and dispatch it to the various commanders on the island. The gist of the letter was as follows: The natives who sneaked into Jaluit and Chitogen and various areas in the latter part of March are natives who had killed a Japanese soldier and escaped and had come to our island to spy. They were felonious criminals; therefore, they have been executed.

32. Q. Was the preparation of such documents as this one, one of your duties as intelligence officer?

A. At that time this was my duty. There was no adjutant at that time to do these miscellaneous jobs for Admiral Masuda, so I was given this temporary duty. JK

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*James P. Keamy*  
LIEUT., USN.



33. Q. During the course of your investigation, did any of these natives escape?

A. On the night that the investigation was completed, a native named Ralimo escaped.

34. Q. Was he later apprehended?

A. Yes.

35. Q. Were these natives ever given a trial?

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

The judge advocate withdrew the question.

36. Q. Do you know whether or not a trial was held for these natives?

A. To the extent that I know of, I do not know of any trial.

37. Q. Did you ever hear that a trial was given to these natives?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I have not heard of any. JK

38. Q. As intelligence officer, were you kept informed of what was going on in Jaluit Atoll?

A. I know generally what was occurring at Jaluit, but as my work was the defense measures against the kidnaping tactics of the Americans and these duties were given the intelligence officer, but I was not in a position to know everything that went on in Jaluit.

39. Q. In the course of your official duty as intelligence officer, did you ever see any documents that stated that these natives had had a trial?

A. Not while I was intelligence officer, but right after I became a member of the defense section, by order of Major Furuki, who was head of the defense section, I received documents which myself and Captain Inoue made reporting the investigation of these natives and also a document labeled "judgment paper." JK

40. Q. I again ask you, did you ever see any papers that stated that these natives were given a trial.

A. I have not seen any documents stating that the natives received a trial.

41. Q. Did you ever take part in any trial for these natives?

A. No.

42. Q. And you continued to investigate them up until the morning of April eighth. Is that true?

A. Yes.

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James P. Kenney

WITNESSES

43. Q. Was the final report then submitted on the investigation?

A. Yes.

44. Q. Was this a written report?

A. Yes.

45. Q. When was it submitted?

A. As I recall, it was in the afternoon of the eighth.

46. Q. Who signed this report?

A. Captain Inoue and myself.

The commission then, at 10:54 a. m., took a recess until 11 a. m., at which time it reconvened. JK

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

47. Q. During what period were you the adjutant?

A. I have never been officially an adjutant.

48. Q. During what period were you acting as adjutant?

A. I have never acted as an adjutant.

49. Q. During what period did you perform the duties of adjutant?

A. As the staff of headquarters was very small, of very few, work involving the calling of the district commanding officers to headquarters or transmitting documents and submitting documents to them, there was no regular staff to perform these duties, so myself, who was in charge of work concerned with the outlying islands, was given this sort of work if called upon. JK

50. Q. Were you doing this type of work during the month of April, 1945?

A. Yes.

51. Q. While performing these duties were you ever called upon to prepare any documents which would indicate that these natives were given a trial?

A. No.

52. Q. To your knowledge, were these natives ever given a trial?

A. To my knowledge, I have not seen or heard of a trial.

Cross-examined by the accused:

53. Q. You stated that near the end of March, 1945, Admiral Masuda ordered you to investigate the natives. When you were given this order, was Admiral Masuda alone or was there someone else with you?

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*James P. Kenny*  
LTJ., USN.

A. As I recall, when I was given this order, Admiral Masuda, Lieutenant Commander Shintome and Captain Inoue were present.

54. Q. Did Lieutenant Commander Shintome relay the order of Admiral Masuda to you or was he just present when Admiral Masuda gave you the order?

A. The first time I was ordered to investigate this incident on the thirty-first of March, I was ordered directly by Admiral Masuda with Captain Inoue and Lieutenant Commander Shintome present. On the next day, on the first of April, when Captain Inoue was ordered the main person in charge of the investigation and myself, who was a second lieutenant at that time, ordered to cooperate with Captain Inoue in investigating these natives. Here we were relayed this order by Lieutenant Commander Shintome.

55. Q. At this time, was Major Furuki present?

A. At this time, Major Furuki was absent. He had gone to Chitogen Island and was absent.

56. Q. You stated that after the natives from Hille were captured they were investigated. While these natives were being investigated, who was responsible for them?

A. I do not remember exactly who at this time was in charge of the natives, but when I was ordered to escort the four natives who were caught sneaking into Jaluit, the four natives, including Raliejap, I was ordered by Lieutenant Commander Shintome to take them to the base pier from where they would be escorted to the Second Ammunition Dump and to hand the four natives over to a navy petty officer whom Lieutenant Commander Shintome would dispatch there. I do not remember exactly who was in charge, but from the instructions I received, I believe it was Lieutenant Commander Shintome. JK

57. Q. You stated that Captain Inoue and yourself investigated these natives. Please tell us briefly how this incident came to light and what the contents of that incident were.

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

The accused replied.

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

The question was repeated.

A. On the afternoon of the thirty-first of March, 1945, a dispatch was sent from the commanding officer of the Jaluit District to Admiral Masuda stating the following: "Last night, the thirtieth of March, four natives, including Raliejap from Hille, drifted ashore on the northern side of Jaluit Island, and at present are confined at headquarters, cutting off any communications with the other natives. It is requested that the officer in charge be dispatched and investigate these natives." That is how the incident came to light. By this dispatch, Admiral Masuda, Inoue and Shintome decided to have them sent to headquarters and investigate them there. They ordered me as investigator and also to escort them from the island. The next day Inoue was ordered to be a main investigator and myself and Inoue were called to Admiral

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*James P. Kenny*  
JAMES P. KENNY



Masuda's quarters with Shintome present and warned not to say anything about the contents of this investigation as it may bring to light things of great importance to the self-supporting measures and operations concerning Jaluit. The natives from Mille, who were Raliejap and his family and Raline, the younger brother of Raliejap, and his family, while transporting chagare (Interpreter's note: coconut toddy) in a canoe at Mille, killed the Japanese soldier who was on the canoe with them, stealing that canoe and also a sampan belonging to Warrant Officer Takahashi, who was in charge of one of the islands at Mille Atoll. They tried to escape to Majuro and Arno Islands with their families. After they had put out from Mille Island by canoe and sampan, they were picked up by an American ship and they were given candy and food, and a Marshallese interpreter came to them with an American officer and they said to Raliejap and Raline: "Fill your ship; sneak into the northern island of Jaluit Atoll. Raliejap, you shall sneak into Jaluit to relay the following message to the natives on Jaluit: That one month later when an American plane flies over the island, the natives shall assemble on an island where there are the Japanese and if there is any native who knows well about the Japanese forces on Jaluit, you shall bring him or else get information from him and come back. If you are caught by the Japanese, say that you were wrecked and drifted to Jaluit. After you have completed this mission, you shall be taken to Majuro and Arno where you shall be given work." Raline sneaked into the northern part of Jaluit. Raliejap into Jaluit where they were both caught.

The witness was duly warned.

The commission then, at 11:43 a. m., took a recess until 2 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Marikawa, Shigeru, the witness under cross-examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

58. Q. This morning you stated as to the contents of your investigation. What methods did you use to obtain this information?

A. Each native was questioned by both of us and this became known through their statements.

59. Q. Was there any evidence?

A. As for evidence, there were the boats and the personal effects were seized. In Raline's group, among the personal effects, were found petty officer Tanaka's clothes, who was the one that was killed by them. A dispatch was sent to Mille asking if such an incident had occurred. Two requests were made to Admiral Masuda, one to send a dispatch to Mille asking if such an incident had occurred; another was that Raliejap stated that he had relayed his message to the natives of Jaluit and we requested that we be allowed to interrogate the natives of Jaluit to see if this was true or not.

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*James P. Keany*  
JAMES P. KEANY

60. Q. You stated that among the possessions were the clothes of the person who was murdered, Tanaka's clothes. How did you know that it was Tanaka's clothes?

A. Captain Inoue himself investigated this while I was out at one of the outlying islands and I have heard from Captain Inoue that on the clothing was written "Tanaka" in Japanese characters. 97

61. Q. When was it that you visited the outlying islands?

A. I left Raidj in the evening of the second of April and returned early on the sixth of April.

62. Q. Before you went on your trip is it correct that you completed the investigation of Raliejap's group before you left?

This question was objected to by the judge advocate on the ground that counsel was originating evidence.

The accused withdrew the question.

63. Q. When was the investigation of Raliejap's group completed?

A. In the afternoon of the second of April.

64. Q. You stated that Raliejap's group was moved from the Second Ammunition Dump to the transmitting station when the other group was brought in. Was their movement because the investigation had been completed?

A. When Raliejap's group was moved to the transmitting station it was after I had left and I do not know the exact reason for this, but as the investigation had been completed for the time being and as the transmitting station was far away there was no means of transportation and very difficult to go there to investigate, they were moved there and the other group whose investigation was yet to be taken up placed in the Second Ammunition Dump.

65. Q. You stated that the contents of this case came to light through the statements of the natives. Do you remember which native confessed first?

A. As I remember it was Heibet.

66. Q. You stated as to the age of the children, but it is still a little vague. Please tell us to what extent was the development of the consciousness of the children.

This question was objected to by the judge advocate on the ground that it was vague and that it was characterizing the testimony of the witness.

The accused withdrew the question.

67. Q. You testified as to the age of the children in your investigation. What was the extent of the maturity of Heibet?

A. The way she answered our questions and knew well the duties given Raliejap, she was more mature than the usual people of her age.

68. Q. Do you know also concerning Siro?

A. As for Siro, as I did not investigate him very much, I do not know.

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*James P. Kenny*

LIEUT., USN.

69. Q. You stated that Raline's group was investigated while you were visiting the outlying islands. When you returned on the sixth day of April to what extent was the investigation of Raline's group in?

A. For the time being, the investigation had already been completed by Captain Inoue.

70. Q. Then, this morning, when you testified that you investigated until the morning of the eighth, was this a further investigation of these natives?

A. This investigation from the sixth to the morning of the eighth was to ascertain facts in making up the report to be submitted.

71. Q. What did you do with the results of your day by day investigation?

A. The results of the investigation every day was reported to Admiral Masuda with Major Furuki and Lieutenant Commander Shintome present.

72. Q. At this time, did Admiral Masuda, Major Furuki and Lieutenant Commander Shintome ask any questions regarding your investigation?

A. I remember that they asked questions.

73. Q. When you went to report to Admiral Masuda, were Major Furuki and Lieutenant Commander Shintome always present?

A. When Major Furuki was away he was not there, but I recall Lieutenant Commander Shintome and Admiral Masuda always being present.

74. Q. What was the period in which Major Furuki was absent?

A. As I remember, he left Enidj on the twentieth of March and returned on the second or third of April.

75. Q. And in all the reports you made after the third, was Admiral Masuda, Major Furuki and Lieutenant Commander Shintome present?

A. I remember that they were there.

76. Q. You stated this morning when you were ordered to take care of some documents concerning the natives you stated you saw a document labeled "judgment paper." What was the content of this document?

A. As I recall, the name of the native, the decision, the crime and the opinion of Captain Inoue.

77. Q. By the names of natives, do you mean the natives that you investigated?

A. Yes.

78. Q. Was Admiral Masuda's signature on the paper?

A. Yes.

79. Q. You stated concerning the executions of the natives that this was made public on the fifteenth or sixteenth of April. On this notice, was there also Admiral Masuda's signature?

A. On the original that was filed at headquarters there was Admiral Masuda's signature, but on the copies that were distributed to the various divisions it stated, "By order of the commanding officer."

80. Q. Do you know what happened to this judgment paper and this notice of execution later?

A. By the orders of Admiral Masuda, these papers and all other official papers were burned after the end of the war.

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*James P. Kenney*

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81. Q. Do you know anything concerning the execution of these natives?  
A. After the investigation had been completed, I went to the outlying islands and when I came back on the fourteenth I heard from Captain Inoue that he had been ordered to execute the natives by the order of Admiral Masuda.

82. Q. When Captain Inoue told you this did you see any signs of distress in Captain Inoue?  
A. I just talked with Captain Inoue in front of his quarters and his expression at that time was eluded.

83. Q. Did you hear anything directly from Captain Inoue concerning this execution of the children?  
A. I have never heard anything from Captain Inoue concerning this.

84. Q. Did you hear any rumors concerning this about Captain Inoue?

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

The accused withdrew the question.

85. Q. What was the general reputation of Captain Inoue on Jaluit?  
A. On Jaluit his general reputation was that he was very serious-minded and was very faithful to his work.

86. Q. How long had you been engaged in investigation work on Jaluit?  
A. My experience in investigating was the period from April first to eighth when I investigated the Hille natives and about twenty days when I investigated other natives.

87. Q. Were you and are you well acquainted with the regulations regarding the authority to investigate as it pertained to conditions on Jaluit in 1945?  
A. The head of the special police section had authority to investigate all crimes relating to the violation of food regulations, but at this time regulations concerning the investigation of crimes such as the Hille case, there were no regulations.

88. Q. You stated you were ordered to investigate the incident which concerned civilians. Did the military have authority to investigate civilians on Jaluit in 1945?  
A. At that time on Jaluit, the military, gunseks and civilians were organized into a Jaluit Defense Garrison and all persons who violated the food regulations and other crimes came under the jurisdiction of the head of the special police section.

89. Q. Were these natives from Hille that you investigated amenable to the military laws?

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

The accused replied.

The commission announced that the objection was not sustained.

A. Yes, CERTIFIED TO BE A TRUE COPY

*James P. Keany*  
JURY, W.W.

90. Q. You stated that after the event happened, on or about April fifteenth, you were shown a judgment note by which these natives were punished by death. You testified that publication was made of their execution. Did the military on Jaluit have authority to punish these natives by capital punishment?

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

The accused withdrew the question.

91. Q. Did the military have authority to inflict capital punishment on civilians?

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

The accused replied.

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

Reexamined by the judge advocate:

92. Q. You have testified on cross-examination that the child, Heibet, was the first to confess. On what date did this occur?

A. As I remember, it was the afternoon of April first.

93. Q. Didn't you question Heibet until late at night on the first of April?

A. Yes.

94. Q. And was it not at the completion of the questioning of this child that you got a confession from her?

A. As a result of the questioning I obtained a confession.

95. Q. When did you commence questioning Heibet?

A. As I remember, it was after the noon meal on April first.

96. Q. What time of day was that?

A. As I remember, it was about one o'clock in the afternoon.

97. Q. At what time in the evening did you finish your questioning of this child?

A. The time in Jaluit is different from here, but it was around four o'clock in the evening. When I said the interrogation started after lunch, I meant at eleven o'clock, because we took lunch at ten o'clock on Jaluit.

98. Q. Approximately how many hours was the child questioned?

A. As I recall, it was five or six hours.

99. Q. And you had also questioned her the day before. Is that not correct?

A. I did not start the investigation until the morning of the first when I started to ask the age, how they came to Jaluit, and the circumstances.

100. Q. Did you on the morning of April first question Heibet?

A. Yes.

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*James P. Kenney*  
JURY, WCH.

101. Q. What story did she give you then?

A. She stated that Heibet together with the other members of the family while carrying copra from Nagurappa Island had been wrecked and had been drifting a week.

102. Q. Did Raliejap, Raliejap's wife and Anchie give you this same story?

A. Yes.

103. Q. What did you do in the afternoon to the girl to get her to change her story?

A. In the morning they stated that they had drifted for a week and that they had sank their sampan when American planes flew over them so that they could not be seen and upon looking into their possessions which myself, Captain Inoue and Admiral Masuda did, we found matches and Japanese money and a notebook which looked like a diary in which were written names such as Tokowa and Aniri which were the names of islands and a persons name Takahashi and they had also stated that they were natives from an island in Mille called Enajet and were carrying copra to Nagurappa. Upon looking at the map of Mille it was found that the names of the islands in the diary were islands in the northern part of Mille and not in the southern part and also the matches and money, the notebook showed no signs of having been wet. The investigators therefore stated that the story sounded false. Therefore in the afternoon breadfruit which was considered one of the greatest delicacies by the natives and copra cooked in "chagani", this was first given to Heibet in the afternoon. It was asked about the islands Aniri and Tokowa and the person Takahashi, it was found that Aniri was the island in which Heibet and her family lived and Tokowa was the island on which Raline lived and that Takahashi was the commanding officer of Aniri Island and that Raliejap and Anchie worked under Takahashi as fishermen and it also came out that Raliejap had stolen a boat from Takahashi. In this way this story was brought out.

104. Q. Hadn't Heibet been fed up until this time?

A. As I remember up to this time they had only been fed the usual rations.

105. Q. How many breadfruit did you give her?

A. This breadfruit was not in the raw, it was prepared and made into a food and placed in a large plate and at a time when were only eating one copra a day this was a delicacy which the military were not able to get on Jaluit and was obtained by Captain Inoue by asking the supply officer to obtain this.

The commission then, at 3:30 p.m., took a recess until 3:45 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Reexamination continued.)

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*James P. Keany*

WIT., WCA



106. Q. Was Captain Inoue also present when you questioned Heibet?  
A. Captain Inoue was also there.

107. Q. Did he participate in the questioning of Heibet?  
A. Yes.

108. Q. Did Heibet confess right after she had this breadfruit?  
A. She did not confess right away. What Aniri was, what Tokowa was, things of that sort kept coming to light and by the time of the evening meal a rough outline of what had occurred was found out. This breadfruit was not all eaten at one time, it was eaten while talking.

109. Q. It did not take her the five hours to eat the breadfruit did it?  
A. Also the copra prepared with "chagani" was very sweet and was not something that could be eaten all at once and by the time the interrogation was over there was still some remaining. *JK*

110. Q. Did you use the same methods in questioning this girl as you did in the case of the Jaluit natives in the following month?

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

The judge advocate replied.

The commission announced that the objection was sustained.

111. Q. Did you ever see the clothing of Tanaka that you referred to on cross-examination?  
A. I did not see it, I testified to it from what I heard from Captain Inoue. *JK*

112. Q. You testified that you made daily reports to Major Furuki, Lieutenant Commander Shintone and Admiral Masuda and that sometimes Major Furuki was not present. In the case of the Haliajap group how many times did you report in the presence of Major Furuki?  
A. When I was investigating Haliajap Major Furuki was absent, on the later investigation Major Furuki was present.

113. Q. Haven't you testified on cross-examination that the investigation of Haliajap's group was concluded on April second?  
A. Yes.

114. Q. Then you didn't make any verbal reports on this group after April second did you?  
A. No report was made on the group of Haliajap, but as there were relations between Haliajap's and Baline's group and reports on the complete group were made, reports on the group of Haliajap were included.

115. Q. So that it is true that up until April second when you, according to your testimony, left for the outlying islands, you never reported in his presence in the case of Haliajap?  
A. I did not report to Major Furuki up to the time I left on the second of April. *JK*

116. Q. What did you do during this further investigation of the Haliajap group on April seventh and eighth?

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*James P. Kenny*  
WIT., etc.

A. Investigating the group of Raliajap we had the natives repeat once more their testimony and the contents of the investigation were ascertained.

117. Q. So that in fact this was a continuation of your investigation, was it not?

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

118. Q. Did you consider the questioning of these natives of these two days part of your investigation?

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

The judge advocate withdrew the question.

119. Q. If you didn't consider your questioning of the natives on the seventh and eighth a part of your investigation, what do you call it?

A. The investigation done on the seventh or eighth was a continuation of the previous investigation.

120. Q. Then the final written report on the investigation was not prepared until April eighth. Is that correct?

A. Concerning the group of Raliajap, I made and submitted a written report to Admiral Masuda on the second of April because he stated that there was some problems vitally important to the defense of Jaluit in the testimony and later a complete report on all the group was submitted.

121. Q. Was the report submitted on April eighth the only written report submitted on Raline's group?

A. I remember it was.

Recross-examined by the accused:

122. Q. These investigations and questionings that you testified to, were they carried out secretly?

A. They were conducted in secret because Admiral Masuda stated before the beginning of the investigation it was necessary that other to persons concerned this be kept secret due to preventing a leak of military secrets.

123. Q. Did he give any other reasons for ordering you to conduct the investigations in secret?

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

The accused replied.

The commission announced that the objection was not sustained.

A. In saying to keep this secret he stated that the people of Jaluit, due to the food shortage and the attacks by the American forces were in a very desperate state of mind and the probabilities that these natives are acting for the Americans in kidnapping the natives of Jaluit, if this became known to the men the natives would also become acquainted with this and would bring about serious complications in self-support and operations on Jaluit.

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*James P. Kennedy*  
JAN 7, 1951

Examined by the commission:

124. Q. You stated in your testimony that you drew up a notice for Admiral Masuda informing the various unit commanders of these executions. Do you know exactly what date these executions took place?  
A. I do not remember.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution rested.

The commission then, at 4:12 p.m., adjourned until 9 a.m., tomorrow, Thursday, May 9, 1947.

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*James P. Keady*

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**SIXTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Friday, May 9, 1947.

The commission met at 9 a. m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United  
States Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Brander W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Belton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The defense began.

The accused made the following opening statement:

The defense will prove the accused innocent of the charge of murder  
and innocent of the charge of violation of the laws and customs of war. We  
shall prove the fact that there was a proclamation issued by the commanding  
officer, Admiral Masuda, to all personnel on Jaluit, military, gunnery, and  
civilians; the proclamation issued by the civilian government of Jaluit to  
the effect that all functions of civil government were commanded over by the  
military commander; all personnel, particularly the civilians, were under the  
command and subject to the orders of the military commander, Admiral Masuda.  
Command responsibility of Admiral Masuda will be shown. His authority to  
order investigations; his authority to hold the trials which were held will  
be proved. We shall prove that the eight prisoners were afforded a trial.  
They were found guilty of crimes and sentenced accordingly. We shall show  
that the trials held were conducted in the manner provided by Japanese  
Naval Court Martial Law, exigencies of the service permitting. We shall  
show that the accused, Captain Inoue, did not commit murder as he is charged,  
nor did he kill the prisoners Raliejap, the wife of Raliejap, Keibet, Anchie,  
Ochira, Sire, Loojirik and Raline in violation of the laws and customs of  
war as he is charged.

The accused waived the reading of this statement in Japanese.

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*James P. Kenny*

J.P.K.

The accused requested the commission to take judicial notice of the following:

Japanese Naval Criminal Law (Act Number 48, April 10, 1906) (Revised in 1942, Law Number 36), particularly:

"Article 2. 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 these attempted crimes.
2. The crime of Art. 72.
3. The crimes of Art. 78 to 85.
4. The crimes of Art. 86 to 89.
5. The crimes of Art. 91 to 93 and the attempted crimes of Art. 91 & 92.
6. The crimes of Art. 95, 96, Clause 2 of Art. 97, 98 and 100. . . . .

"Article 4. The naval officers and sailors who commit the crimes of the Naval Criminal Law or of the other laws or ordinances in the occupational territories of the Japanese Forces are treated the same as those who commit these crimes 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. . . . .

"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, it is permissible to take the extenuating circumstances into consideration in punishing it, or the punishment may be reduced or remitted.

"Article 18. The previous article shall also be applied to actions prescribed as crimes in the criminal law or ordinances. . . . .

"Article 23. 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 places, buildings and other things used by the Navy.
2. To destroy or shut up land and water paths, bridges, light-houses or buoys; or to interrupt in other ways the passage of ships or the march of troops.
3. That the commander, leading his ship and troops, refrains from assuming post of guard or of arrangement, or leaves such places.
4. To dissolve naval squadron or naval unit, put them to rout or into confusion, or interrupt the connection or the meeting of such.
5. To allow the lack of arms, ammunitions, provisions, clothings and the other munitions.
6. To inform or make false orders, informations or reports.
7. To spread false information 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. . . . .

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"Article 55. One who resists the superior officer's order or who is not subordinate to it shall be condemned to such penalties as follows:  
1. In the face of the enemy, he shall be condemned to death or life term or above ten years' confinement.  
2. In war-time or when in need of emergency measures of rescuing ships, from above one to ten years' confinement.  
3. In other cases, under five years' confinement. . . .

"Article 64. One who, resorting to arms or weapons, violates or threatens the guard shall be condemned as follows:  
1. In the face of the enemy, life or above five years' imprisonment or confinement.  
2. In other cases, above one year's terminable servitude or confinement.

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

"Article 70. The attempted crimes of Art. 58 to 61, 61, 61-3, and 62 to 66 shall be punished. . . .

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

"Article 78. Those who burn down the vessels, aircrafts, tanks, factories, buildings, trains, electric-cars, motor-cars or bridges for battle use, or warehouses in which the articles for Naval use are stored, shall be condemned to death, or life or above ten years' imprisonment.

"Article 79. Those who burn down arms, ammunitions, provisions, clothings, or other goods for Naval use piled up outdoors, shall be condemned to such penalties as follows:  
1. Committed in war-time, to death or life imprisonment.  
2. In other cases, to life or above two years' imprisonment. . . .

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

Japanese Criminal Code, Law Number 45, 24 April 1907, amended by Law Number 61, 1941, particularly:

"Article 25.--If any of the following persons has been sentenced to penal servitude or imprisonment for not more than two years, execution of sentence may, according to circumstances, be suspended from one year to five years from the day when judgment has become irrevocable:

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1. Persons who have not been previously sentenced to imprisonment or a graver punishment.
2. Persons who, though they have been sentenced to imprisonment or graver punishment, have not again been sentenced to imprisonment or graver punishment within seven years from the day when execution (of the former punishment) was completed or remitted. . . .

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

"Article 36.--Unavoidable acts done in order to protect the rights of oneself or another person against imminent and unjust violation are not punishable.

"According to the circumstances, punishments may be mitigated or remitted for acts exceeding the limits of defense.

"Article 37.--Unavoidable acts done in order to avert present danger to life, person, liberty, or property or 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.

"The provisions of the preceding paragraph do not apply to persons under special obligation because of their calling or occupation.

"Article 38.--Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable.

"A person who without knowledge (of the fact) has committed a grave offense (crime) cannot be punished in proportion to its gravity.

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

"Article 66.--Punishment for a crime may be mitigated when extenuating circumstances exist.

"Article 67.--Even though punishment is to be increased or mitigated by law, it may nevertheless be mitigated for extenuating circumstances. . . .

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

"Article 83.--Every person who for 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 punished with penal servitude for life. . . .

"Article 85.--Every person who has acted as a spy for an enemy power, or has aided a spy of an enemy power shall be condemned to death or punished with penal servitude for life or not less than five years.

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"The same (punishment) applies to every person who has disclosed a military (or naval) secret to an enemy power.

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

"Article 87.--Attempts of the crimes of the preceding six Articles shall be punished. . . .

"Article 249.--If a robber has wounded a person, he (she) shall be punished with penal servitude for life or not less than seven years; if he (she) has caused the death of a person, he (she) shall be condemned to death or punished with penal servitude for life."

The Japanese Code of Criminal Procedure, Law Number 75, May 5, 1922, amended by Law Number 72, 1926; Law Number 43, 1935; and Law Number 71, 1937, particularly:

"Article 1. The territorial jurisdiction of a court lies in the place where the offense was committed, or the residence, temporary domicile or otherwise the present place of the accused.

"With respect to an offense committed on board a vessel of the Japanese Empire outside of the Empire of Japan, beside the place provided in the preceding paragraph, the place of registration of the vessel, the place of the nationality of the vessel, or the first port the ship touched after the offense was committed, has jurisdiction. . . .

"Article 5. When several cases are related and fall under the jurisdiction of different courts, the court having jurisdiction over one case is competent to adjudicate on all other offenses concurrently."

Japanese Naval Court Martial Law, promulgated by Law Number 92, 26 April 1921, amended by Law Number 9, 1941, particularly:

"Article 1. Court-Martial shall have power to try the following persons of their crimes:

1. The person mentioned in the Art. 8 No. 1 and 2; and the Art. 9 of the Naval Criminal Law,
2. The crew of naval transport,
3. Persons who are members of a naval unit or belong to it except those mentioned in the preceding two clauses.
4. Prisoners of war.

"When there are, among the persons mentioned above in No. 2 and 3, some who should be omitted specially, then it shall be determined by order of Court.

"Article 2. Court-Martial has power to try those persons mentioned above, of the crimes committed by them prior to their present standing also.

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JAMES P. KENNY

"Court Martial has power to try the persons even though he has lost his position if, during his former standing, report on his crime was received or he was already arrested or detained. . . .

"Article 4. Court-Martial has power to try persons, other than those mentioned in the Art. 1 stationed in the territory surrounded by enemy, of the crimes provided in the following items:

1. The same or separate crime committed in concert with the person mentioned in the clauses 1-2 of Art. 16.
2. The crimes of Naval Criminal Law, Military Criminal Law and Military Secret Safeguarding Law as well as of the Ordinances especially provided to meet military necessities.

"Crimes of sheltering criminals, destroying evidences, making false expert opinion or misinterpretation and pilferage are regarded as being committed in concert with the original crimes. . . .

"Article 6. Court-Martial, at the time of Military operation, if necessary, in order to maintain safeguard of the navy, may exercise power or jurisdiction over crimes of persons other than mentioned in the Art. 1. . . .

"Article 8. Courts Martial are organized as follows:

1. Higher Court-Martial.
2. Tokyo Court-Martial.
3. Naval District Court-Martial.
4. Guard District Court-Martial.
5. Fleet Court-Martial.
6. Isolated Court-Martial.
7. Temporary Court-Martial.

"Article 9. Higher Court-Martial, Tokyo Court-Martial, Naval District Court-Martial and Guard District Court-Martial are organized permanently. However, at Guard District, it might not have Court-Martial. Fleet Court-Martial, when it is necessary, is organized specially in a fleet commanded by Commander-in-Chief of a fleet or commander of an independent fleet or a detached fleet as well as in a man-of-war sent to foreign countries. JK

"Isolated Court-Martial is established especially in a district surrounded by enemy when a declaration of Martial Law is made. Temporary Court-Martial in a case of necessity during war and naval operation shall be specially established in a naval unit.

"Article 10. (a) Higher Court-Martial or Tokyo Court-Martial makes the Minister of Navy its president. (b) Naval District Court-Martial makes the Commander-in-Chief of the District its president. (c) Naval Guard District Court-Martial makes the Commander of the District its president.

"Specially established Court-Martial makes the Commandant of unit or district where the said Court-Martial is established its president. . . .

"Article 16. Court-Martial in a territory surrounded by enemies has jurisdiction over the following cases:

1. Case of accused person who is subordinate of Commandant of the said territory or one who of the said territory or one who receives supervision of the Commandant.

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LIEUT., USN.



2. Case of accused person whether he be a resident of the district or not has committed crime in the said district and is mentioned in the Art. 1-3.
3. Accused case which belongs to the jurisdiction defined in the Art. 1-3.

"Article 17. A Temporary Court-Martial has jurisdiction over the following cases:

1. Case of accused person who belongs to or receives the supervision of the Commandant of unit where a court martial is established. JOK
2. Case of accused person who, whether he be a resident of the District or not, has committed crime in the said district and mentioned in the Art. 1-3.
3. Case of accused person mentioned in the Art. 6, and resides in Guard District of a unit where Temporary Court-Martial is established.
4. Accused case which is transferred to, in accordance with the Articles 312 or 333. . . . .

"Article 30. In a special court-martial or guard district court-martial, the Commanding Chief may let a high government official staying in the isolated district take the duties of the judge in place of the law officer. . . .

"Article 86. In a Special Court-Martial, it is not necessary to abide in the regulations of this section. JK

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

"Article 88. A counsel shall be selected from the persons mentioned below:

1. Naval Officers or Ranking Officers.
2. Naval Higher Civil Officer or Probationer.
3. Lawyers designated by the Minister of Navy.

"Article 89. Selection of Counsel should be done at every trial. Selection of Counsel should be made by a letter jointly signed with a person for counsel.

"Article 90. A number of counsel should not be above two for each accused.

"Article 91. A Counsel is allowed to read or look over any document or evidential object or to copy in the Court-Martial any document relating to the accused case.

"Article 92. Counsel has right to make judicial procedure independently only when there is a special stipulation for it.

"Article 93. Regulations of the preceding six articles shall not be applied to a Special Court-Martial. . . . .

"Article 96. The consultation of judges shall not be held public. However, judiciary officers in probation might be allowed to listen to it.

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 JUDGE, ADV. GEN.

"A meeting for the consultation of Judges is opened by the Chief Judge and he presides it. However, its proceedings and opinions expressed by each judge should be held secret. . . .

"Article 267. In case a Prosecuting Officer is about to make inquiry of a witness he may let the latter make an oath.

"A Naval judicial police officer or judicial police officer might not ask witness to make an oath. . . .

"Article 369. With regard to cases corresponding to death, life, penal servitude or imprisonment for a minimum of one year or more, the court shall not be held without a counsel, except when the decision is pronounced. 972

"In the event the counsel does not appear in Court or the accused does not choose a counsel, the President by his authority appoints a counsel.....

"Article 372. The preceding three articles shall not be applied in a Special Court Martial. . . .

"Article 420. An appeal may be made on the decision of Tokyo Court Martial, Naval District Court Martial. . . .

"Article 500. Judgment shall be executed after decision is made.

"Article 501. The execution of the judgment shall be directed by the Judge Advocate of the Court Martial who held the trial or the Judge Advocate of the Court Martial to which the preliminary judge who held the trial belongs, except those which from their nature should be handled by the Court Martial, President, appointed judge or preliminary judge.

"The execution of the decision of the appeal case or the decision of the original court martial because of a dismissal of the case, shall be directed by the Judge Advocate of the Higher Court Martial.

"In the event of the preceding two paragraphs, when the legal documents are at the original court martial the Judge Advocate of that Court Martial shall direct the execution of the decision. . . .

"Article 504. The execution of the death sentence is subject to the order of the Minister of the Navy. . . .

"Article 510. When the death sentence is pronounced in the Special Court Martial, the Chief shall perform the duties of the Minister of the Navy with regard to its execution or the suspension of execution."

Japanese Naval Laws and Regulations in Relation to Order and Obedience, particularly:

Naval Battle Regulations, General Principles, Part II,  
Military Training Regulations, General Principles, Part II, Chapter 1;  
Chapter 2, Section 1, Article 20.  
Service Regulations of Personnel on Ships, General Principles, Part II,  
Part III, Part IV, Part VI, Article 105.

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The judge advocate made the following objections:

The judge advocate does not object to the request that judicial notice be taken of the Japanese Criminal Code. The judge advocate has previously requested that judicial notice be taken of this Japanese Criminal Code and the commission has taken judicial notice thereof. The judge advocate does not object to the taking of judicial notice of Japanese Code of Criminal Procedure. It is understood that this Japanese Code of Criminal Procedure is one of the statutes which Ordinance Number 26 makes applicable to the South Sea Islands, and the commission has, on request by the judge advocate, taken judicial notice of Ordinance Number 26. The judge advocate does not object to the court's taking judicial notice of Japanese Naval Court Martial Law and of Japanese Naval Criminal Law, so long as the defense is required to establish during the course of the trial that these laws and the applied provisions thereof, which are on the face applied to the navy, applied to the Japanese navy, are in effect the local law of the Marshalls and were properly applicable to the natives. If the defense fails to establish the applicability of the Naval Court Martial Law or the Naval Criminal Law to the natives, the judge advocate reserves the right to object further at that time to judicial notice of these provisions and the attempted application thereof. The judge advocate objects strenuously to the request that judicial notice be taken of excerpts from the Japanese Navy Regulations. These Navy Regulations have not in any means been shown to be applicable to the natives on the Marshall Islands, nor in any manner have they been shown to be the local law of the Marshall Islands. They clearly do not fall within the general rules with regard to the taking of judicial notice. These general rules require that the subject matter of which the court should take judicial notices should be facts which the court knows to be true without any evidence to prove them; facts which are part of the common historical or geographical knowledge of all intelligent men and facts which are readily establishable from authentic sources. In this regard the judge advocate would further note that these regulations are not the local law of the Marshalls and there is no indication in any thing which the commission has heretofore heard that can be so applied. *JK*  
In Underhill's Criminal Evidence, it is stated in section seventy, that *JK*  
"generally the higher courts such as the Supreme Court and other courts of appellate jurisdiction, will not take judicial notice of enactment and existence of an ordinance of a municipality, city, town, or village, nor of its amendments, unless a statute so requires. Nor will they notice ordinances of county commissioners, boards of health, or state highway commissions." Further on it states: "The court does not take judicial notice of the statutes of another state, nor of a foreign country, . . . . Nor the police regulations of towns." Before the requested excerpted regulations can be considered in the proceedings of this commission, they should be affirmatively and positively proved by the defense. They are not within the realm of those things which the commission should take judicial notice of.

The accused replied.

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

The commission made the following rulings:

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STATE OF TEXAS

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Judicial notice has previously been taken of the Japanese Criminal Code. The commission further takes judicial notice of the following: the Japanese Naval Criminal Law, the Japanese Code of Criminal Procedure, and the Japanese Naval Court Martial Law. The commission does not take judicial notice of the Japanese Naval Regulations. In view of the voluminous nature of the documents of which the commission has taken judicial notice, the right of the judge advocate to make objections to particular portions thereof as may from time to time be referred to is granted.

The judge advocate introduced Mr. Frederick A. Savary as interpreter, and he was duly sworn.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present station.

A. Warrant Officer, Imperial Japanese Navy, Hamako, Tatsuchi.

2. Q. Where are you presently confined?

A. In the stockade, Guam.

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

A. (Standing up and pointing at the accused) Captain, Army, Insue, Fumio.

Examined by the accused:

4. Q. What is the name of the outfit to which you were attached?

A. The Sixty-sixth Guard Unit, personnel of the northern guard unit.

5. Q. Who is your commanding officer?

A. My overall commander was Navy Captain Shiga, Masanari; my immediate superior was Futa, Kiyoshi.

6. Q. In the beginning of 1945, around March or April, where were you?

A. I was detached from the northern fort and was at Tokowa Island.

7. Q. Where was this place called Tokowa? Tell us the name of the atoll.

A. It is an island of the Mille Atoll. It was situated near the channel for ships, about five ~~xx~~ (Interpreter's note: about ten miles) from Mille.

8. Q. What were your duties on Tokowa Island?

A. A certain number of men was stationed on this island due to the food shortage at that time. We were distributed in order to gather coconut to make coconut toddy for ourselves and also to send the same to the main island, Mille.

9. Q. During 1945, around March, that is, while you were still on Tokowa Island, did any unusual thing happen in regard to natives?

A. Yes.

10. Q. What is that?

A. In 1945, toward the end of March, two natives were in a canoe ferrying coconut toddy to Mille Island together with petty officer Tanaka.

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*James P. Keany*

STANDARD  
FORM NO. 1

11. Q. Do you remember the names of these natives?  
A. Yes.

12. Q. What are the names?  
A. Ralimo, Lasejirik, Reliejap, Sire (is a boy).

13. Q. When the natives deserted, what method did they use in their escape?

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

The accused withdrew the question.

14. Q. You said that two natives together with petty officer Tanaka were ferrying coconut toddy to Mille Island. Do you know what happened?  
A. Yes. Tanaka was on board and the crew and Lasejirik and Ralimo were crew members. They left Tokowa in the canoe around six o'clock in the afternoon. The usual course for this transportation boat was to travel from island to island within the lagoon; however, on this particular day, the canoe was put out into the middle of the lagoon. When the boat had reached a point off Malagai, Tanaka asked why the canoe had taken this particular course. He was answered that it was on account of certain conditions.

The witness was duly warned.

The commission then, at 11:32 a. m., took a recess until 2 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

15. Q. The witness stated this morning that he knew of an incident regarding natives while he was stationed on Tokowa Island. How did you get to know about this incident?

A. Petty officer Tanaka was dropped overboard and did not return the following morning while the natives were ferrying across coconut toddy. We learned of the incident through the report of natives the following day. We investigated the houses of the natives and found that their families were gone also. They had escaped.

16. Q. You said that on account of the reports of the natives that were ferrying coconut toddy the fact of petty officer Tanaka's being dropped overboard and the fact that he did not return was learned the following morning. Tell us what happened then.

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*James P. Henry*  
J. P. HENRY

A. We contacted the natives on an island, Aniri, that was next to Tokowa to find out if they had escaped from there or not. Then we received a report that all the natives on Aniri Island had escaped. Checking the reason why the natives of Aniri Island had escaped we found that it was on account of Lasejirik and Oohira's relative. Before the natives escaped, that is the previous day to the escape of the natives, an unknown native woman of Aniri had come to Tokowa and had talked to Lasejirik, Oohira, and so forth, and, therefore, on account of this it was known that the escape was planned from Aniri. A sampun was used in the escape. Our party thought that maybe the natives had drifted ashore on some other islands and therefore a search party was instigated. However, there were no signs of the canoe or signs that natives had drifted ashore. We thought that they had gone over to the side of the Americans.

17. Q. Did you contact headquarters?

A. I did contact headquarters asking them whether the canoe had arrived or not.

18. Q. What was the answer from headquarters?

A. Headquarters' answer was that the canoe had not arrived the night before, and that Tanaka ~~also~~ had not arrived. *JK*

19. Q. Then what did you do?

A. As we heard that Tanaka had not arrived, we thought that some ill might have befallen him, and we were very much worried about him.

20. Q. Did you search for Tanaka?

A. Yes. We sent out a search party <sup>for</sup> of petty officer Tanaka from Tokowa. We searched the different islands as far as Nagarappa Island. However, no trace of him could be found. Between Tokowa and the main island of Nille there was an island called Nagarappa. *JK*

21. Q. After that, did you find out the whereabouts of Tanaka?

A. Yes, the following day about five in the afternoon we received a dispatch from headquarters. The dispatch was as follows: "Petty Officer Tanaka is now kept at Madagai. He is now being treated and he will be sent to headquarters for medical attention."

22. Q. And then what happened to Petty Officer Tanaka?

A. Then Tanaka went to the sick bay of headquarters and received treatment.

23. Q. Please tell us all you know about this.

A. After about a month at headquarters Petty Officer Tanaka returned to the island of Tokowa. I heard the following from him personally: "He left Tokowa Island about six o'clock and immediately proceeded from shore. A little while later,...."

The continuation of this answer was objected to by the judge advocate on the ground that it was hearsay.

The accused replied,

The commission announced that the objection was not sustained.

A. (Continued.) ".....I asked the natives why they had taken such an off-shore course. They replied that it was on account of wind and tide conditions."

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*James P. Keamy*  
LIEUT., GEN.

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Although I cautioned them two or three times, they kept on their off-shore course. As the natives told me that this course was taken on account of tide and wind conditions, I thought that everything was all right and I did not think much about it. I sat down on one of the tin containers of coconut toddy and did not think about it. After we had reached a position a long way off shore, something touched my head; I thought the mast had fallen on me. When I looked back, I felt the second blow. The blow was delivered with the steering oar. When I tried to stand up I received the third blow and immediately, thinking that I did not have a chance, I jumped overboard. After I had jumped overboard, the natives lowered the sail and paddled around the place where I had jumped overboard, about four or five times, evidently checking whether I was alive or not. As they could not find me, they returned to Tokowa. I swam for about eight hours. I reached the island of Madagai and I managed to come to the army barracks on this island and then I passed out. I stayed on Madagai until the next day when I was taken to the main island of Mille on a stretcher for treatment. After this, about a month later, I returned to Tokowa Island." If Tanaka was an ordinary man, he would have died, but he was a man of unusual physique and was a good swimmer.

24. Q. You have said that Petty Officer Tanaka received treatment for about a month. Do you know the nature of his wounds?

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

The accused replied.

The commission announced that the objection was not sustained.

A. He had on his head a scar of about ten to fifteen centimeters wide.

25. Q. Did you see this scar?

A. Yes, I did.

26. Q. You have mentioned names of natives. Tell us the names of the natives of Tokowa Island and the names of the natives of Aniri Island, the ones that you know.

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

The accused replied.

The commission announced that the objection was not sustained.

A. The natives that escaped from Tokowa Island are as follows: Ralimo; Loojiriki; Oshira, who was Ralimo's wife; and Siro, a boy of about fifteen years of age; and the natives that escaped from Aniri. I do not know the names of the natives who escaped from Aniri.

27. Q. You testified that the natives that had escaped from Aniri were related to Ralimo. How do you know this?

A. Because Ralimo himself mentioned this fact; moreover, the other natives mentioned it.

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*James P. Kenney*  
JAMES P. KENNEY

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28. Q. Do you know what kind of character Ralimo and Loojirik had?

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

The accused replied.

The commission announced that the objection was sustained.

29. Q. You have stated that the boy of the Ralimo family was about fifteen years of age. If you know, please tell us what kind of work this boy performed on this island.

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

The accused replied.

The commission announced that the objection was sustained.

30. Q. Do you know in what direction the natives escaped?

A. The natives escaped to the open sea going between Aniri and Tokova. I believe that they headed toward the Americans.

The judge advocate moved to strike the words "I believe that they headed toward the Americans" out of the answer on the ground that they were the mere opinion of the witness.

The accused made no reply.

The commission directed that the words be stricken out.

31. Q. You stated that the age of the boy was around fifteen. How do you know this?

A. Because the boy was able to climb the tallest coconut trees in order to cut down coconut toddy and also he worked just like any other man.

32. Q. What do you mean by "cut coconut toddy"?

A. To cut coconut toddy, I mean the following: when the shoots or sprouts come out from the tree it is firmly tied around with coconut rope, and then after the sprouts are tied, three times a day one would climb the tree, untie one knot and make a small incision of about one-tenth of an inch.

33. Q. Did the witness know Ralimo and Loojirik before this time?

A. Yes.

34. Q. Do you know what the personal history of these men were?

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

The accused made no reply.

The commission announced that the objection was sustained.

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*James P. Kenney*

WITNESSES

35. Q. What kind of work did Raline and Lacejirik perform?

A. They used to make repairs on canoes.

The commission then, at 3:15 p. m., took a recess until 3:35 p. m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

36. Q. When the case of Raline and Lacejirik happened, do you know if there were any American ships near the island of Nille or not?

A. Yes. Every day there were small auxiliary vessels with loudspeakers near by.

Cross-examined by the judge advocate:

37. Q. Did you ever see the natives after they had left Nille Atoll in the canoe?

A. No.

38. Q. Then, is it true that all you know about what happened after they left in the canoe is what you were told by Tanaka a month after the incident?

A. I know something else.

39. Q. Do you know anything else of what happened while the natives and Tanaka were in the canoe?

A. I found out that Tanaka had received wounds from the natives and then had arrived on Madagai Island.

40. Q. How do you know that these wounds were received from the natives?

A. I heard this from Petty Officer Tanaka.

41. Q. You stated in your testimony that you sought to contact the natives on Aniri and you received a report that all the natives on Aniri Island had escaped. Is it true that all the natives on Aniri Island had escaped?

A. Yes. All the natives escaped on one ship; however, there were two or three left. There were only three or four natives on the island and they had escaped. JK

42. Q. Did you ever speak with these natives who had escaped at any time after they escaped?

A. No.

43. Q. You testified earlier concerning Lacejirik and Oohira's relatives. Were they on Aniri Island? JK

A. Yes.

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*James P. Kennedy*  
JAMES P. KENNEDY

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44. Q. How did you find out why the natives escaped from Aniri?

A. Because the canoe did not come back. Moreover, when we went to the natives place the family was gone and then I contacted Aniri, but everyone had left.

45. Q. Then you did not speak to any of the natives on Aniri?

A. No.

46. Q. You testified this morning about an unknown woman from Aniri who had spoken to Lacejirik. How do you know this woman spoke to Lacejirik?

A. My squash farm was near the house of the natives. I was at the farm and I knew that someone had come to the house of the natives. I asked who was there and Raline and Ochira had told me that their relative had come to visit them. This was in the evening previous to the day that the canoe left the island.

47. Q. Did you hear this unknown woman speak with them?

A. I saw them talking, but as I do not know the native tongue, I did not know what was said; however, Ochira, the wife of Raline, could speak good Japanese, and she told me.

48. Q. Did she tell you that they had arranged to escape?

A. No, they never mentioned anything like that.

49. Q. Then, how do you know that in the conversation they had arranged to escape?

A. Because she only came once and this once was on the evening previous to the escape; besides, it was definitely shown that the escape was planned.

50. Q. But you did not hear this conversation; therefore, how do you know what this conversation was about?

A. Because if they had not planned anything, only the natives on Aniri would have escaped; moreover, the natives took all their personal belongings. They did not leave anything behind. Also, more than one hundred natives of Tokowa said that plans were made.

51. Q. But you did not hear this conversation, did you?

A. No.

52. Q. Do you know the name of the woman with whom they spoke?

A. I do not know.

53. Q. Did none of these more than one hundred natives tell you the name of this woman?

A. I do not mean natives. I mean more than one hundred military personnel. There were only twenty or thirty natives on Tokowa. These natives told us that the woman had come to make plans to escape.

54. Q. Did these twenty natives tell you the name of this woman?

A. No, I never heard.

55. Q. Are you sure that these twenty natives told you that this unknown woman had persuaded Lacejirik to escape or was it only the military personnel who told you that they had planned an escape?

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*James H. Kenney*

TEST., WCH.

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The natives said this and all the others on the island.

56. Q. You testified concerning one message which was sent to Mille asking about Tanaka and an answer from Mille in which they said that he had not arrived. Do you know of any other messages that were sent or received concerning Tanaka or the natives?

A. Yes, I know. This is other than the dispatch.

57. Q. Is this another dispatch that you are referring to?

A. Yes. This other instance is as follows: there was a soldier going further than Tekona for liaison purposes; as he was passing Madagai Island he was stopped by an army man and informed that Tanaka had arrived on Madagai; that Tanaka was wounded and was receiving medical treatment. I heard this report from a sailor.

58. Q. Did you ever see or hear of any other messages or dispatches concerning Tanaka?

A. No.

59. Q. Did you ever hear or see any other dispatches concerning these natives?

A. Regarding the escape?

60. Q. Yes.

A. Only the dispatch that stated that Tanaka was on Madagai Island and that the canoe had not arrived on Mille Island.

61. Q. Did you receive any other or send any other dispatches concerning these natives?

A. I do not know of any other dispatches.

62. Q. Were you attached to the headquarters at Mille?

A. I was a person of the northern fort.

63. Q. Was there a radio station there?

A. Not at the northern fort. There was only telephone communication between the northern fort and the headquarters.

64. Q. In the performance of your duties did you see the dispatches that came into Mille headquarters?

A. Are you referring to dispatches that came to headquarters while I was on Tekona?

65. Q. I mean any dispatches in the performance of your normal duties.

This question was objected to by the accused on the ground that it was too broad and that it was not clear to the witness.

The judge advocate replied.

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*James P. Kenny*  
J. P. K.

The commission announced that the objection was not sustained.

A. No, I did not.

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

The commission did not desire to examine this witness.

The witness made the following statement:

Raline was working as a carpenter on the particular day that he came and asked to be released from that work and asked to be put on the canoe as a member of its crew. At that time on our island, it was well known that this man was of a bad nature, and we had never used him as a crew member. While Raline was staying on Tokova Island, he was treated very kindly. However, while ferrying coconut toddy across to Mille Island he attacked Petty Officer Tanaka with an ear, causing Tanaka to get into the water, also the fact that he circled five or six times around the spot that Tanaka had jumped into after checking and thinking that he was dead, he took the food and escaped. If they did not have any maliciousness, they would go together with Tanaka to Mille Island, unload the coconut toddy and then escape. From the first action was planned, and I wish that the senior member of the commission and the commission would understand this fact and give a lenient judgment in the case. That is all.

The commission directed that the words "From the first the action was planned, and I wish the senior member of the commission and the commission would understand this fact and give a lenient judgment in the case" be stricken from the record.

Examined by the commission:

66. Q. Do you know where Tanaka is at present?

A. I only know that he is in the prefecture of Kagoshima.

The witness was duly warned and withdrew.

The commission then, at 4:35 p. m., adjourned until 9 a. m., tomorrow, Friday, May 10, 1947.

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*James P. Kenney*

WITNESSES, U.S.N.

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**SEVEN DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Saturday, May 10, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Reese, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocates:

1. Q. State your name and rank.  
A. Former Lieutenant, Imperial Japanese Navy, Fusta, Kiyoshi.
2. Q. Are you presently confined on Guam?  
A. Yes.
3. Q. If you recognize the accused, state as whom.  
A. I recognize the accused. His name is Captain Inoue.

Examined by the accused:

4. Q. Have you ever had duties on Mille Island in 1945?  
A. I was on Mille from the third of September 1943, to the twenty-fifth of  
September 1945.
5. Q. What unit were you attached to?  
A. The Sixty-sixth Naval Guard Unit.
6. Q. Do you know the islands in the Mille Atoll, Takoua and Aniri?  
A. I do.
7. Q. Were these islands in the area under your jurisdiction?  
A. Takoua was under my jurisdiction, but Aniri was not.

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*James P. Kenny*

LIEUT., USN.

8. Q. Do you know about the desertion of natives from Tokoua in March 1945?

A. I do.

9. Q. How did you come to know this?

A. In the middle of March, my men were scattered on the various islands and they were supposed to carry food from these islands to the main island. On this certain day, food was supposed to come from Tokoua, but the people on the main island waited until twelve o'clock that night but food did not arrive. On this day, the weather was good and the boat and the food ought to have been on time. As they did not come, I thought there may have been trouble and was worried. On the next morning, about eight o'clock, an army messenger who came from Aniri relayed a message to me which stated that last night, petty officer Tanaka, who was carrying food by boat, was struck by the natives and thrown into the sea. He had been swimming from five o'clock last night and had drifted ashore this morning, and that he was in critical condition. He asked that I take a stretcher to pick him up. I asked the army messenger what was Tanaka's condition and he answered that he had been struck on the right part of his head and that there was a big wound and he was tired out and unconscious. I sent six men with a stretcher to Aniri to pick Tanaka up. About forty to sixty minutes later they returned and stated that Tanaka was in a very critical condition and could not be moved; but the army was treating him, and he may live. He was left as he was. Before this I reported what I heard by report by telephone to headquarters. I do not know how he came by boat or by stretcher, but the evening of the next day he had been brought to headquarters.

10. Q. Are you sure that the island Tanaka drifted ashore on was Aniri?

A. Aniri was a mistake. It was Madagai.

11. Q. Did you see petty officer Tanaka personally?

A. I saw Tanaka personally a day after he returned to headquarters.

12. Q. At this time, what was the condition of his wound?

A. His head was bandaged with only his left eye showing and I could not tell about the wound, but that day I spoke to him.

13. Q. What did you talk about?

A. I asked Tanaka to explain the circumstances and he stated as follows: "As usual one or two hours after the sun had gone down, we left Tokoua, headed toward Nille with the food, and about one-half way, the canoe was taking another course different from the usual one which was going by the islands, and I asked why they were going this way. They answered in the native tongue and I did not understand, but I was reassured. On the boat were coconuts and coconut toddy. I settled down and was drowsing as we went toward Nille Island. About seven o'clock in the evening, I was suddenly struck on the head. I thought instinctively that the mast must have broken and had hit me on the head. As I tried to lift my head, a second blow with an oar hit me and I found out for the first time that they were trying to kill me with the oar. While I was defending myself, I may have been thrown or wilfully threw myself into the sea, I do not recall, but it hurt greatly; but I dived under the water after I had been thrown into the sea and stayed there. The canoe circled three times in that vicinity, and after the canoe left, I swam toward the land. After I reached the beach, I do not remember what happened."

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*James P. Kenny*  
LTC., USN.

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

The accused replied.

The accused made the following statement:

At this time the defense requests that the commission subpoena as a defense witness Warrant Officer Tanaka, who is still alive and in Japan.

The judge advocate replied.

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

The commission directed that the answer be stricken out.

The commission made the following statement:

The commission has no objection to the defense procuring petty officer Tanaka as a witness through the usual channels, but will not permit any delay in the progress of this trial for this purpose. Ample opportunity has previously been afforded to summon the desired witnesses.

14. Q. How long did it take Tanaka to recuperate from his wounds?

A. I think it took over forty-five days for him to be able to go back to his island and work.

15. Q. At this time, were there any other cases of natives deserting from Mille?

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

The accused made no reply.

The commission announced that the objection was sustained.

16. Q. In this period, did American ships come in and around the neighborhood of Mille?

A. They came about three or four times a week.

17. Q. Do you know what things these ships did?

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

The accused replied.

The commission announced that the objection was sustained.

The accused did not desire further to examine this witness.

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

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*James P. Kenny*  
Lieut., USN.



The witness made the following statement:

The fact that the natives escaped was of more importance to headquarters than the wound that Tanaka received. The effect on the forces that the natives had escaped was great. I received a reprimand from the commanding officer because of my responsibility, and thereafter all measures were taken to prevent the escape of the natives present. Due to the heavy bombings the natives frequently deserted. I believe the effect of the desertions of these natives was great on the natives and the military.

The witness was duly warned and withdrew.

The commission then, at 11:12 a.m., adjourned until 9 a.m., Monday, May 12, 1947.

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*James P. Kenny*

WITNESSED AND SUBSCRIBED

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**EIGHTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, May 12, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur C. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreter.

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

No witnesses not otherwise connected with the trial were present.

The accused made the following statement:

As soon as the defense found that there was a possibility of Warrant  
Officer Tanaka being alive they attempted to find him. According to our  
information he is at Kagoshima-Kan, in the southern part of Japan. When  
the commission ruled that the defense must secure him through the usual  
channels we conferred with the Director of War Crimes, Pacific Fleet, here on  
Guam. He advised us that there would be considerable delay to secure such  
a witness. He advised us to prepare interrogatories and submit them to the  
judge advocate and send them by courier on the plane that left this morning  
for Japan. This has been done. The interrogatories were submitted to the  
judge advocate and approved by him and I am sure that they went off by  
courier on the plane today. As soon as these are returned to us with the  
answers we will introduce the document containing the questions and answers  
into the record of this commission. JPK

The judge advocate made the following comment:

The only comment by the judge advocate is with regard to the statement  
that as soon as the defense had found out the possibility that Tanaka was  
alive that they had made efforts to obtain him as a witness. The judge  
advocate would like the record to indicate that such efforts were not  
made through the office of the judge advocate or through the office of the  
War Crimes Director. The judge advocate believes that it was in part to JPK

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obtain this witness that the defense went to Tokyo. If such is the fact the judge advocate wishes to point out that defense did not seek to utilize the extensive facilities of SCAF or the War Crimes Director in order to locate this witness in Japan. Failure to do so may in part explain why the defense has been unable to locate and produce this witness prior to this time. With regard to the interrogatories, the judge advocate has approved the form of them, but believes the defense should be advised that they are not under obligation to introduce them if the contents thereof consists of matter which they object to, or do not wish to introduce in evidence.

The commission announced that the procedure outlined by the accused was approved, subject to the remarks of the judge advocate.

The accused requested that the commission take judicial notice of "Martial Law" as proclaimed in Rajokan Fukoku No. 38 of 5 August 1942.

The judge advocate objected to the commission taking judicial notice of "Martial Law" as proclaimed in Rajokan Fukoku No. 38 of 5 August 1942 as follows:

The judge advocate objects to the request of defense counsel that judicial notice be taken of the martial law. Martial law is a peculiar type of law which is not part of the normal local law in that it is not the prevailing applied law. Martial law is law arising out of emergency situations which require certain conditions and certain actions in order to become operative as local law. There has been no evidence produced before this commission in this case indicating that martial law was ever proclaimed and that therefore the provisions of the Rajokan Fukoku No. 38 martial law (which is the Japanese basic martial law, as proclaimed on 5 August 1942.), came into effect. On the contrary there is every reason to believe that martial law was not in effect in the Marshall Islands during the period with which this commission is concerned. In a prior case in which the same defense counsel acted for the accused, one Major Furuki, it was affirmatively established by the defense that martial law had not yet been proclaimed in the Marshall Islands at a period slightly later than the instant occurrence.

There is a certain basic nature to martial law which is universally recognized, this basic martial law arising in times of emergency on a national or social basis authorizes the exercise of certain powers somewhat similar to those of self-defense of an individual. The Rajokan Fukoku No. 38 proclamation contains certain provisions which appear to go beyond the customary boundaries of martial law and the customary rights of the military commander in a situation of martial law. All of these powers and rights however are prefaced upon the actual proclamation and declaration of martial law. I cite in this regard particularly article 9 of the Rajokan Fukoku No. 38, martial law which reads as follows: "In a war area, the administrative and judicial affairs of the district, if they are concerned with military affairs, shall come under the command of the commanding officer of the district. Therefore, the officials, judges, and judge advocates of the district, upon proclamation or declaration of Martial Law shall immediately come under the command of the commanding officer" (italics supplied).

This can be interpreted as dissimilar to our own and to the common practice of martial law which normally considers that the military commander

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*James P. Kenny*  
Lieut., JAG.



of forces occupying territory under martial law is not in a position as military governor of such territory and that in general, exercises the power to suspend local law and jurisdiction only when necessary to control persons interfering with the exercise of military authority. Martial law does not give absolute power, it is limited by necessity of the situation - and does not per se mean the substitution of military for civil government. It is primarily because of these differences that the judge advocate objects to the taking of judicial notice of the Dajokan Fukoku No. 38, martial law.

The accused moved to strike out that portion of the judge advocate's objection which made reference to the trial of Major Furuki.

The judge advocate replied.

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

The commission announced that the objection was sustained. The commission further ruled that the motion to strike certain portions of the judge advocate's remarks from the record was not sustained.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.  
A. Major, Imperial Japanese Army, Furuki, Hidesaku.
2. Q. Are you presently confined at Guam?  
A. Yes.
3. Q. If you know the accused state as when.  
A. Inoue, Fumio.

Examined by the accused:

4. Q. Have you ever had duty on Jaluit Atoll?  
A. Yes.
5. Q. Tell us when you arrived on Jaluit and when you left Jaluit.  
A. The date I arrived on Jaluit was 18 January 1944, and the time I left Jaluit was 11 October 1945.
6. Q. What were your duties on Jaluit during this period?  
A. I was the battalion commander of the Second Battalion, First South Seas Detachment, from the beginning of April 1945. I became head of the defense section of the Jaluit Defense Garrison and head of the War Preparations Committee until the end of the war.
7. Q. Who was your commanding officer?  
A. Rear Admiral Nagata, Hideo.
8. Q. You stated that you were an army officer and that your commanding officer was a Rear Admiral in the navy, how do you explain the line of command and your disposition?

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*James P. Kenney*  
J.P.K.

A. At that time by instructions from general headquarters all army and navy units in the Pacific Ocean Area came under the command of the supreme commander of that base and that the supreme commander would command all army and navy units. In my case I came under the command of Rear Admiral Akiyama who was the commanding officer of the Sixth Base Force at Kwajalein and by his order I came under the command of the commanding officer of the Sixty-second Naval Guard Unit, Rear Admiral Masuda. In all matters other to those pertaining to my promotion or salary or personal matters I came under the command of Admiral Masuda and received instructions from him, the same as his regular navy officers and men.

9. Q. Do you know what relation Captain Inoue had in the command of Jaluit?  
A. I do.

10. Q. Is it the same as in your case?  
A. Yes.

11. Q. What is the relation between yourself and Captain Inoue?  
A. Captain Inoue was officially attached to the headquarters of the First South Seas Detachment and after I arrived to take command of the Second Battalion, First South Seas Detachment, by order of the Commanding Officer of the First South Seas Detachment, Captain Inoue was ordered attached to my unit and came under my command.

12. Q. Do you know the circumstances of the Japanese forces on Jaluit on and around 1945?  
A. I do.

13. Q. I shall ask you some questions concerning those circumstances. Was there any means of transportation between Jaluit and the rear bases?  
A. At that time the American forces had supremacy of sea and air in the Pacific area and all transportation between Jaluit and the rear bases and the neighboring bases was absolutely cut off.

14. Q. Where were the headquarters of the Jaluit Defense Garrison located?  
A. It was located on an island called Rmidj in the middle part, on the east side of Jaluit Atoll.

15. Q. Where were the former headquarters of the Jaluit Defense Garrison located? On what island?  
A. On Truk Island.

16. Q. What were the means of transportation between Truk and Jaluit?  
A. After the fall of Kwajalein transportation between Truk and Jaluit by sea and air was absolutely impossible. We were barely able to maintain contact by radio communication.

17. Q. When did Kwajalein fall?  
A. In the beginning of February 1944.

18. Q. What were the means of transportation or contact between the Fourth Fleet Headquarters and Jaluit?  
A. It is as I have just stated concerning communications between Truk and Jaluit.

19. Q. What were the conditions of armament and supply of ammunition and the supply of food, its storage and its resupply, on Jaluit at this time?

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*James P. Keany*  
LIEUT., USN.

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4. Concerning the conditions of armament, almost all effective weapons against ships were destroyed. Concerning anti-aircraft, all high angle guns were destroyed, the only effective weapons against air raids were three 25 mm cannon, these had been damaged and repaired many times, therefore were not very effective. As ammunition for these three 25 mm cannons at the beginning of 1945 was only twelve thousand rounds, strict restrictions were placed on the use of this ammunition. On the ammunition for the 25 mm, no matter how many planes came they were restricted to two hundred rounds per day. After the fall of Kwajalein there was not even one resupply of ammunition for weapons and there was no hope of supply in the future. As for the food on Jaluit, in the middle of 1944 only one days rations for the military and gunsokus on the island remained. This was saved in case of an American invasion and we were not allowed to eat it. Concerning the resupply of food, it was the same as in the case of arms and ammunition. We had to rely on the native food which could be obtained on Jaluit. Many military and gunsokus had to be used and all natives who lived on Jaluit had to be mobilized to obtain these foods. One day's ration on Jaluit was one to one and one-half coconuts and 3.18 pints of coconut toddy a day, this was the main diet. All grasses which could be eaten were gathered throughout the atoll and they were all eaten. Rats and lizards were all eaten. As this was the only food which could be obtained the military and gunsokus on Jaluit all showed signs of malnutrition and after 1944 the persons dying of starvation increased.

20. Q. What were the battle conditions at that time on Jaluit?

A. Just before the fall of Kwajalein fierce bombings were directed at Jaluit. After the fall of Kwajalein the number of planes attacking Jaluit was to the end of the war eight thousand and the total amount of bombs dropped on Jaluit was five thousand tons. By the latter part of 1944 all weapons and armaments on Ruidj, the main island of the atoll, were destroyed. Jaluit had no effectiveness as a military base. From the beginning of 1945 the American forces used Jaluit as a practice ground for planes and continued to bomb it. Again the water around Jaluit was patrolled constantly by American destroyers, and bombardments by warships were frequent. This is an outline of armed warfare between the American forces and the Japanese on Jaluit. The attacks which caused us the most worry were the attacks to destroy the food on Jaluit. Farms, whether they were on the main island or on outlying islands, were systematically bombed. We could not grow food and also coconut groves which were the source of food on Jaluit were systematically bombed by the Americans. Boats used in carrying food which were considered the life line of Jaluit were destroyed one by one by bombing. Attacks were continued until even small canoes which could hardly seat one person were destroyed. Up to the end of the war the natives which were the main source of labor on Jaluit, one-half of them, about one thousand, were taken away by the Americans.

The commission then, at 10:30 a.m., took a recess until 11:03 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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*James P. Henry*  
Lieut., USN.



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

(Examination continued.)

21. Q. You stated in your testimony regarding war conditions that air raids and bombardments were made. Will you state concretely what this means?

A. From the day that Kwajalein fell until the middle of 1944 a dozen heavy bombers raided Jaluit several times a day, after which the number decreased, but there were always planes over Jaluit. It could never be said that there were no attacking planes over Jaluit, and when small craft were not around Jaluit heavy bombers and medium bombers were continually patrolling and bombing Jaluit. I have not finished stating on the war conditions on Jaluit. Another kind of attack which was tried on Jaluit was through propaganda. From the middle of 1944 leaflets were dropped in an effort to break the morale and make the people desert. In the latter part of March 1945 two groups of spies, a total of eight persons, were sneaked into Jaluit. Also after which the dropping of leaflets and broadcasts from surface craft was intensely conducted. The three methods which the Americans used systematically and ingeniously to break the will to fight and break the morale of the men was through direct destroying of armament and installations, the attack against food production areas and through propaganda to break the morale of officers and men. Jaluit which came under these attacks from the middle of 1944 could be said to be in the same instance of a sick man on his death bed trying to live with his arms and legs taken away and also his food. Under these circumstances the policy set up by the commanding officer of the defense garrison, Admiral Masuda, is as follows: Under difficult circumstances we must continue the defense of Jaluit, to do so we must try to keep the people from dying and therefore all efforts have to be made to obtain food and see to it that the military, gunsokus and natives do not desert. This policy was not set up by Admiral Masuda only from what he observed on Jaluit, but as a result of what he knew and looked into about the other bases in the Marshalls in which the natives and military deserted in large numbers to the enemy and on which approximately two hundred people were dying a month of starvation.

The witness was duly warned.

The commission then, at 11:28 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

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*James P. Kearsy*  
JURY, U.S.N.

22. Q. How many military, gunnaks and natives were there on Jaluit in this period?

A. There were fourteen hundred regular military, around six hundred gunnaks, and a little more than two thousand natives.

23. Q. What was the relation between the two thousand natives and the regular military at this time?

A. The natives came under the command of Admiral Masuda and were one of the elements composing the Jaluit Defense Garrison.

24. Q. What sort of work were they doing under the command of the military?

A. They were producing food and other necessities and its transportation needed for the existence of the people on Jaluit.

25. Q. You stated this morning in your testimony that two groups of natives sneaked into Jaluit. Do you know from what island they sneaked into Jaluit?

A. From Mille Island.

26. Q. How did you know of this fact that these natives sneaked into Jaluit from Mille?

A. Because Admiral Masuda held an examination and consultation for these natives and he was one of the members who was in on this. I was not in on this investigation.

27. Q. When did these natives sneak into Jaluit?

A. As I recall, it was the thirty-first of March, 1945.

28. Q. At this time, were you on Jaluit?

A. I was on Jaluit.

29. Q. Were you at the headquarters on Jaluit?

A. On this day, I was not at headquarters.

30. Q. Then, where were you?

A. I was at Chitogen Village, located in the northwestern part of Jaluit.

31. Q. By what did you know that the natives sneaked into Jaluit on the thirty-first of March?

A. When I was at Chabnoren Island, which was on the west side of the Chitogen area, the district commanding officer of this area, First Lieutenant Furuno reported to me that Raline and three other natives had drifted ashore on the northern part of Ren Island and that they had been sent to headquarters. After my return to headquarters, I was told by Shintone and Admiral Masuda that Raline and three other natives had drifted ashore on the southern tip of Jaluit from Mille.

32. Q. What day was it when you returned to headquarters?

A. It was on the third of April.

33. Q. Were investigations held on these natives?

A. Yes.

34. Q. Who investigated these natives?

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Lieut., USN.

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A. Captain Inoue and the intelligence officer, Lieutenant Morikawa, were ordered to investigate and they investigated. Admiral Masuda also investigated on this case.

35. Q. Who was the one who gave orders to Captain Inoue and Lieutenant Morikawa to investigate this incident?

A. Admiral Masuda.

36. Q. Were you present when Captain Inoue and Lieutenant Morikawa were ordered to investigate and act as investigators?

A. I was not present.

37. Q. Do you know who was present when Captain Inoue and Morikawa were ordered as investigators?

A. Lieutenant Commander Shintone.

38. Q. How do you know this?

A. I had heard from Lieutenant Commander Shintone and also from Admiral Masuda when I returned on the third of April to headquarters and later I heard from Captain Inoue and Lieutenant Morikawa.

The judge advocate moved to strike out the answer to question 37 on the ground that it was hearsay.

The accused replied.

The commission directed that the answer be stricken out.

39. Q. I would like you to answer directly from what you saw, what you heard, or what you know concerning this incident. Do you directly know what the contents of this incident were?

A. I do.

40. Q. Tell us what you know about this incident.

A. From about the middle of March, 1945, several hundred natives deserted to American ships. Also about the same time, several hundred Koreans revolted and deserted to American ships, and there were also some Japanese who deserted to the Americans. The principals of this incident, Raliejap and Raline and their families, determined to desert to the Americans and as a matter of desertion, they determined upon the following plan: Raline, living on Tokowa, Raliejap, living on Aniri, and there was a person - a man - living with Raliejap, I have forgotten his name at the moment, who worked for the Mille Defense Garrison in transporting things by boat. They planned to kill the soldier on the boat and steal it. On the other hand, Raline was to steal the boat of the commanding officer, Takahashi, then Raliejap's boat was to tow the boat that Raline stole and go through the Tokowa Channel and seek the American ships in the water around Mille. If they could not be located, they were head toward Arno and Majuro where they would present themselves. Around the latter part of March, Raline and the person whose name I have forgotten, on a certain day while sailing from Tokowa toward the main island of Mille, at the half-way point, about fifteen kilometers out, the natives struck petty officer Tanaka on the head several times with an oar and then threw him into the sea. They took the clothes off Tanaka into the things they were carrying in the boat, then circled the place where

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LIEUT., USN

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Tanaka had been thrown into the sea to make sure, and then went to Aniri. Raliejap had already stolen Takahashi's boat and preparations had been completed. Towing this boat they had stolen they went to Tokowa Island where they took on board Raline's family and going through the Tokowa Channel headed toward the open sea. Shortly after they had reached the open sea they were picked up by an American ship and they were given many things to eat. On board were some Marshallese and negroes. On this ship Raline and Raliejap were called on by an American officer and there was a Marshallese interpreter. They were given the following instructions: You will sneak into Jaluit and do as follows: Raline, you will go to the northern tip, and Raliejap, to the southern tip. You are to find out as much as possible about the forces on Jaluit and their self-supporting measures and when you return bring with you a native who knows well about Jaluit. And also you are to tell the natives and the military and gunboats on the island about the revolt of the Koreans and their desertion, desertion of the natives, and desertion of the military on Mille Atoll; about a month later the Americans would bring many planes and ships to take you away; and the natives were to gather on an island where there are no Japanese and make preparations to escape. As a sign to us that you have made these preparations, a woman is to stand on the beach of the island facing the lagoon. Try to get as many military and gunboats to escape as possible and if you are asked why you got to Jaluit, you are to tell them you drifted here while transporting food to Mille. After you have completed this mission, you will be sent to Majuro and Arno where you will be given much food and clothes and let live there.

The commission interrupted the answer and suggested that counsel ask the witness his source of this information.

41. Q. How did you come to know about these facts?

A. This I came to know through the examination and consultation of these natives. I was one of the persons who conducted this.

42. Q. You stated that you came to know this question because you were a person who was in on the examination and consultation of these natives. Tell us explicitly from what source you derived this information. The judge advocate stated that as you were not with the natives at Mille and you were not with them on the boat trip, that you did not know. Please tell us explicitly where you received this information.

A. After I returned from the outlying island, Admiral Masuda called myself, Shintone, and Inoue to him and told us as follows: The natives from Mille, it has been found, had committed murder and other felonies and had been given the duty to act as spies by the Americans, and this is a serious crime on Jaluit. As the regular courts are on Ponape and Truk, I shall have to handle this case by the authority vested in me on Jaluit, as a regular court cannot be held. Under the circumstances, the best procedure, which is a special examination and consultation, will be held. Captain Inoue shall act as judge advocate, Furuki and Shintone, he ordered to act in the capacity of judges and he also shall act as a judge. This crime pertains to military secrets, therefore, keep the proceedings secret. The persons receiving these assignments are judging on human lives; therefore, perform them soundly and in good faith.

The commission announced that the answer up to this point was not responsive.

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 LIEUT., JUDGE.

A. (continued) I found out these facts through two investigation reports which were ordered returned by Captain Inoue concerning the investigation of these natives. Admiral Masuda ordered Captain Inoue to read the first investigation report concerning the Raline group.

The judge advocate moved to strike out the answer to question 40 on the ground that it was hearsay.

The accused replied.

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

The commission directed that the answer to question 40 be stricken out.

43. Q. You stated that you were ordered to act as a judge and that Captain Inoue was ordered to act as judge advocate. Concerning this, how was this procedure conducted?

A. From the third of April to the sixth of April, an examination and consultation was held on Raliejap's group. On the sixth, an examination and consultation was held from Raline's group and on the eighth and ninth a complete examination and consultation was held on both of these incidents. JMK

44. Q. What steps were taken before this examination and consultation was held?

A. The members were appointed and the duties explained them. Captain Inoue as a judge advocate read the investigation report on Raliejap and the three natives.

45. Q. How was Raline's group's examination and consultation held?

A. It was the same as in the other case. Admiral Masuda stated that the Raline group should be examined and consulted upon, and Captain Inoue read the investigation report.

46. Q. You stated that the examination and consultation started with the reading of the investigation report. What examinations and consultations were held concerning these natives?

A. The boat in which the Raliejap group came to Jaluit was inspected. The things that were in the boat was as follows: Chagana, which was in bottles, and bruire, which is breadfruit prepared so that it could be kept for a long time. Admiral Masuda went with Captain Inoue to where the natives were confined and ascertained their statements. During the examination and consultation on points which were not sufficient, Admiral Masuda ordered it looked into further and ordered the investigation held in parallel with consultation. On the fifth of April, the acts of Raliejap's group were determined to actually be what was stated in the investigation report.

The witness was duly sworn.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 13, 1947.

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*James P. Keany*  
J.P.K., U.S.N.

**NINTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, May 13, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, Junior, U. S. Naval Reserve,  
Major James H. Tatech, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidenaka, the witness under examination when the adjournment  
was taken on May 12, 1947, entered. He was warned that the oath previously  
taken was still binding, and continued his testimony. JK

(Examination continued.)

47. Q. The last answer you gave yesterday was that the examination and  
consultation of Raliejap's group was begun on the third and completed on the  
sixth and you answered concerning this. What were the steps taken in the  
examination and consultation of Raline's group?

A. The examination and consultation of the Raline group was begun on the  
sixth and completed on the seventh. At first Captain Inoue read the investi-  
gation report which had been made by him. The clothes of Tanaka were  
submitted for inspection as evidence. Admiral Masuda took the record and  
went to the natives to ascertain the facts and on points that were not  
sufficient ordered Captain Inoue to investigate further.

48. Q. You were testifying to examination and consultation of Raliejap's  
group. When and where was this examination and consultation held and who  
was present?

A. The place was Admiral Masuda's air raid shelter. The persons assembled  
there were Admiral Masuda, myself, Lieutenant Commander Shintone and Captain  
Inoue.

49. Q. Where was the place and who were the people present in the consultat-  
ion of Raline's group?

A. It is the same as in the case of Raliejap.

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*James P. Kenny*

U.S. NAVY



50. Q. You stated at these examinations and consultations the facts in the case of Raliejap and Raline were determined on. Tell us what facts were determined to have been true.

A. The following facts were determined upon in the examination and consultation. That at the end of March the natives Raline and Raliejap had plotted to desert and Raline's group had killed Petty Officer Tanaka and took the boat which Raliejap had stolen - the boat in Takahashi's custody - and placed their families on board and headed out toward the open sea where they were picked up by an American ship and they were given a mission to sneak into Jaluit and to find out about the military forces on Jaluit and if possible to bring a person who knew well about Jaluit back with them and to relay about the desertion of the natives, military and gunsekus on Hille and the desertion and revolt of the Koreans and to relay to the natives of Jaluit also the military and gunsekus that a month later many planes and ships would come to Jaluit and carry them away and that they were to go to an island where there were no soldiers and as a signal to place a woman on the inner side of the island. After this Raline sneaked into the northern part while Raliejap went to the southern part of the island.

The judge advocate moved to strike the complete answer on the ground that it was immaterial and irrelevant to the issues before this commission.

The accused replied.

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

The commission stated that it would announce its decision on the motion to strike when it reconvened after the noon recess.

The witness was duly warned.

The commission then, at 11:33 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

The commission announced that the motion was sustained and directed that the answer be stricken out.

51. Q. You stated that you examined and consulted upon these natives and established the facts of their actions. How were the facts established?

A. By the following three points: (1) Admiral Masuda ascertained by the

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native, the investigation of Inoue and Morikawa and the confessions obtained from them; (2) the reports of the commanding officer of the Jaluit district where the natives drifted ashore and also from the head of the detachment on Ren Island and the district commanding officer of Chitogen Village; (3) the boats and other material evidence.

52. Q. On the third item, you stated "boats and other materials." Will you state concretely what other material evidence there was?

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

The accused withdrew the question.

53. Q. You testified concerning boats and other materials. Were these boats and other materials brought before the people on the examination and consultation for them to see and inspect?

A. The boats were tied to the pier and they were not brought to the examination. The other things that Raliejap brought, such as food, clothes that were in a wooden box and also some toilet articles which were wrapped in a cloth, were submitted at the examination and the clothes of petty officer Tanaka which were brought by the Raline group were also submitted in the examination.

54. Q. Were the boats also inspected and examined?

A. Yes.

55. Q. How were they inspected and examined?

A. The commanding officer went to inspect and examine the boat. Myself and Shintone also went together to inspect and examine the boat.

56. Q. Was it no mistake that this boat was the boat that they had stolen from Kille Island?

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

The accused withdrew the question.

57. Q. Did you confirm that this was the boat in evidence?

A. Yes.

58. Q. Tell us the breakdown and the amount of things that were brought to be examined and inspected.

A. The effects of the Raliejap group was one wooden box, length of about one meter, width of about fifty centimeters, depth of about forty centimeters. It contained family clothes. I do not remember exactly what sort of things were in the box. Wrapped up in a cloth were towels, matches, and other toilet articles. I do not remember exactly what they were. As for food, there was a bottle which contained from six to nine pints and was filled with chagana, two baskets of buiro, which is prepared breadfruit that can be preserved, and copra. I do not remember the exact number. I also remember that all the copra was not brought in during the examination and consultation. As for the effects of the Raline group, the clothes of petty officer Tanaka, there was a regular Japanese navy shirt and short pants with the mark of the Sixty-sixth Naval Guard Unit and the name clearly shown. OK

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LIEUT. COL., USA.

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The judge advocate moved to strike out this answer on the ground that it went into collateral matter.

The accused replied,

The commission directed that the answer be stricken out.

59. Q. You stated that you judged on the acts of these natives through these inspections and examinations. How did you judge them?

A. What do you mean when you say "How did you judge them?"

60. Q. You stated that you ordered the investigation reports by Inoue and Morikawa and that you obtained the confessions and that the reports of the various district commanders were read; also, you inspected and examined the boats and other material evidence. How did you judge the natives as a result of what you inspected and examined?

A. It was judged that the natives who had sneaked in had committed the crime.

61. Q. What kind of a crime do you mean when you say crime?

A. As violation of the Japanese Criminal Code, spying, murder and rebellion; in violation of Navy Criminal Code, desertion, attacking a guard in a group and destroying of military property and others.

62. Q. Tell us briefly what actions of the natives were applicable to what crime.

This question was objected to by the judge advocate on the ground that it was going into collateral material and was irrelevant.

The accused replied.

The commission announced that the objection was not sustained.

A. The mission that they were given by the American ships was that the natives were given a mission to spy on the boat and at the island where they drifted ashore, relay the message to some natives, this made them guilty of the act of spying. That they attacked the guard in a boat and plotted to kill him made them guilty of the crime of murder. Planning to desert to the Americans, desert from Hille and desert to an American ship made them guilty of desertion. That Ralime and Raliejap stole the boat made them guilty of the crime of destroying of military property and these acts on a whole made them guilty of the crime of plotting with another nation against Japan. That they attacked the guard in a boat made them guilty of the crime of attacking guards in a group.

63. Q. You stated that they killed a guard on a boat. Do you know the name of the person that they killed?

A. I do. It was Petty Officer Tanaka of the Sixty-sixth Naval Guard Unit.

64. Q. How did you determine the fact that it was Tanaka of the Sixty-sixth Naval Guard Unit that was killed?

A. Because the native, Ralime, confessed that he had killed petty officer Tanaka and the fact that he had the clothes of petty officer Tanaka in his box.

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JAN 2, 1948



65. Q. Did you see the clothes of Petty Officer Tanaka with his name on it?

This question was objected to by the judge advocate on the ground that it was repetitious, irrelevant, and went into collateral matter.

The accused replied,

The commission announced that the objection was not sustained.

A. I did.

66. Q. What kind of clothing was this?

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.

67. Q. After the crimes of the natives were determined, how was the examination and consultation continued?

A. On the eighth, a new investigation report with a supplementary investigation report attached was reviewed and then at this time Admiral Masuda said: "Tomorrow I shall hold an examination and consultation to determine the sentence on these natives. Inoue, in your capacity as judge advocate, shall give an opinion as to the punishment, tomorrow. Furuki and Shintone, prepare opinions as to sentence." On the next day, the ninth, an examination and consultation was held to pass sentence on the natives. Inoue stated his opinion as to sentence by a prepared opinion paper. After this, Shintone myself, and Admiral Masuda expressed our opinions. Further opinions were exchanged on how or whether to punish these natives. Then Admiral Masuda made his decision and a judgment paper was drawn up by him. JK

68. Q. Where was this last examination and consultation held?

A. In Admiral Masuda's air raid shelter.

69. Q. On the eighth and ninth were Admiral Masuda, Shintone, yourself, and Captain Inoue present? JK

A. Yes.

70. Q. You stated that Inoue expressed his opinion as a judge advocate. What opinion did he express?

A. The opinion stated by Captain Inoue by his opinion paper was that the two children should be sent to an island to the north of Ruidj and confined. The grown-up people, the adults, they should be punished with death. And as for the crimes against the adults, it was as I stated previously. As for the children, as I remember, the charge of spying was laid against them. At this time Captain Inoue also stated that the natives had actually committed the crime and they had been given a mission to spy by the Americans. That there was no doubt that they had actually committed the crime and at a time when

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Jaluit was under siege by the enemy and in dire circumstances by rebellion and spying against Japan and the revealing of the secrets of the Jaluit Defense Garrison overturns its very basis of security and therefore should be punished severely. The two children, it is clear, are spies, but as they are unfortunate and pitiful, they should be confined that they may not act as spies.

The judge advocates moved to strike out that portion of the answer which relates to the specific opinion of Inoue with regard to what acts had been committed by the natives on the ground that it was hearsay.

The accused replied.

The commission announced that the motion was not sustained and that the commission would accord this reply its proper weight.

The commission then, at 3:23 p.m., took a recess until 3:42 p.m., at which time it reconvened. JPK

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

71. Q. You just stated Captain Inoue's opinion as judge advocate. What were your opinion, Shintone's opinion and Admiral Masuda's opinion?

A. Shintone and myself were of the same opinion as Admiral Masuda concerning the adults, it was the same opinion as Inoue's. But, concerning the children, they shall be sentenced to death by reason for this. That the two children are underwise and their mind has developed to the extent of that of an adult, and in that they are spies, it is the same as in the case of adults; and if they are confined as stated by Inoue, it would mean the pardoning of their act of spying. There is no way out but death. Under the dire circumstances on Jaluit if these two escape and reveal military secrets, it would mean the basis of existence of the Jaluit units and result in the destruction of military property; therefore, it is pitiful, but they shall be sentenced to death. To this I expressed the following opinion: Steps should be taken to prevent the spying of the two children and confine them as stated by Captain Inoue. As means of doing this, these two children should be confined on another island and a good soldier selected to guard these children and reeducate them, especially concerning spying; therefore, destroying any of their attempts to spy. Lieutenant Commander Shintone also agreed to this. In reply to this Admiral Masuda stated: "I feel just as sorry for the two children as you and my opinion remains. I have many children of my own, but is there any means to do with the execution of these children since we have determined on the act of the natives? I have thought about this thing day

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and night and there is no way of finding any means to do without this. Even at this point, is it not true that Ralime escaped? All of you know how difficult it is to prevent spying and infiltration of counter-intelligence. On Jaluit where there is nothing, and the conditions are the most hopeless. We have had a very difficult time keeping counter-intelligence out. I have thought concerning this very thoroughly, especially since last night after Ralime escaped and to provide against the revealing of military secrets and to keep up the morale of the Jaluit forces and to the continued existence of the Jaluit Defense Garrison. There is no other way but to sentence the children to death." For a short time, no one spoke, after which Admiral Masuda said: "We are finished with the examination and consultation and sentence shall be decided" and then stated that he had sentenced the eight natives to death, and on the top part of Inoue's opinion paper, he wrote in the sentence of death, signed it and then initialed it. JK

72. Q. Please tell us briefly how this decision paper was written.

A. On the top part of Captain Inoue's opinion paper there was a column to write in the decision, to the right he wrote in judgment in the column reserved for this, and on top of the names of the eight natives, he wrote in the sentence of death and on the right he signed "Rear Admiral Masuda, Nisuke," and initialed it.

73. Q. Was the sentence relayed to all the natives?

A. Yes.

74. Q. How was this done?

A. Admiral Masuda took Captain Inoue with him and went to where the natives were confined.

75. Q. From what we have heard from the witnesses up to the present, they have stated that Admiral Masuda directed the investigation and examination and consultation. Is that correct?

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

The accused replied.

The commission announced that the objection was sustained.

76. Q. You stated that Admiral Masuda assembled yourself, Shintome and Inoue and stated that by his authority and under the conditions on Jaluit you would hold this consultation at this time. Were there no established courts at Jaluit?

A. No.

77. Q. Under normal conditions, if you know, what courts would these natives have been referred to?

A. To the court at Pohnpei.

78. Q. Where were the military courts?

A. At Truk.

79. Q. Couldn't these cases have been sent to the Pohnpei or Truk courts?

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

The accused withdrew the question.



80. Q. Do you know, by your own knowledge, if it were possible to send these cases to the Ponape and Truk courts?

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

The accused replied.

The commission announced that the objection was not sustained.

A. It was absolutely impossible.

81. Q. For what reasons was it absolutely impossible?

A. At the time the central Pacific was dominated by the American forces and all inter-base connections were completely cut off after the fall of Kwajalein. There was no transportation by way of air between Truk or Jaluit or Jaluit and the other bases.

82. Q. Do you know if Admiral Masuda had the authority to examine and consult this case?

A. I do.

83. Q. Tell us what authority he had, if you know.

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

The accused replied.

The commission announced that the objection was sustained.

84. Q. Do you know whether there was an order from the Fourth Fleet Commanding Officer to Admiral Masuda around April, 1944?

A. I do.

85. Q. Please tell us what it was.

A. It stated that each supreme commander of each base should command all military, gunnery, government officials and civilians, and administer judicial and administrative affairs.

86. Q. Did this dispatch give Admiral Masuda authority to take action in this case?

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

The accused replied.

The commission announced that the objection was sustained.

87. Q. You acted as one of the group of people examining and consulting on this case. Do you know of your own knowledge, if the act you testified to of Admiral Masuda, was right or wrong?

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Lieut., JAG.

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

The accused replied,

The commission announced that the objection was sustained.

The witness was duly warned,

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 14, 1947.

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*James P. Kenny*

1ST LT., USN.

**TENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Wednesday, May 14, 1947.

The commission met at 9 a. m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradford W. Lee, junior, U. S. Naval Reserve, JK  
Major James H. Tatesh, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the adjournment  
was taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Examination continued.)

88. Q. You stated yesterday concerning the steps taken during the investi-  
gation until the findings of this group of people on examination and consul-  
tation. Do you know who directed and who decided the investigation and  
examination and consultation?

A. I do.

89. Q. Please tell us.

A. Admiral Hasegawa.

90. Q. Did any one of the persons concerned, yourself, Shintome, or Inoue,  
as the judge advocate, make any objections?

A. No.

91. Q. You, acting as a member of this group in examination and consultation, JK  
what did you think of this?

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

The accused replied,

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*James P. Kenny*  
JUDGE ADVOCATE, U.S.N.



The commission announced that the objection was sustained.

92. Q. In yesterday's testimony you stated that Admiral Masuda said, "Even now, has not Ralime escaped?" If you know when Ralime escaped, please tell us.

A. It was on the night before the examination and consultation, to decide the sentence, was held.

93. Q. Was the decision concerning Ralime also made at this same time?

A. Yes.

94. Q. What occurred as a result of this decision?

A. Right after the decision was made, Admiral Masuda gave Captain Inoue orders concerning the execution. He wrote these orders on the bottom part of the judgment paper and read it to Captain Inoue. It stated as follows: "Captain Inoue, on April 9 (I do not know the exact date), 1945, you shall execute the sentence of death on the seven natives other than Ralime, by shooting." Captain Inoue, after hearing this order, was silent for a short time, after which he stated the following opinion to Admiral Masuda: "As for myself, the execution of the children I can not do because I feel very sorry for them, and I wish I could be exempted from the execution of these children or at least postpone the execution for two or three days so I may have time to think of means other than the execution. At this time, Admiral Masuda raised his voice and stated definitely that this was an order of execution and that "this order of execution was reached after an examination and consultation and you should know better than any of the men on Jaluit what an order is. I shall not tolerate any further opinions on this order. In the evening I shall go to tell the natives their sentences. Captain Inoue, you shall accompany me." After this, Captain Inoue told me as follows: "It is very difficult for me to execute these children, but as I have been ordered to do so, I can not get out of performing the execution. Never before have I felt as I do now how hard the life of a soldier is." That evening, Captain Inoue went with Admiral Masuda on a motorcycle with a side car attached to where the natives were confined to read the sentences to them. Two days later, when Ralime was captured, Admiral Masuda called all the judges and Captain Inoue to him and at the bottom of the judgment paper wrote the following: "About the eleventh of April (I do not remember the exact date), 1945, Captain Inoue, after sentence of death passed on Ralime, Captain Inoue shall perform the execution by shooting." On the evening of that day, Admiral Masuda accompanied by Captain Inoue went to tell the sentence to Ralime at his place of confinement. Jue

The judge advocate moved to strike the portions of the answer to the question relating the statements of Admiral Masuda and the statements of Captain Inoue made subsequent to the decision of the alleged trial procedure for two reasons: First, on the ground that they were hearsay statements made subsequent to the alleged trial; and second, on the ground of irrelevance because these statements were being used by defense in order to establish a certain motive in this accused and the existence of that motive was irrelevant and immaterial except in mitigation. The judge advocate further moved to strike those portions of the answer referring to when Captain Inoue and Admiral Masuda went on two occasions to read the sentences to the natives on the ground that there has been no testimony as to the source of this information given by the witness, and therefore it must be assumed that the testimony was hearsay. Jue

The accused replied.

The commission was cleared. The commission was opened, and all parties to the trial entered. The commission announced that the motion to strike certain portions of the answer was not sustained. The reply in question

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*James P. Henry*  
JURY, JEN.

will be considered in its entirety and the various portions thereof accorded their proper weight and place in the proceedings.

95. Q. You stated that Admiral Masuda and Captain Inoue went to the place where the natives were confined in a side car. Did you see them go?

A. I did.

96. Q. How did you know that they were going to tell the sentence to the natives?

A. Admiral Masuda and Captain Inoue got on the side car in front of my quarters and told me that they were going to the ammunition dump and to the base transmitting station to pass sentence on the natives. 8x

97. Q. Do you know if the natives were executed according to the order of execution?

A. I do.

98. Q. When was this order executed?

A. After the sentence was passed and on the same day.

99. Q. How do you know this?

A. Because Captain Inoue came to me and reported that the execution had been completed.

100. Q. To whom did he report this?

A. Captain Inoue and myself lived in the same house and in different rooms separated by a wall. When he went to any place other than to headquarters, he usually told me where he had gone and what he had done. In this case, as usual, he told me where he had gone and what he did.

The judge advocate moved to strike out this answer on the ground that it was not responsive. The judge advocate further moved to strike the answer to question 99 on the ground that it has become apparent that it was hearsay due to the fact that this information did not come about as a result of either Major Furuki's or Captain Inoue's official duties, but merely as a result of a personal conversation.

The accused made no reply.

The commission directed that the answers to questions 99 and 100 be stricken out.

101. Q. Do you know if this information concerning the execution was made known to the forces on Jaluit?

A. I do.

102. Q. Tell us.

This question was objected to by the judge advocate on the ground that it called for an answer that would be irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

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*James P. Kenney*

SEP 11, 1946

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A. Admiral Masuda made the executions public as follows: "The natives who sneaked into Jaluit from Kille committed felonies there and were given a mission to act as spies and did not; therefore, it was decided to execute them. They have been executed on the two days, the ninth and twelfth (I do not remember the exact date)," and it was made public in this form to all the men on Jaluit. This was also sent to the district commanders on the outlying islands.

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

The accused replied.

The commission directed that the answer be stricken out.

103. Q. To whom and by what means was this execution made public?

A. It was made public to all military and gunzokus on the island. The means of making this public was that the commanding officer of the Jaluit Defense Garrison made up a document which he circulated to myself, Shintome, and Inoue, after which Shintome ordered the circulation to all the units on Jaluit, including the ones on the outlying islands. As for the Naval Guard Unit, Shintome personally made this public. I personally saw him do it. As for the army, the adjutant relayed this information to the persons assembled to receive orders from the various units. I saw the record in which it stated that this word was relayed. As for the outlying units, myself, as head of the Defense Section, had a document prepared and sent to the commanding officers of the outlying bases.

104. Q. What was Shintome's position on Jaluit at this time?

A. Lieutenant Commander Shintome was the executive officer of the Sixty-second Naval Guard Unit, actually he was almost an adjutant to Admiral Masuda, and he was one of his most important helpers. He had contact with all the units and helped Admiral Masuda strenuously in all matters.

105. Q. If you know to what extent Lieutenant Commander Shintome was involved in this incident, please tell us.

This question was objected to by the judge advocate on the ground that it was too vague, irrelevant and immaterial. *JK*

The accused replied.

The commission announced that the objection was sustained. *JK*

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

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*James P. Kenney*

1944, 1945

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

(Examination continued.)

106. Q. This morning you stated that Masuda had said to Captain Inoue: "You should know what an order is better than anyone else on Jaluit." Will you tell us what orders are in the military service and what are the rules on which they are based?

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

The accused replied.

The commission announced that the objection was sustained.

107. Q. Do you know what punishments there are if a person does not obey the orders of his superior officer?

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

The accused replied.

The commission announced that the objection was sustained.

108. Q. Do you know what duties Captain Inoue had on Jaluit at the time this Mille native incident occurred?

A. I do.

109. Q. Please tell us what duties he had.

A. He was head of the special police detail of the Jaluit Defense Garrison and was head of the farming department and the self-supporting measures committee. JTC

110. Q. Do you know what work was handled by the special police section?

A. I do.

111. Q. Tell us briefly what their duties were.

A. (1) It was the investigation of facts, the food regulations and the rationing of it; (2) Disciplinary and moral supervision; (3) Investigation of crimes and their punishment.

112. Q. Do you know who ordered Captain Inoue as head of the special police section?

A. I do.

113. Q. Who was it?

A. Rear Admiral Masuda.

114. Q. You stated in your testimony that Captain Inoue was your subordinate. What command relation did Admiral Masuda have with Captain Inoue?

A. As the special police section came directly under the command of Admiral Masuda, he could order Captain Inoue in this respect; and also, on special occasions, he could order Captain Inoue directly.

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*James P. Keany*  
JTC, JTC.

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115. Q. Do you know if there were any command relations as superior and subordinate between Admiral Masuda and Captain Inoue?

A. I know.

116. Q. Were there any?

A. There were.

117. Q. You stated that one of Captain Inoue's duties was the investigation of crimes and the execution of punishment. Do you know if Captain Inoue performed any of these duties concerning military, gunzoku, or natives previous to the Mille native case?

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

The accused made no reply.

The commission announced that the objection was sustained.

118. Q. You stated previously that you knew of natives deserting from the other bases on the Marshalls. How did you come to know this?

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

The accused made no reply.

The commission announced that the objection was sustained.

119. Q. Do you know if radio communications were possible between the Jaluit and the other bases around February to March, 1945?

A. I do.

120. Q. Tell us about it.

A. Radio communications between other bases in the Marshalls were not sufficient but were possible. It was the same in the radio communications between the Fourth Fleet Headquarters and Truk and Jaluit.

121. Q. Do you know if any inquiry was made to Mille concerning the Mille natives?

A. I do.

122. Q. Please tell us.

A. No inquiry was made concerning the Mille natives. The reason is as follows: In the middle of the examination and consultation of the Mille natives, I expressed an opinion to Admiral Masuda to inquire about the Mille crimes at the Sixty-sixth Naval Guard Unit. Admiral Masuda stated as follows: "We have evidence and it is backed by the confessions of all of the natives. Their guilt has been established. Also the codebooks now in use in the Marshalls have been in use for over a year and the enemy has captured Kwajalein and Tarawa and I have to presume that all dispatches sent from Jaluit are known to the enemy. If we let the enemy know that we have caught the natives and that they had confessed to the crime, the enemy would try newer and more effective methods to achieve their motive." Therefore, for this reason that the enemy may monitor and intercept our messages, Admiral Masuda rejected the opinion I expressed. JPK

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*James P. Henry*  
JAMES P. HENRY

The judge advocate moved to strike out that portion of the answer which followed the words "No inquiry was made concerning the Hille natives" on the ground that it was clearly hearsay, irrelevant and immaterial.

The accused made no reply.

The commission directed that that portion of the answer be stricken out.

123. Q. Do you know the reason why no inquiry was made?

A. The reasons were: (1) Eight natives had confessed and it was evidence that their guilt was established and thought not necessary to probe further; (2) Was from the standpoint of operations, through fear of interception of their messages, which was undesirable to the defense garrison of Jaluit. JTK

The judge advocate moved to strike out this answer on the ground that it was irrelevant, immaterial, and the mere opinion of the witness.

The accused replied.

The commission was cleared. The commission was opened. All parties to the trial entered, and the commission announced that the motion was denied.

124. Q. Do you know if there are regulations in the Japanese military service called "Rules and Regulations on Army Life"?

A. I do.

125. Q. What things does it regulate in this manual?

A. It has regulations concerning each persons duties and each daily routine in the service.

126. Q. Do you know if there are paragraphs in this book concerning the relation between superior and subordinate?

A. I do.

127. Q. Do you know what regulations or rules there are on this?

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

The accused replied.

The commission announced that the objection was sustained.

Cross-examined by the judge advocate:

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

A. He is dead.

129. Q. When did he die?

A. On the fifth of October, 1945.

130. Q. Do you know if martial law was proclaimed on Jaluit, Marshall Islands?

A. I do.

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*James P. Kenny*

STENOGRAPHER, USN.

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131. Q. Was martial law declared?

A. It was not formally proclaimed, but it was recognized the contents were that of martial law.

132. Q. You have testified concerning the authority which Admiral Masuda derived from certain dispatches. Was this authority broad enough to authorize him to violate international law?

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

The judge advocate withdrew the question.

133. Q. Did the authority given Admiral Masuda in the dispatches you referred to empower him to punish by death without a trial?

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

The judge advocate replied.

The commission announced that the objection was sustained.

134. Q. Was there a copy of naval court martial law on Jaluit during the period that you were there?

A. I think there was, but I did not ascertain this.

135. Q. Where do you think this copy of naval court martial law was?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. In the office of the headquarters of the Sixty-second Naval Guard Unit.

136. Q. You testified concerning the decision that was reached by yourself, Shintone, and Admiral Masuda concerning the natives; and you testified that you and Shintone expressed the opinion as judges that the children should be spared, but that the others should be punished with death. Is that correct?

A. Yes.

137. Q. Then, it was the opinion of both Shintone and yourself that the children should be spared but that the others should be punished with death. Is that correct?

A. Yes.

138. Q. You testified that the examinations and consultations were held in three groups: (1) From the third to the sixth concerning Raliojap; (2) The second group concerning Raline's group on the sixth, and then (3) a third series of examinations and consultations on the eighth and ninth. Did this last examination concern the identical material and evidence that was used in the former two examinations?

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JURY, U.S.

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. The examination and consultation of the third group was concerned with the relations between the two groups and also supplementary evidence to the case.

139. Q. In the course of all of these examinations, did any native witnesses appear before Shintone, Masuda and yourself to testify concerning the events?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No native witnesses were called in front of Admiral Masuda, myself, and Shintone, but Admiral Masuda, himself, went directly to where the natives were and questioned them directly.

140. Q. Were you present with Admiral Masuda when he went to question the natives?

A. I did not go.

141. Q. Do you know if Shintone was present with Admiral Masuda when he questioned the natives?

A. I do not know.

142. Q. Did Admiral Masuda ever bring back from these alleged visits to the natives any transcripts of testimony by these natives?

A. No.

143. Q. Were any of the natives who were subsequently executed by Captain Inoue ever present during the course of the examination and consultation?

A. They never appeared while the three of us were conducting the examination and consultation. etc

144. Q. You testified concerning certain reports by Inoue and Morikawa of their investigations. Did these reports contain the alleged confessions you have spoken about during your testimony?

A. I cannot grasp the meaning of this question.

145. Q. You testified that the last examination was held on the ninth of April. Did this examination take all day?

A. It did not take all day. It took all morning. When I stated the ninth, I cannot say exactly that it was the ninth, but somewhere around there.

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*James P. Kenney*

STATE, TEX.

146. Q. During the course of your testimony, you have referred to certain investigations by the natives. How do you know about these investigations?  
A. I know from what was reported to me by Captain Inoue and Lieutenant Merikawa, who were the investigators, and what I was told by Admiral Masuda when he returned from his questioning of the natives.

147. Q. Then, you never heard the natives confess, did you?  
A. I did not hear them confess directly.

148. Q. Did you ever see any written confessions from any of these natives?  
A. No.

149. Q. You testified that the natives were guilty of murder and of spying. Is that correct?  
A. Yes.

150. Q. Who were the natives found guilty of murder?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The six adults were guilty of the two crimes.

151. Q. Who were they found guilty of murdering?  
A. The natives who were found guilty of killing a Japanese soldier were Ralime and the native who lived with him. The person that the natives killed was petty officer Tanaka of the Sixty-fourth Naval Guard Unit. JK

152. Q. You testified that when you first heard of this native incident that you were away on a trip and that when you returned, Admiral Masuda called you, Shintone, and Inoue together in his office. Is that correct?  
A. Yes.

153. Q. What did Admiral Masuda say to you when he called you together in his office at that time?  
A. He told us that the natives who had sneaked in from Mille Island had committed murder and other felonies and that it was found that they were spies and this was a serious crime on Jaluit. As they could not be sent to the courts at Truk or Ponape, they would be given an examination and consultation by Admiral Masuda on his authority on Jaluit. Admiral Masuda also stated that Admiral Masuda, Furuki, and Shintone would act as judges and that Captain Inoue would perform the duties of judge advocate.

154. Q. What day was this on?  
A. It was around the third.

155. Q. It was subsequent to this date, was it not, that the first examination and consultation was held with regard to the Raliejap group?  
A. The examination and consultation began on this day. JK

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*James P. Kenny*  
JAN 11, 1945

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156. Q. Did the examination and consultation begin after Admiral Masuda had called you together?

A. Yes.

157. Q. You have testified that Admiral Masuda said that the natives had committed murder and other crimes. Are you sure these are the words that Admiral Masuda used?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He stated that according to the investigation made it had been found that they had committed murder and other felonies.

158. Q. Did he state that the investigation indicated they had committed murder or did he state that they had committed murder?

This question was objected to by the accused on the ground that it called for an answer that would be hearsay and that it was irrelevant to the issues being tried.

The judge advocate withdrew the question.

159. Q. Did Admiral Masuda state that the natives had committed murder?

A. He said that according to the investigation report it was stated that these natives had committed murder.

160. Q. Did Admiral Masuda tell you what the natives had done at this time?

A. He did not say anything in detail.

161. Q. Did Admiral Masuda say that the natives were also guilty of spying?

A. When did he say this?

162. Q. At this time when he called you and Shintone together and said you were to act as judges.

A. He did not say that they were guilty as spies.

163. Q. Did he say that the investigation reports showed that they were guilty as spies?

This question was objected to by the accused on the ground that the witness had not stated anything concerning guilty or not guilty, and that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He did not say that they were guilty as spies.

164. Q. Did he say that they were accused in the investigation report of being spies?

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*James P. Kenny*  
STENOGRAPHER

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

The judge advocate withdrew the question.

165. Q. At that time, did he say that they were accused in the investigation report of being spies?

A. He did not say that the natives were accused of spying.

The witness was duly warned.

The commission then, at 4:27 p. m., adjourned until 9 a. m., tomorrow, Thursday, May 15, 1947.

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*James P. Kenny*  
JURY, TEN.

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09 15

**ELEVENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Thursday, May 15, 1947.

The commission met at 9 a.m.

**Present:**

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

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidenaku, the witness under examination when the adjournment was  
taken on May 14, 1947, entered. He was warned that the oath previously  
taken was still binding, and continued his testimony.

(Cross-examination continued.)

166. Q. You testified that the first examination of Halsey's group  
occurred from the period of the third to the sixth. What time on the third  
day did the examination begin?

A. I do not remember exactly what time it was, but it was in the morning.

167. Q. Do you know how long a time was spent during this first examination?

A. I think it was about three hours.

168. Q. On the fourth when did the examination begin?

A. I do not remember when we began on the fourth.

169. Q. Do you remember whether it was in the morning?

A. I do not remember.

170. Q. Do you remember if it was during the daytime?

A. It was during the daytime.

171. Q. Do you remember how long a meeting this consultation was?

A. I do not remember exactly how long it took.

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*James P. Kenny*  
LIEUT., USN.



172. Q. Do you remember approximately how long it took?

A. I do not remember the approximate time.

173. Q. Do you know whether any consultation was held on the fourth at all?

A. I do.

174. Q. Was there a consultation held on the fourth?

A. Yes.

175. Q. Do you know what was consulted about on the fourth?

A. I think the examination of the boat and the clothes and food the natives brought was done on this date, but I do not remember exactly.

176. Q. Where was the examination of the boat made?

A. The judges went to see the boat at the pier and the consultation concerning this was done in the air raid shelter of Admiral Masuda.

177. Q. How far is it from headquarters to the pier?

A. About five hundred meters.

178. Q. How long did it take the judges to go to the boat and to return to Admiral Masuda's air raid shelter?

A. I think it was about thirty minutes.

179. Q. Approximately how long did you consult about this after you returned to Admiral Masuda's air raid shelter?

A. Just short of an hour.

180. Q. And on that day you consulted at least an hour and one-half. Is that correct?

A. Yes.

181. Q. Do you now recall whether that was on the fourth or not that this took place?

A. It was around the fourth, but I can not say exactly whether it was the fourth or not.

182. Q. On the day of the fifth when was examination and consultation held?

A. I do not remember the time.

183. Q. Was it in the daytime?

A. Yes.

184. Q. Do you know approximately how many hours of consultation were held on this day?

A. I do not remember the time.

185. Q. Do you know how many hours were spent on the sixth day consulting about the Raliojap group?

A. As I remember the examination and consultation of the Raliojap group was over in the first three days of the examination and consultation.

186. Q. Did the examination of the Raline group begin on the sixth?

A. It was around the sixth.

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*James P. Kenney*  
LIEUT., USN.

187. Q. Do you know how many hours were spent on the sixth day consulting on the Raline group?

A. I do not remember.

188. Q. Was it in the daytime?

A. Yes.

189. Q. Was it in the morning?

A. I do not remember exactly.

190. Q. Was consultation held on the day of the seventh concerning the Raline group?

A. It was around the seventh.

191. Q. How many days did this first examination of the Raline group take? OK

A. Do you mean the first day?

192. Q. How many days from the sixth?

A. I think it was two days.

193. Q. Do you know approximately how many hours the consultation on the seventh was concerning the Raline group?

A. I do not remember.

194. Q. Do you know if it took place in the daytime?

A. As I remember it was during the daytime.

195. Q. At all these earliest examinations and consultations were Shintone, Inoue, Masuda and yourself always present?

A. Yes.

196. Q. On the morning of the third day when the consultation was begun with regard to the Raliojap group, did you use any written investigation report?

A. This was read.

197. Q. Was it read from a written paper?

A. Yes.

198. Q. Who read the report?

A. Captain Inoue.

199. Q. Whose investigation report was it?

A. It was the investigation by Captain Inoue and First Lieutenant Morikawa.

200. Q. Did this investigation report contain the confession of the child?

A. Do you mean that the child had confessed?

201. Q. Yes.

A. It was written in the investigation report that the child had confessed.

202. Q. Was this same written investigation report used throughout the fourth and fifth days of the consultation?

A. Yes.

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*James P. Kenny*  
LIEUT., GEN.

203. Q. Was this the same final investigation report that was submitted on the eighth and ninth at the final consultation?

A. Do you mean was it the very same one that was submitted in the first examination?

204. Q. Yes, that is what I mean.

A. At the time of the third examination and consultation a rewritten report was used. 87K

205. Q. Did the first investigation report contain charges that the natives had been spying?

A. Yes.

206. Q. As a result of that first investigation completed on the fifth did Admiral Masuda at that time determine that the natives of the Raliejap group were guilty of murder and spying?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. He did not determine that the natives were guilty, he determined the actions of the natives.

207. Q. During the period from the third to the fifth, the period of this first investigation, did Admiral Masuda or any members of this consultation direct Inoue to go back and ask further questions of the natives at the Second Ammunition Dump?

A. Yes.

208. Q. Who told Captain Inoue to go back and ask these questions?

A. Admiral Masuda.

209. Q. Did you or Shintone tell him to ask any additional questions?

A. I do not think we did.

210. Q. But you are sure that Captain Inoue went back to the Second Ammunition Dump and asked the Raliejap natives further questions.

A. Yes.

211. Q. On the eighth day do you remember how many hours were spent in consultation?

A. I do not remember.

212. Q. Do you know if that was in the daytime?

A. It was during the daytime.

213. Q. Do you know approximately how many hours were spent on that eighth day?

A. I do not remember.

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*James P. Henry*  
Lieut., USN.



214. Q. On the ninth day when was the consultation held?

A. I can not say exactly it was the ninth day, but do you mean the last day of the examination?

215. Q. That is right,

A. On the last day it was begun in the morning.

216. Q. Do you know approximately how long that meeting took?

A. I think it took all of the morning.

217. Q. About how many hours?

A. About three to three and one-half hours.

218. Q. You testified that the investigation report which was used on the first examination commencing on the third stated that the child had confessed.

A. Did it also state that the adults had confessed?

A. Yes.

219. Q. Did it state that all the adults had confessed?

A. Yes.

220. Q. Did this investigation report state who confessed first?

A. It was the child.

221. Q. Did this investigation report state what methods were used to make the child confess?

A. It was stated that the child had been given candy, obtaining her good feeling and good will and received the confession.

222. Q. Did this investigation report state that this child told that her parents committed murder merely because she was given a piece of candy?

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

The judge advocate replied,

The commission announced that the objection was sustained.

223. Q. Did this investigation report state that this child admitted the murder of a Japanese soldier and that this child was induced to make this confession by giving the child a piece of candy?

A. What was written in the investigation report was that the child was given candy and as a result confessed.

224. Q. When Admiral Masuda instructed Captain Inoue in your presence to act as judge advocate, did he swear him to truly determine and report the facts?

A. Not in my presence.

225. Q. Do you know if Captain Inoue was sworn?

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

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*James P. Kenney*

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The judge advocate replied.

The commission announced that the objection was sustained.

226. Q. In your official capacity as an alleged judge at this proceeding do you know if the judge advocate was sworn? 8X

A. I do not know.

227. Q. Were you and Lieutenant Commander Shintone sworn as members of this alleged examination and consultation?

This question was objected to by the accused because it included Lieutenant Commander Shintone and therefore called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Myself and Lieutenant Commander Shintone were not asked to be sworn and I think I misunderstood the question before this and I would like to have it repeated again.

228. Q. When Captain Inoue at the meeting on the third read the alleged investigation report so far as you know he was not sworn to tell the truth. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. When Captain Inoue read this investigation report he did not take an oath. He was not sworn.

229. Q. At these examination meetings from the third through the ninth were the accused natives represented by defense counsel or any legal representatives?

A. They were not represented.

230. Q. On the eighth day at the close of the meeting did Admiral Masuda tell you and Lieutenant Commander Shintone to consider the sentence and return the following morning?

A. Yes.

231. Q. Were you also to consider whether the natives were guilty of the crimes of murder and spying?

A. He did not say to think on whether they were guilty or not guilty.

232. Q. Did he ever ask you to think on whether the natives were guilty or not guilty?

A. No.

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*James P. Kennedy*  
Lieut. Comdr.

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233. Q. On the ninth day when you assembled with Admiral Masuda and Lieutenant Commander Shintone did Admiral Masuda ask your opinion concerning the sentence? OK

A. Yes.

234. Q. Did he also ask Lieutenant Commander Shintone to give his opinion as to sentence?

A. Yes.

235. Q. Were your opinion and Shintone's opinion the same as to the sentence?

A. Yes.

236. Q. What was your opinion with regard to the sentence of the women?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Concerning the women, my opinion was death.

237. Q. Was it Lieutenant Commander Shintone's opinion that these women should be punished with death?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Lieutenant Commander Shintone's opinion was also death.

238. Q. With regard to the children, what was your opinion?

A. My opinion was to confine them so that they could not escape.

239. Q. Was Lieutenant Commander Shintone's opinion also the same?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

240. Q. Then with regard to the children, it was your opinion and Shintone's that they should not be punished with death, is that correct?

A. Yes.

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*James P. Keany*

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241. Q. When you were originally called together with Lieutenant Commander Shintone and Captain Inoue on the third and informed that you were to act as a judge, did you ascertain the duties of a judge?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

242. Q. When did Baline escape?

A. On the night before the meeting to determine the sentence was convened.

243. Q. Then is it true that Baline's escape occurred after almost the complete examination and consultation had been finished?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

244. Q. Then is it true that Baline's escape had nothing to do with the failure to have the natives present in Admiral Masuda's shelter during the examination and consultation?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It had nothing to do with it.

The commission then, at 10:18 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

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*James P. Kenny*  
JAMES P. KENNY

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245. Q. When you testified yesterday in regard to the children and stated that they were "kogara", what did you mean by the word "kogara"?  
A. I meant that their bodies were smaller than the build of an ordinary adult.

Reexamined by the accused:

246. Q. The question of the judge advocate in cross-examination with reference to the day before the last day of the examination, "Did Admiral Masuda tell you to think about whether they were guilty or not guilty?", and you answered that, "Admiral Masuda did not say to think about whether they were guilty or not guilty." Do you know what the reason why he said this? JX

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

The accused replied,

The commission announced that the objection was sustained.

247. Q. Tell us exactly what Admiral Masuda said at this time.

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

The accused made no reply.

The commission announced that the objection was sustained.

248. Q. To the question by the judge advocate in cross-examination, "Did Admiral Masuda ever ask you to think on whether the natives were guilty or not guilty?", you answered, "No." Is this correct?  
A. This is correct.

249. Q. What did Admiral Masuda say on this subject at this time?

This question was objected to by the judge advocate on the ground that no time had been specified in this or prior questions.

The accused made no reply.

The commission announced that the objection was not sustained.

A. At this time Admiral Masuda said, "a decision will be decided tomorrow, think on this."

250. Q. When he said to decide the decision, when he stated decision did he mean determine whether he was guilty or not guilty and the sentence or did he only mean the sentence?

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

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*James A. Kenny*  
JAN 22, 1944

The accused withdrew the question.

251. Q. When Admiral Masuda said, "decision will be decided", what did he mean when he stated decision?

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

The accused replied.

The commission announced that the objection was sustained, but informed the accused that if the question was directed at what the witness understood it would be permitted.

252. Q. When Admiral Masuda stated to think on the decision, what did you understand decision to mean?

A. I understood decision to mean to think on whether they were guilty or not guilty and if we thought they were guilty what sentence should be given them.

253. Q. By what facts was it decided that the natives in this case were spies?

A. Do you mean by me?

254. Q. In the examination and consultation.

A. Are you asking how I determined it?

255. Q. How did the people conducting the examination and consultation determine the natives were spies?

A. When Captain Inoue read the investigation report and Admiral Masuda questioned the natives directly on this and ascertained the facts that a confession was obtained and the confession stated that an American ship had given them a mission to spy and with an intent to spy they sneaked into Jaluit and that they had performed the duties as spies by relating what they were told to do to some natives on Jaluit and also the reports of the district commanding officers of Chitogen and Jaluit submitted to the defense garrison commanding officer stating that some of the natives had been told about the mission of the natives from Wille.

The judge advocate moved to strike out that portion of the answer following the words, "Admiral Masuda questioned.....", on the ground that it was hearsay, irrelevant and immaterial.

The accused made no reply.

The commission announced that the motion to strike was not sustained and that the proper weight would be given to the reply.

256. Q. At that time what did you understand a spy to be?

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

The accused replied.

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*James P. Kennedy*

WIT., U.S.N.



The commission announced that the objection was sustained.

257. Q. Have you ever read the Rules of Land Warfare in the Hague Convention?  
A. No.

258. Q. Were you ever taught in the military service what a spy was according to international law?

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

The accused made no reply.

The commission announced that the objection was sustained.

259. Q. What did you understand Admiral Masuda's authority to be to call a court martial and punish criminals at the time of the examination and consultation?

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

The accused replied.

The commission announced that the objection was sustained.

Recess-examined by the judge advocate:

260. Q. You were asked by the judge advocate this morning before the recess with regard to Admiral Masuda, "Did he ever ask you to think of whether the natives were guilty or not guilty?" and in answer to this you said, "No." Is that correct?

The accused requested that the record show that the witness was interrupted in answer of this question when it was first asked.

The judge advocate replied.

The commission denied the request of the accused.

A. That is correct.

The witness was duly warned.

The commission then, at 11:26 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

*James P. Kenny*  
CERTIFIED TRUE COPY  
JAMES P. KENNY  
CLERK, U.S.N.

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(Recess-examination continued.)

261. Q. After the recess this morning, you were asked by the defense counsel with reference to this question by the judge advocate whether or not you had answered "No" to the question, "Did Admiral Masuda ever ask you to think on whether the natives were guilty or not guilty?" and you answered, "This is correct." The next question by the defense counsel was, "What did Admiral Masuda say on this subject at this time?" and you answered this: "At this time Admiral Masuda said a decision will be decided tomorrow. Think on this." The next question by the defense was, "When Admiral Masuda stated to think on the decision what did you understand 'decision' to mean?" and you answered "I understand decision to mean to think on whether they were guilty or not guilty and if we thought they were guilty what sentence should be given them." In the answer to this last you indicated that you understood the word 'decision' to include the determination of guilty or not guilty. Is that what you understood the word decision to mean?  
A. What I understood it to be was to find whether he was guilty or not guilty. If he was guilty to think on the sentence and as I understood it and we in Japan understood that it includes both.

262. Q. Then, why, this morning before the recess, when you were asked whether Admiral Masuda ever asked you to think on whether the natives were guilty or not guilty, did you answer "No"?

A. Admiral Masuda used the word "hanketsu" (interpreter's note: decision) and he did not say guilty or not guilty and when I was asked whether he had said think on whether they are guilty or not guilty, I answered "No."

263. Q. Since you understood the word "hanketsu" to include being guilty or not guilty, why did you answer that he had not asked you to determine whether they were guilty or not guilty?

A. Because he did not use those words.

264. Q. What words did he use?

A. He used the word "hanketsu."

The judge advocate asked the interpreter the Japanese words expressing "guilty or not guilty."

The interpreter replied "yusai musai."

265. Q. Did you understand the words "yusai musai" to be included in the finding "hanketsu"?

A. Yes.

266. Q. And the words "yusai musai" were the words that were used in the question to you before the recess this morning?

A. In this question do you mean in the question asked by the judge advocate?

267. Q. Yes.

A. Yes.

268. Q. If you considered that the words "yusai musai" were included in the

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*James P. Keany*

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word "hanketsu," why did you answer "No" to the question whether Admiral Masuda had ever asked to find "yusai musai" in connection with these natives?

A. Because he did not use the words "yusai musai" but had used "hanketsu."

269. Q. The question you were asked this morning was "Did he ever ask you to think on whether the natives were guilty or not?" The question this morning wasn't whether Admiral Masuda had used the words "yusai" or "musai"; and, therefore, I asked you whether or not in thinking you were to determine whether they were guilty or not guilty; and, therefore, is it not true that you understood the words "yusai" and "musai" this morning as what you were to think about and not whether they were the words Masuda had actually used?

This question was objected to by the accused on the ground that it was beyond the scope of the redirect examination, too long and too complicated and difficult for the witness to understand, and was argumentative.

The judge advocate replied.

The commission announced that the objection was sustained.

270. Q. Were you asked by the judge advocate this morning before the recess whether Admiral Masuda had used the words "musai yusai"?

A. I was.

271. Q. The very first question you were asked in redirect examination this morning was with reference to whether or not Admiral Masuda ever asked you to think on whether the natives were guilty or not guilty. The next question was, "What did Admiral Masuda say on this subject at this time?" How did you know what time was being referred to?

A. I cannot get the meaning of the question.

272. Q. The first question that you were asked in redirect examination did not refer to any particular time but referred to "never." How did you know what time the defense counsel meant when, in his second question when he said "at this time?"

A. As I remember, I was asked by the judge advocate whether Admiral Masuda, on the last day before the decision, ever asked me to consider whether the natives were guilty or not guilty. Therefore, when I was asked by the defense counsel at this time, I understood it to mean the time I was asked "yusai musai."

273. Q. During the period of the recess this morning, did you think about the answer you had given the judge advocate with regard to that first question?

A. I did.

274. Q. Did you talk to anyone about this answer that you had given the judge advocate before the recess?

A. No.

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

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*James A. Kenney*  
Lieut., USN.



The commission did not desire to examine this witness.

The witness made the following statement:

Concerning the last questions of the judge advocate, I was asked if Admiral Masuda had ever asked us to think on whether the natives were guilty or not guilty, and I answered that he did not, but I wanted to continue to say that he had said to think on the decision. As I was about to continue I was stopped by the judge advocate and in answer to the direct question of the defense stated that on the day that the determination of their acts was made, Admiral Masuda said that the next day a decision would be made on the natives and that Inoue should prepare his opinion as a judge advocate and Shintone and Furuki were to think on their opinions concerning the "hanketsu" (decision). As I remember, I testified as above and also concerning the sentence of death which was given the children. In testifying to the reasons why Admiral Masuda gave the decisions of death to the children, there was a part I forgot, so I would like to add it here. The children, if confined, a guard will always be necessary. Even now, Ralime has escaped and it can never be said to be sure and it would be very difficult. These children will have contact with the guards and relay the conditions of the military, the gunsoku, on Wille, the rebellion and desertion of the Koreans, and the desertion of the natives and try to gather as many natives, military and gunsokus from Jaluit to desert and give them a chance to achieve their motive. If this occurred it would break the discipline of the forces. This would drop the basis of military discipline, military secret, which is becoming known to the enemy and also the labor needed to get food, military and gunsoku, would be lost. It can be seen that this would bring about the eventual downfall of Jaluit and to save the existence of the Jaluit Defense Garrison, the two children were sentenced to death. Next, I would like to speak on the general reputation of Captain Inoue. It was generally stated on Jaluit that Captain Inoue had a fine military spirit, was the most obedient, the most diligent and a person who would give his own life to save another. He was also very fair under the dire circumstances on Jaluit. There was no one who could fulfill the job of head of the special police section other than Captain Inoue. Because Captain Inoue was the head of the special police section, they were able to maintain the morale and discipline on Jaluit. Whatever acts Captain Inoue did and whatever he said was sincerely believed by everyone. Whether it was army or whether it was navy, and whether it was regular military or gunsoku, there was no one who did not believe in him sincerely.

The witness was duly warned.

The commission then, at 3:07 p.m., took a recess until 3:37 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocates:

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*James P. Kenney*

WIT., NEW.

PL 119

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1. Q. State your name and rank.  
A. Former Captain, Imperial Japanese Army, Inoue, Fumio.

2. Q. Are you the accused in the instant case?  
A. Yes.

Examined by the accused:

3. Q. When did you enter the Japanese army?  
A. In December, 1932.

4. Q. Did you graduate from the Japanese Military Academy?  
A. No.

5. Q. When did you become an officer?  
A. On March first of 1937. JK

6. Q. Have you ever had duties with the Japanese forces on Jaluit?  
A. I have.

7. Q. What was the period that you were stationed there?  
A. The thirtieth of November, 1943, to the eleventh of October, 1945.

8. Q. What unit were you attached to?  
A. Headquarters of the First South Seas Detachment.

9. Q. What unit were you attached to on Jaluit?  
A. I was attached to the headquarters of the Second Battalion, First South Seas Detachment.

10. Q. Who was the commanding officer of that unit?  
A. Major, Imperial Japanese Army, Furuki, Hidesaku.

11. Q. While you were stationed on Jaluit, were there any other units there?  
A. The only army unit was the Second Battalion.

12. Q. Were there any navy units?  
A. There were.

13. Q. What units were there?  
A. There was the Sixty-second Naval Guard Unit, commanded by Rear Admiral Masuda. JK

14. Q. What relation was there between the Sixty-second Naval Guard Unit and the Second Battalion of the First South Seas Detachment?  
A. Upon arrival of the Second Battalion, it was placed under the command of the commanding officer of the Sixty-second Naval Guard Unit, Rear Admiral Masuda, and was commanded by him.

15. Q. On Jaluit what duties did you have?  
A. In December, 1944, I was attached to the headquarters of the Second Battalion and was in charge of building fortifications. At the time of the incident, I was attached to the battalion headquarters of the army and worked as head of the farm department and the self-supporting committee, of which Lieutenant Commander Shintone of the navy was head. I also acted as head of the special police section which was under Admiral Masuda.

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*James A. Kenny*  
JAN 1, 1945.

0930

16. Q. What time do you mean when you say, "at the time of the incident"?  
A. The end of March, 1945.

17. Q. What unit did this special police section belong to?  
A. It was a section of the Jaluit Defense Garrison under which came the military, gunzoku and the natives and was commanded by Admiral Masuda.

18. Q. Since when had you been doing the work of the head of the special police section?  
A. From the beginning of December, 1944.

19. Q. You mentioned the Jaluit Defense Garrison. Do you know for what reasons and when this organization was set up?  
A. I do.

20. Q. Tell us briefly what you know.  
A. In February, 1944, after the fall of Kwajalein, the Marshalls area and the other bases were cut off, and all transportation was cut off and by the decision of general headquarters, Admiral Masuda was given the full administrative and judicial authority and from April, 1944, thereafter, Admiral Masuda administered to all judicial and administrative affairs on Jaluit Atoll. From this time, the Jaluit Defense Garrison was organized.

21. Q. How do you know that Admiral Masuda was given this authority?  
A. When Admiral Masuda was given the authority by the commanding officer of the Fourth Fleet, he called all the commanding officers together and relayed them this order and from this time the natives were included in the Jaluit Defense Garrison and all civilians were given the status of gunzokus, and the head of the civil government on Jaluit was ordered to work under Admiral Masuda, and from the fact that Jaluit Defense Garrison was organized, I know this. JK

22. Q. Was there any official order saying that the Jaluit Defense Garrison will be organized?  
A. Admiral Masuda put out an order.

23. Q. To whom did he address this?  
A. To each unit and the natives.

24. Q. What kind of work does the special police section perform?  
A. The duties were (1) the investigation of food rationing; (2) the upkeep of military discipline and morale; (3) investigation of crimes and execution of punishment.

25. Q. Among the last duties you stated the execution of punishment. Did you also decide whether they should be punished or not?  
A. No, I did not decide.

26. Q. Who decided this?  
A. When I stated punishment, it was not punishment for felonious crimes. It was disciplinary punishment. I made the investigations and consultation examination was held by Shintone, Furuki, and the commanding officer of the

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*James P. Kenny*  
LIEUT., JG.

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person to be punished and they determined the degree of this punishment and the final judgment was made by the commanding officer (Admiral Masuda).

27. Q. Among the duties you mentioned, did the third kind of duty apply also to natives?

A. It did not apply to the natives.

28. Q. Other to the duties as head of the police section, were there any relations between Admiral Masuda and yourself such as taking orders as a subordinate officer from a superior? JK

A. Concerning my duties as head of the police section, I took orders directly from Admiral Masuda, but in other matters, Major Furuki was my commanding officer and Admiral Masuda was the supreme commander.

29. Q. Did Admiral Masuda, as head of the special police section, have authority to order and command you and directly give you orders?

A. As he was the supreme commander, he had the authority; but in matters other than as head of the special police section, the orders were usually relayed to Major Furuki which was then relayed to myself. JK

30. Q. Do you know if an incident concerning natives from another island occurred on Jaluit around March, 1945? JK

A. I do.

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

A. It was a case where natives from Mille sneaked into the island.

32. Q. Do you remember the names of the natives?

A. I do.

33. Q. Tell us their names.

A. The natives were Raliajap, Anchio, Heibet, the wife of Raliajap, whose name is very long and I have forgotten it, Raline, Lacojirik, Ochira and Siro.

34. Q. How do you know these things?

A. I know because I was ordered to investigate this incident and to act in the examination and consultation procedure.

35. Q. By whom and when were you ordered to perform this investigation?

A. In the morning of the first of April, 1945, I was relayed Admiral Masuda's order in Lieutenant Commander Shintone's room by Lieutenant Commander Shintone.

36. Q. What is the substance of that order?

A. It stated as follows: This morning natives from another island who had sneaked into Jaluit have been brought here. Admiral Masuda has already ordered Lieutenant Morikawa to investigate them but he thinks one is not sufficient; Admiral Masuda ordered that you shall also perform this investigation.

37. Q. Were you ever ordered directly by Admiral Masuda concerning this order?

A. I was.

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*James P. Kenney*  
Lieut. Col., USA

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38. Q. When was this?

A. It was right after I was ordered by Lieutenant Commander Shintome.

39. Q. Where were you given those orders?

A. In the air raid shelter which were the quarters of Admiral Masuda.

40. Q. Was any one present?

A. Admiral Masuda, Lieutenant Commander Shintome, Lieutenant Morikawa and myself, the four of us.

41. Q. Was the commanding officer, Furuki, present, too?

A. Major Furuki was not present.

42. Q. Do you remember if you received any instructions concerning the investigation from Admiral Masuda?

A. There were some instructions.

43. Q. Tell us briefly what those instructions were.

A. Admiral Masuda stated as follows: In the evening of March 30th, the four natives drifted ashore on the island of Jaluit. From what was investigated at Jaluit they have stated that they had drifted while transporting materials. The report is here and they say they are natives from Kille. There are many questions as to whether they were really natives who drifted. Investigate this carefully. Captain Inoue may not know the conditions of the other bases in the Marshalls, but it is a great difference from Jaluit. As a result of this investigation, even though you may come to know many things, I forbid you to say anything concerning them to anyone for if it is found that you have relayed this information to anyone you shall be punished severely. As a place to work in the investigation, we will clear a part of my air raid shelter and use it. Do not talk about this incident any place other than here. We will start on the investigation starting this morning.

44. Q. In your answer you stated Admiral Masuda said to you that you may not know the conditions of the other bases in the Marshalls. Would even a person of your rank not know the conditions of the other Marshall bases?

A. We were not told anything other to what was necessary. The reason for this was that on dispatches from the other bases and Truk, all persons other to the commanding officer, Shintome, the communication officer, Morikawa, and Major Furuki, were not allowed to see these dispatches.

The commission then, at 4:30 p.m., adjourned until tomorrow, Friday, May 16, 1947.

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*James P. Kenney*

SECRET., PER.

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**EXHIBIT D-1**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Friday, May 16, 1947.

The commission met at 9 a.m.

**Present:**

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

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

No witnesses not otherwise connected with the trial were present.

The accused, Inoue, Fumio, the witness under examination when the  
adjournment was taken on May 15, 1947, resumed his seat as a witness in his  
own behalf. He was warned that the oath previously taken was still binding,  
and continued his testimony.

(Examination continued.)

45. Q. In yesterday's testimony you stated that on the first of December  
1932 you entered the army. Have you been in the army ever since?  
A. From the time I entered the army I stayed on active duty for one year  
thereafter.

46. Q. When was the next time you entered the army?  
A. I was recalled into the service as a reserve officer in December of 1936  
from that time I have been on duty ever since.

47. Q. Yesterday you testified that Admiral Masuda went with you to  
investigate the four natives from Hille on the first of April 1945. Where  
and what natives did you investigate?  
A. I investigated Raliojap and three other natives who had drifted ashore  
on the southwest part of Jaluit at the Second Ammunition Dump with Lieutenant  
Morikawa.

48. Q. You stated Raliojap and three other natives. What are the names of  
those other natives?  
A. They were Raliojap, the wife of Raliojap, Anshio and Heibet.

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*James P. Kenny*  
LIEUT., USN.



49. Q. Were the four other natives from Mille Island at the Second Ammunition Dump at this time?

A. At this time the other four natives had not arrived at the main island of Ruidj. The fact that four other natives including Raline had landed in some part of Jaluit was learned after two days of questioning Raliejap.

50. Q. You stated that you investigated Raliejap's group for two days. What did you find as a result of this investigation?

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

The accused withdrew the question.

51. Q. You stated that you investigated Raliejap's group for two days. How did you go about this investigation?

A. At the Second Ammunition Dump Morikawa and myself investigated the natives. First the boat, possessions of the natives and other things which were sent from Jaluit were examined in detail. According to the investigation reports sent from Jaluit it indicated it had to be determined first whether the natives had really drifted.

52. Q. What did you find as a result of this investigation?

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

The accused replied,

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

The accused withdrew the question.

53. Q. What did you find as a result of the investigation in regard to whether the natives had actually drifted?

A. It was found that they were not natives who had drifted, but natives who had sneaked in with a certain motive.

54. Q. Did you investigate where on Mille Atoll they lived?

A. I did.

55. Q. What was found out as a result of this?

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

The accused made no reply.

The commission announced that the objection was sustained.

56. Q. Did you investigate what motives the natives had in sneaking into Jaluit?

A. I did.

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*James A. Henry*  
JURY, U.S.N.

57. Q. What motives did you find they had?

A. It was found that they were ordered by the Americans to try to get the military, gunsokus and natives to desert, also to relay a message and to look up the conditions on Jaluit.

58. Q. Did you investigate what the actions of the four natives were after they left Mille enroute to Jaluit?

A. I did.

59. Q. What did you find out?

A. The following was found. That on Mille, Raliejap and three other natives, Raline and three other natives, a total of eight natives, after plotting killed a soldier, stole a military boat and provisions and they all deserted to the enemy and in the open sea out of Mille they were taken in by an American ship and they were brought by this same boat to the waters adjacent to Jaluit. Raliejap and three other natives were to sneak into Jaluit. Raline and three other natives were to sneak into another place on Jaluit and that on this American ship they received a mission to which I have testified previously. After this mission was achieved they planned to escape from Jaluit.

The judge advocate moved to strike this answer on the ground that it was the opinion of the witness, that it was irrelevant and immaterial, and that it was clearly hearsay.

The accused replied.

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

60. Q. You stated the natives were Raliejap and three others. What were the names of the three other natives?

A. They were Raliejap, the wife of Raliejap, Anchio and Heibet.

61. Q. Did you investigate as to their history?

A. I did.

62. Q. What did you find out as a result of this investigation?

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

The accused replied.

The commission announced that the objection was sustained.

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

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

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

No witnesses not otherwise connected with the trial were present.

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*James P. Kenney*  
Lieut., JCH.

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

(Examination continued.)

63. Q. In your investigation, did you ask Raliejap his age?

A. I did.

64. Q. How old was he?

A. It has been a long time and I do not remember his age, but he was about forty.

65. Q. What was the age of the woman who said she was Raliejap's wife?

A. As I remember, it was about thirty.

66. Q. What was the age of Anshio?

A. As I remember, it was about twenty-five to twenty-six.

67. Q. How old was Heibet?

A. I do not remember how old she said she was.

68. Q. How old did you think she was?

A. Her mind was developed to that almost of an adult, but her size was very small; and from what I remember, her age may have been from about ten to twelve or thirteen years old. JK

69. Q. Was Heibet a woman?

A. Yes.

70. Q. Was Anshio a man or a woman?

A. He was a man.

71. Q. This morning you testified to the acts of these four natives from the time they left Mille until they reached Jaluit. Did all four of them testify to this?

A. Yes. This was what all four of them stated.

72. Q. Did the child, Heibet, know of the actions you have just stated? JK

A. She did.

The judge advocate moved to strike out this answer and the previous answer on the ground that they were hearsay.

The accused replied.

The commission announced that the motion was not sustained.

73. Q. In your last testimony in the morning session, you stated as to the killing of a soldier. Did these four natives know the name of that soldier?

A. They did.

74. Q. What did the natives know the name to be?

A. They stated that it was Petty Officer Tanaka.

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*James P. Kenney*

LIEUT., USN.



75. Q. In the investigation, did you ask the natives when they left Kille?

A. I did.

76. Q. What time did they answer?

A. In the middle of the night on March twenty-fifth or twenty-sixth, 1945.

77. Q. Did they tell you that they killed the Japanese soldier?

This line of questioning was objected to by the judge advocate on the ground that it was hearsay, called for the opinion of the witness, was leading, irrelevant and immaterial; and the judge advocate moved that the answers to the previous questions be stricken from the record on the ground that they were hearsay, irrelevant, immaterial, and went into collateral matter.

The accused replied.

The commission announced that the objection to the question was sustained on the ground that it was leading; but that the motion to strike was not sustained.

78. Q. When and where did you investigate Raline and the three other natives?

A. The investigation of Raline and the three other natives was begun on the third of April at the Second Ammunition Dump.

79. Q. Do you know the names of Raline and the three other natives?

A. I do.

80. Q. Tell us their names.

A. The names are: Raline, Ochiro, Lacojirik, and Siro.

81. Q. Was Raline a man or woman?

A. He was a man.

82. Q. How old was he?

A. He was about thirty or thirty-three.

83. Q. What was the sex and age of Ochiro?

A. Ochiro was a woman and was about twenty-three to twenty-four.

84. Q. What was the sex and age of Siro?

A. He was a boy and his age was from about ten to thirteen.

85. Q. What was the sex and age of Lacojirik?

A. He was a man and his age was twenty-two to twenty-three.

86. Q. Up to what time in April did you continue that investigation?

A. In relation to the Raline group, they were investigated from the third to sixth of April.

87. Q. Tell us briefly what you found in your investigations of Raline's group.

A. Their acts were similar to those I testified to in the case of Raliejap. It was found that Raline and Raliejap had killed a Japanese soldier, Tanaka, and that their boat was taken by Raliejap's boat and picked up. They were given the same mission and sneaked into the northwestern tip of Jaluit Atoll. The place where Raliejap landed and where Raline landed, the distance was about sixty kilometers. 87K

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*James P. Henry*  
LIEUT., USN.

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88. Q. Did you investigate what these two groups of natives did upon their arrival on Jaluit?

A. I did.

89. Q. Tell us briefly what they did.

A. The Raliejap group, upon their landing on Jaluit, relayed to the natives the conditions of Mille Island and also that a month later, American ships would come to take the natives from Jaluit away. As for Raline's group, they acted similarly to Raliejap's group. At Chitogen Village and Ben Island where they relayed the same information and were looking up or asking about the Japanese forces on the island.

90. Q. Other to your interrogation of these natives, did you look into any material evidence?

A. I did.

91. Q. What things did you investigate?

A. I investigated on the following: (1) boats used, (2) the possessions of the natives and the food they stole from Mille, (3) the clothes of petty officer Tanaka, (4) the investigation reports on their actions on the island of Jaluit and Chitogen Village, (5) the fact that the information they relayed had spread to Pingalap Island. JK

92. Q. What were the sizes of these two boats?

A. Raliejap's boat - the length was about two meters and was crewed with four people in it. There was the mark of the Sixty-sixth Naval Guard Unit on it and at the end of the boat was a rope.

93. Q. What was the size of the other boat?

A. The canoe was shattered when the natives sneaked into Chitogen Village and according to the testimony of eyewitnesses, it was stated that it was a medium sized canoe capable of seating four people. JK

94. Q. You stated that there were the clothes of petty officer Tanaka. How did you know that it was Tanaka's?

A. When the possessions of Raline's group were examined, this was found with the name of Petty Officer Tanaka of the Sixty-sixth Naval Guard Unit on it.

95. Q. Tell us if you reported the results of this investigation to anyone? JK

A. I did.

96. Q. To whom and where did you report this?

A. In the investigation I conducted from the first to the second of April, myself and Orihara reported to Admiral Masuda with Lieutenant Commander Shintone present in Admiral Masuda's air raid shelter twice a day. On the investigation conducted from the third to the sixth of April, it was reported at the same place with Admiral Masuda, Major Furuki and Lieutenant Commander Shintone present. I reported to them the results one or two times a day.

97. Q. Do you know what happened to the natives on which you submitted your investigation report?

A. I do.

98. Q. Tell us what you know.

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*James P. Kenney*  
LIEUT. COL. USA

A. The eight natives as a result of the highest examination and consultation on Jaluit, were sentenced to death.

The judge advocate moved that this answer be stricken from the record on the ground that it was not responsive.

The accused replied.

The commission directed that the answer be stricken.

99. Q. Do you know if an examination and consultation was held for these natives, on whom you submitted an investigation report?

A. I do.

100. Q. Do you know what steps and procedure was taken in examining and consulting on these natives?

A. I do.

101. Q. How do you know this?

A. Because I was ordered to act as judge advocate by Admiral Masuda and acted in the examination and consultation.

102. Q. Tell us by what procedure this examination and consultation was conducted.

A. As Admiral Masuda was waiting for the return of Major Furuki, Major Furuki changed his schedule and came back to the main island of Enidj together with natives of the Raline group on the morning of the third of April. Admiral Masuda called Shintome, Furuki, and myself to his quarters and told us as follows: "There are natives who sneaked into Jaluit. I shall have what they said read by Captain Inoue. If possible, I would like to send these natives to Truk and Ponsape, but as this cannot be done, I shall hold an examination and consultation with the ranking officers on Jaluit on my authority. Shintome and Furuki and myself shall act as judges. Inoue shall act as a judge advocate." The above is what he ordered and the highest examination and consultation on Jaluit was held during the period of the third to around the ninth of April.

103. Q. You stated that there were two groups, the Raliejap group and the Raline group. Were the examinations and consultations for the eight natives all held at one time?

A. For the Raliejap group, from the third to sixth of April. For Raline's group, from the sixth to about the seventh and a combined consultation of both groups from the eighth to around the ninth.

104. Q. Where were these examinations and consultations held?

A. The place was Admiral Masuda's personal air raid shelter which he had turned over for this purpose.

105. Q. As a result of this examination and consultation, what happened to the natives who were alleged to have committed the crimes?

A. As a result of the examination and consultation, the eight natives were given a sentence of death.

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*James P. Kenney*  
LIEUT., USN.

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106. Q. You stated that you were ordered to act as judge advocate in the examination and consultation. Did you express your opinion as to the facts in this case in your capacity as judge advocate?  
A. I did.

107. Q. What opinion was that?

A. On the eighth of April, on the day that Raline escaped, Admiral Masuda called Shintone, Furuki and myself to his room and stated: "Tomorrow the decisions on these natives shall be made. Inoue shall think on his opinion on sentence. Furuki and Shintone shall think well on their opinion on the decision." By this, around the ninth of April, in Admiral Masuda's air raid shelter in my capacity as judge advocate, I gave my following opinion: Raline, Raliejap, Anchio, Iacofirik, Ochiro and Raliejap's wife: the above six were guilty of the crimes of murder, robbery and violation of the navy criminal code; desertion to the enemy; violation of the Japanese Criminal Code; rebellion, spying and the stealing of military provisions and boats; violation of the above Japanese laws and treason against the Japanese. *JK* *JK* And it was necessary to maintain military secrets, military discipline and also to maintain the lives and existence of the military, gunnery and natives on Jaluit that they be executed. As for Heibet and Siro, these two children were guilty of spying, but that they be confined to Akisen Island (which was a continuation of Ruidj) as there were no natives there. This was my opinion.

The commission then, at 3:15 p.m., took a recess until 3:39 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

108. Q. You stated that these natives violated the crime of spying in the Japanese Criminal Code in your opinion. What acts or duties did you find that violated the act of spying as set forth in the Japanese Criminal Code?  
A. The acts which violated the act of spying set down in Japanese Criminal Code, was that the eight natives, supported by the Americans with will to tell the natives saying that they had drifted. They asked about the dispositions of soldiers which were a military secret in the neighborhood that they drifted ashore. And also, they relayed that "about a month later, American ships would come and get you, that the natives on the north assembly and the natives from the south assembly on an island where there are no soldiers to be taken away." And also relayed detailed instructions concerning this. And the fact also that they had relayed about the executing of natives on Kille, as were stated by the same method about a month later, six hundred natives of Jaluit escaped; the same method that these natives had stated about. *JK*

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*James P. Kenny*  
Lieut., Col.

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

The accused replied.

The commission directed that the answer be stricken out.

109. Q. When you stated your opinion as judge advocate and stated that the natives violated the act of spying, what did you understand the act of spying as set forth in the Japanese Criminal Code to be?

A. I understood the act of spying as set forth in the Japanese Criminal Code to mean obtaining intelligence through false statement with the will to communicate this to the enemy.

110. Q. Have you ever read the Hague Convention concerning the laws and customs of war?

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

The accused replied.

The commission announced that the objection was sustained.

111. Q. Did you express your opinion on these natives in their crime of murder as one that was an accomplished act?

A. Yes.

112. Q. Did you express your opinion that an inquiry should be made to Mille to ascertain these facts?

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

The accused withdrew the question.

113. Q. Concerning these natives, do you know if an inquiry was made concerning them to Mille?

A. I do.

114. Q. Was an inquiry made?

A. No.

115. Q. Did you ever ask for an inquiry to be made concerning this? OK

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did. I asked twice and it is as follows: On April second, Lieutenant Morikawa and myself asked Admiral Masuda to make an inquiry. The next time I expressed my opinion that an inquiry be made was after the examination and consultation had begun.

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*James P. Kenny*  
Lieut. J. P. Kenny

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116. Q. Was his opinion adopted?  
A. It was not adopted.

117. Q. At the time the examination and consultation was being held, were the natives called there?  
A. They were not called there.

118. Q. Do you know if Admiral Masuda, Major Furuki and Shintone, anyone of the judges, ever went to question the natives?  
A. I do.

119. Q. Tell us what you know.  
A. Admiral Masuda went with myself to question the natives. I have never seen Shintone or Major Furuki go to question the natives.

120. Q. When was it that Admiral Masuda and yourself went to question the natives?  
A. It was two times. One on the morning of April third; the other after the evening meal on the sixth of April.

121. Q. When was the decision made?  
A. It was around the ninth of April.

122. Q. Do you know if there was a judgment paper?  
A. I do.

123. Q. Tell us the form it was in.  
A. The judgment papers were in a form with divided into columns and on the top it stated "judgment paper" and on the top a column, a place to mark in the decision, next the name of the crime, also what law applied and written on the outside of these columns it was stated decision, which was made as stated on the right and was dated the ninth of April, 1945, signed Rear Admiral Masuda, Hsuke, with his initials.

124. Q. Do you know if these sentences he indicated were executed?  
A. I do.

125. Q. Do you know who executed these sentences?  
A. I do.

126. Q. Who was it?  
A. I executed the sentences.

127. Q. When was it that you executed these sentences?  
A. Around the ninth of April, I executed seven natives, excluding Raline; and around April thirteenth, I executed another natives, Raline. JK  
JK

128. Q. Did you perform these executions voluntarily or were you ordered by someone?

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

The accused withdrew the question.

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*James P. Kenney*  
Lieut., USN.

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129. Q. Have you ever studied Japanese Criminal procedure or the Japanese court martial law?

A. I have never studied any of these laws.

The commission then, at 4:24 p.m., adjourned until 9 a.m., tomorrow, Saturday, May 17, 1947.

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*James C. Kenny*

WITNESSES, USA.

EX-134

0944

**THIRTEENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Saturday, May 17, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

130. Q. In yesterday's testimony, you testified that Admiral Masuda waited  
for Major Furuki to come back from the outlying islands, and upon his return,  
called Furuki, Shintone and yourself to his room and stated as follows:  
"On my authority, the highest examination and consultation possible on  
Jaluit will be conducted by the ranking officers. Furuki, Shintone and  
myself shall act as judges," and that "Inoue shall act as a judge advocate."  
Is that correct?  
A. Yes.

131. Q. In testifying to this authority, what did you understand Admiral  
Masuda's authority to be at this time?

This question was objected to by the judge advocate on the ground that  
it called for the opinion of the witness and that it was too broad in its  
scope.

The accused replied.

The commission announced that the objection was not sustained.

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*James P. Kenny*  
JURY, U.S.N.

A. By the administrative and judicial authority given the supreme commander, I sincerely understood at this time that he had the authority to judge on criminals and punish them. Under usual circumstances, this would have been sent to Palau District Court, but after April, or thereabout, of 1944, in the Jaluit area, Admiral Masuda exercised judicial and administrative authority.

132. Q. You testified that Admiral Masuda ordered Furuki, Shintone to act as judges and Inoue to act as a judge advocate. How did you understand Admiral Masuda's authority to order you to act as such?

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

The accused replied.

The commission announced that the objection was sustained.

133. Q. In yesterday's testimony you testified that death sentences were given the eight Mille natives and that you executed this sentence. Tell us how you came to execute this sentence.

A. Now I came to execute this sentence is as follows: At a time of the last examination and consultation on the ninth of April, as a result of this examination and consultation, Admiral Masuda gave the natives the decision of death. At this time, with Shintone and Furuki present, Admiral Masuda ordered me, as head of the special police section at this time, to execute the death sentence. After this order was written at the end of the judgment paper and reading the order to me, I was relayed this order. As a result of the examination and consultation, Admiral Masuda gave the death sentence and read the sentence to each native. I was convinced that it was legal; therefore, I was ordered to perform the execution, I expressed what opinion I was allowed concerning the execution of these two children to Admiral Masuda. In other words, I asked if there was some way to save the children, or at least postpone the execution for two or three days so I could think of other means to save them. To this, Admiral Masuda would not listen to my opinion. Reprimanding me, he said: "Execute the order tonight." Returning to my quarters, I went to Major Furuki who was my commanding officer. I told Furuki of my difficult position in having to execute the children and sought his advice. Major Furuki said himself and Shintone had expressed the opposite opinions, but the admiral would not listen. There is no other way but to do as ordered. The execution of the two children, I was convinced that this was a legal act and I had no doubt that this was a rightful act.

134. Q. Tell us briefly how did you carry out the death sentence?

A. I carried out the death sentence by shooting them with a pistol.

135. Q. Where did you execute this order?

A. I performed this in the area south of the Airmen Transmitting Station on Ainsman.

136. Q. Do you know who decided the method in which to execute the order and where to execute it?

A. I do.

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*James A. Kenny*  
WITNESSED, WEN.

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137. Q. Who was it?

A. It was Admiral Masuda.

138. Q. When you took the Mille natives to the place of execution, were there any guards?

A. Yes.

139. Q. Do you know who gave those guards their duties?

A. I do.

140. Q. Who was it?

A. This assignment of the guards was as follows: When Admiral Masuda ordered me to execute the death sentence, I asked for seven persons to act as guards and I also stated that if I had any men under my command, I would use them, but at that time, as there were only two, I asked that they be obtained from another unit. Admiral Masuda ordered Lieutenant Commander Shintone to submit five guards from the Naval Guard Unit, and two of my men were assigned as guards. Seven men, including Captain Jinno, were assigned as guards. I gave the guards their instructions. JK

The judge advocate moved that that portion of the answer which refers to Admiral Masuda ordering Lieutenant Commander Shintone to provide guards be stricken from the record on the ground that it was hearsay.

The accused replied.

The commission announced that the motion was not sustained.

141. Q. Did you report to Admiral Masuda after you executed the orders?

A. I did.

142. Q. Do you know if the executions of the eight Mille natives were made public?

A. I do.

143. Q. By what form and what were the contents of the publication of the death of these eight natives?

A. I would like to have the question repeated.

The question was repeated in Japanese. JK

A. (continued.) This was made public around the fourteenth of April. On that day, Admiral Masuda called Furuki, Shintone and myself to his office and stated as follows: "Because of the escape of Raline and the disturbance caused at that time, it is a fact that almost everyone knows about the natives who sneaked in and it is necessary to let them know what happened." He then showed us a document of publication. The contents were as follows: "At the end of the month, the natives who sneaked in from Mille or other bases in the Marshalls," I am not sure on this point, "The eight natives committed murder and spying; and therefore, all were executed." By this document it was made public.

144. Q. Do you know who signed this document of publication?

A. I do.

145. Q. By whom was it signed?

A. It was put out by the supreme commander of the Jaluit Defense Garrison.

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*James P. Kenney*  
LIEUT., USN.

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146. Q. When you were ordered to execute the two children, you testified that you requested Admiral Masuda to postpone the execution two or three days. Is that correct?

A. This is correct. Major Furuki and Lieutenant Commander Shintone are living witnesses who can testify to this.

The judge advocate moved to strike the words "Major Furuki and Lieutenant Commander Shintone are living witnesses who can testify to this" out of the answer on the ground that they were the mere opinion of the witness, hearsay, irrelevant and immaterial.

The accused made no reply.

The commission directed that the words be stricken out.

147. Q. You testified that Admiral Masuda did not listen to you when you made this request. Is this correct?

A. Yes.

148. Q. At this time, were you able to reject this order of Admiral Masuda?

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

The accused made no reply.

The commission announced that the objection was sustained.

149. Q. How did you understand your position in rejecting the order of Admiral Masuda?

A. As a soldier and as a person who is responsible for the maintenance of discipline on Jaluit, it was absolutely impossible to disobey the order, especially as this order was put out after the highest examination and consultation on Jaluit by the ranking officers was decided upon and this placed me in a position where I was unable to disobey Admiral Masuda's order.

150. Q. Do you know, if in the military service there is a manual on army life?

A. I do.

151. Q. What does this manual regulate?

A. It is a manual on army life. It is on army regulations and it contains regulations on the life of every person in the army and regulates the basis for their actions in matters other than battle.

152. Q. Do you know if it is required that every officer and soldier in the Japanese army know what is written in this manual?

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

The accused replied,

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*James P. Kenny*  
Lieut., JAG.

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The commission announced that the objection was sustained.

The commission then, at 10:17 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, his counsel and the interpreters. 9x

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

153. Q. You stated you know about the Manual on Army life. Do you know the regulations in it regulating obedience in orders between subordinates and superiors?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant since the defense of superior orders can only be used in mitigation.

The accused replied.

The commission announced that the objection was sustained.

154. Q. Before you were recalled in the army in 1938 what was your profession?  
A. I was a clerk in a company office.

155. Q. How long have you been confined?

A. I have been confined from the eleventh of October 1945 to the present.

156. Q. Were you ever told the reason why you were being confined?

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

The accused made no reply.

The commission announced that the objection was sustained.

157. Q. Were you ever questioned while you were being confined?

A. I was questioned once, but this case was not on this case but on another case and I was asked the conditions on Jaluit.

158. Q. Have you ever tried to find out what you were being confined for?

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

The accused made no reply.

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James P. Kenny  
Lieut. J. G. W.

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The commission announced that the objection was sustained.

159. Q. Have you ever submitted any documents to the Judge Advocate General of the Navy while you were being confined?

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

The accused replied.

The commission announced that the objection was sustained.

160. Q. Are there any statements other to the statement you submitted to the judge advocate in November of 1946 that you submitted to the American authorities?

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

The accused made no reply.

The commission announced that the objection was sustained.

161. Q. The confession which was introduced in your case, was this the only document pertaining to this case which you prepared?

A. No.

162. Q. What other documents did you prepare in regard to this case?

This question was objected to by the judge advocate on the ground that it was too broad in its scope since there may be reference to documents which are irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained and stated that the commission would decide the relevance of any other documents according to the reply.

A. Other to the statement which was introduced by the prosecution the other day, there is a statement concerning this incident which I made of my own free will and submitted. The way it was submitted is as follows: In September 1946, while I was confined in the Guam stockade I drew up this statement in the stockade and it was submitted to the Judge Advocate General of the Navy through the judge advocate of Commander Marianas. It was also addressed to the Japanese Minister of the Navy. I was convinced that this native incident was lawful and asked that this be investigated and cleared up. In this statement I stated the outline of this native incident and what happened on Jaluit. J.R.

The judge advocate moved to strike this answer on the ground that it was irrelevant and immaterial and was concerned with an extra-judicial statement of this witness.

The accused replied.

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*James P. Keany*  
J.P.K., U.S.N.

The commission announced that the motion to strike was granted and directed that the answer be stricken.

163. Q. I show you a copy of a document. Is this a copy of the letter that you made in September of 1946?

A. Yes.

164. Q. Do you know where the original of this letter is?

A. I do.

165. Q. Where is it?

A. I handed this document to the judge advocate, Flynn, and he told me that the original was held at the legal office, Commander Marianas, and that copies had been sent to the places where it was addressed.

The judge advocate moved to strike this answer on the ground that there has been no evidence to show when and where this alleged conversation with the judge advocate Flynn occurred.

The accused replied.

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

166. Q. When did the judge advocate Flynn tell you this?

A. It was about, as I remember, it was twenty days to one month after I submitted this document. There were ten copies of it typed up and Lieutenant Kerriek came with the judge advocate and I believe he may remember it.

167. Q. Do you wish to offer this letter in evidence in your behalf at this trial?

A. I request that this document be allowed to be submitted in evidence.

A letter was submitted to the judge advocate and to the commission, and by the accused was offered into evidence to be read into the record.

The judge advocate objected to the receiving of this document into evidence as follows:

The judge advocate objects to the admission of this document in evidence. This document is a document labeled "Inoue Case", dated 11 September 1946 written by Fumio Inoue, the accused in the instant case. The document is clearly a self-serving declaration made during the period of confinement and in anticipation of his forthcoming trial. The document was not made as a memorandum at the time of the commission of the alleged offenses, it was not an official document made in the course of the duties as an alleged judge advocate at the alleged procedure, instead it is a document written one and one-half years after the commission of the offense with which this accused is charged. The judge advocate has already briefly indicated the basis on which self-serving statements are not admitted as evidence. It is unnecessary to further give legal citations on self-serving statements. There is no exception to the hearsay rule or other rules of evidence under which this statement can conceivably be admitted. JK

The accused made no reply.

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*James P. Kenny*  
LIEUT., USN.

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

The commission announced that the objection was sustained.

The commission then, at 11:40 a.m., adjourned until 9 a.m., Monday, May 19, 1947.

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*James A. Keagy*  
JURY, TEN.

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**FOURTEENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, May 19, 1947.

The commission met at 9 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoué Fumio, the witness under examination when the adjournment was  
taken, resumed his seat as witness in his own behalf. He was warned that  
the oath previously taken was still binding, and continued his testimony. OK

(Examination continued.)

168. Q. The other day you testified to the sneaking in of eight natives  
from Mille Island. As for the Jaluit Defense Garrison, do you know if they  
took any measures to prevent this?  
A. I do.

169. Q. Tell us briefly what those measures were.  
A. The preventative measures taken were as follows: (1) to prevent the  
natives from deserting and to patrol the island, the defense section, headed  
by Major Furuki was set up; (2) to protect the outlying islands, officers  
and men were dispatched; (3) all intercourse between islands was stopped;  
(4) messages concerning the facts that the natives may try to desert a  
month from now were sent to the district commanding officers and preparations  
to prevent this were made secret; (5) military, gunnery and Koreans who it was  
thought might desert were assembled at the main island and watched; (6) a  
capable officer was dispatched to the outlying islands to train the patrolling  
personnel.

170. Q. You testified that according to the natives' confessions it was their  
mission to relay that a month later American planes and ships would come  
to get the natives and also you stated that you took preventative measures  
against this. Do you know if a month later that they stated occurred? OK

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*James P. Kenny*  
JURY, U.S.N.

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

The accused replied.

The commission announced that the objection was sustained.

171. Q. Yesterday you testified that you were not a graduate of the military academy and that you were recalled into the service as a reserve officer. What was your occupation before you were recalled into the service?

A. I was a clerk in a company office.

172. Q. How long have you served with the army?

A. I was on active duty from December, 1932 to November, 1933, and I was recalled into the service in December of 1938, and served until the end of the war.

Cross-examined by the judge advocate:

173. Q. Were the natives on Jaluit paid for the work they did?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know of their actually being paid in cash, but I know of a document which stated that when a supply ship came in they would be supplied with food and daily necessities.

174. Q. Were the natives subject to disciplinary punishment?

A. Yes.

175. Q. Are gunseks paid for their work?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. From what I remember, as there was no cash on Jaluit, they were not paid in cash, but it was promised that they would be paid for their work at the end of the war. *JK*

176. Q. Do you know if it was promised that the natives would be paid for their work at the end of the war? *JK*

A. I do.

177. Q. Were they promised that they would be paid at the end of the war?

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*James P. Kennedy*

SECRET, U.S.N.

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember hearing from the civilian officer, Takisawa, that Admiral Masuda stated that the natives would be paid at the end of the war. OK

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

The judge advocate made no reply.

The commission directed that the answer be stricken.

178. Q. Are specific gunsokus attached to one branch, either the army or the navy?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. All the gunsokus on Jaluit were officially attached there as navy gunsokus, but in their actual work, some were attached to the army, some to the navy; and they worked together with the various units. OK

179. Q. Were the natives officially attached to the navy?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The natives, as part of the Jaluit Defense Garrison, were not members making up the army or the navy.

180. Q. Isn't it an essential condition of being a gunsoku that you have to be attached to either the army or the navy?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

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*James P. Kenny*

WITNESSES

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A. I think it is essential that a gunsoku has to be attached to the army or the navy. On Jaluit, the navy gunsoku actually worked under six commanders and some under navy commanders at the various units. OK

The commission then, at 9:41 a.m., took a recess until 9:50 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony.

(Cross-examination continued.)

181. Q. You testified that Masuda ordered Shintone to provide five additional guards for the execution. Were you present when Admiral Masuda gave this order to Shintone?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

182. Q. On Saturday, May 17, on direct examination, you were asked the following questions: "197. Q. Were you ever questioned while you were being confined?" You answered: "I was questioned once, but this once was not on this case, but on another case, and I was asked the conditions on Jaluit." By this answer did you mean that since the end of the war you were never questioned in regard to these Mille natives?

A. I mean that concerning this incident with which I am charged, I was never questioned.

183. Q. Do you mean up till the beginning of this trial?

A. Yes.

184. Q. Were you questioned by Lieutenant Field regarding a confession concerning the Mille natives and the facts in this case?

A. I was never questioned by Lieutenant Field. I was told, if I wanted to, to write what I knew about the incidents that were concerned and I wrote the statement what I knew about. The one that was addressed to the Judge Advocate General, U. S. Navy, and also the statement in which I wrote what I knew about this incident.

185. Q. Then, you are sure that you were never, since the end of the war up until the beginning of this trial, questioned concerning the Mille natives in the incident involved in this case?

A. After the end of the war, before I was confined, I was questioned once.

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*James P. Kenney*

WASH., D.C.

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186. Q. Then you were questioned concerning these natives and the native incident?

A. It is correct that I was questioned once, but in that previous question I was asked if I was confined, so I stated that I had not been questioned. Jx

187. Q. But you have been questioned once?

A. Yes.

188. Q. Were you questioned on October 9, 1945, by a United States naval officer in a board of investigation concerning war crimes and atrocities?

This question was objected to by the accused on the ground that it was irrelevant and immaterial and that there had been no showing that the board of investigation had to do with this present trial and further objection was made to the judge advocate referring to a record in framing the question, said record not having been introduced into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know if the above mentioned person had these duties or what kind of a person he was, but around the ninth of October, 1945, I was questioned as to a part of this incident by McKinson and a person who looked like a judge advocate, and an interpreter Okubo, - these three persons.

189. Q. In this testimony that you gave on October 9, 1945, were you asked the following question: "3. Q. Tell all you know about the execution of the eight natives who were captured April 1945, their capture and all the things leading up to it." And did you give the following answer: "A. About six months have elapsed so I might have the dates and the names of the natives mixed up but I will give you the true story of it. At that time I was Naval Police Commander. My duties were to check on the civilians and Navy and Army personnel from not eating more than they were allowed to. About the end of March this year there were reports to headquarters that four natives had drifted down to Jaluit. On the following day, we had a report that four other natives had also landed on the island north of Medyai. At that time Warrent Officer Omura on Jaluit Island and First Lieutenant Furuno on Shittogen Island notified that the natives had drifted over there. Headquarters had no check on the eight natives because they thought the natives were sent here by the Americans to make some scheme to get the other natives off. Therefore the eight natives were sent to headquarters. At that time these natives were sent to the headquarters they didn't have any particular person in charge to look after the natives in native cases so the admiral ordered me to investigate these natives. On this still here the Army and Navy got along very harmoniously so whatever we did we had full cooperation among the units, the Naval Police were composed of Army and Navy personnel. I was the commander of the Navy and Army Police. The natives that were brought from Jaluit were kept on Ainsman and the other four were kept at ammunition dump on Ruidj. I and First Lieutenant Morikawa, intelligence officer, and Shiroshita, civilian interpreter, the three of us interrogated these eight natives. I first asked this question, 'Why did you desert Mills?', the natives replied, Jx

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*James P. Keary*

STATE, U.S.A.

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'Because many of the other natives were being rescued by the other American ships and we had heard an order by the commander of Mille that if any more natives tried to escape or escaped that all the natives left on Mille would be executed; so we made up our minds to take a chance in trying to get picked up by an American ship or drift to Majuro.'

"The four on Shittogen and the four on Jalnit had conferred with each other before they left Mille,"?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember the detailed contents asked on that day. At this time I was not sworn in. I did not know that this was being taken down. I had no chance to reaffirm this, but I remember stating in general concerning this, but I do not remember the detailed content.

190. Q. Is any part of this answer you gave at the board of investigation not true according to your knowledge?

This question was objected to by the accused on the ground that the witness was being questioned as to what happened at a previous board of investigation and the witness was being made to testify against himself. *JK*

The judge advocate replied.

The question was repeated.

The commission announced that the objection was not sustained.

A. I think the following is false: On the following day we had a report that the four other natives had landed on the island north of Medyai. It was actually three days before it was found that they had landed on Chitogen, and as I recall I think I stated in detail more important things concerning the motive that the natives left Mille, and as the natives were confined until the evening of the third at the ammunition dump, I am sure I stated the ammunition dump. Other to this, I do not remember what I stated at that time.

The commission then, at 10:30 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

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*James P. Kenny*

Lt. Col., USN.

MS. 146

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191. Q. Did you testify to the truth at this investigation?

This question was objected to by the accused on the ground that it was improper, immaterial, and irrelevant at this time as to what was said at the board of investigation.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I told the truth; but this investigation was made after Admiral Masuda had put out a statement that this was done "by my authority according to the laws of Japan," and when I was asked about this I stated only the general outlines of the incident. As I remember, I did not state other persons names.

192. Q. Did the natives speak Japanese?

A. There were about three who could speak Japanese.

193. Q. What language did the other natives speak?

A. All of them could speak a little Japanese, but most of it was native tongue.

194. Q. Which natives spoke Japanese?

A. As I remember, it was Lacojirik, Oshiro and Anchio.

195. Q. When did Admiral Masuda go with you to see the natives?

A. From what I remember, on the first of April, in the morning, he went to see the natives. The times he went to investigate the natives was on the third, in the morning of the third of April, and the evening of the sixth of April.

196. Q. Did Admiral Masuda speak with the natives on April first when he went to see them?

A. He did.

197. Q. For how long a period did he speak with them?

A. At this time, it was about fifteen minutes.

198. Q. Had the natives confessed at this time?

A. No, they had not confessed.

199. Q. On the morning of the third, when Admiral Masuda went to see the natives, how long did he stay with them?

A. He was there about an hour.

200. Q. Did he speak with them on this day?

A. He did.

201. Q. What time of the day was this?

A. As I remember, it was from about seven to eight.

202. Q. Where did you go to see these natives?

A. The Second Ammunition Dump.

203. Q. About how long did it take you to go to the Ammunition Dump and return?

A. It took about an hour and ten minutes to go there and return.

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James P. Kenney  
JAN 1, 1948

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204. Q. Who went with you and Admiral Masuda?

A. The two of us went.

205. Q. Were there any guards at the ammunition dump when you arrived?

A. Yes.

206. Q. Do you know the names of the guards?

A. They were navy guards from the Naval Guard Unit and as they were seamen I do not know their names.

207. Q. How many were there?

A. As I remember, there were four.

208. Q. Did they stay outside while you and Admiral Masuda went into speak with the natives? JK

A. The guards were outside.

209. Q. Did you and Admiral Masuda go in alone?

A. Yes.

210. Q. And there was no one with you and Admiral Masuda except the natives? JK

A. No.

211. Q. Then, you did not have an interpreter with you?

A. No.

212. Q. On the sixth, what time did you and Admiral Masuda go to see the natives?

A. We left about three thirty in the afternoon and went to the Ainanman Transmitting Station and the Second Ammunition Dump. It was getting dark when we returned and I think it was about five thirty in the afternoon.

213. Q. How much time did you spend in the Ainanman Transmitting Station?

A. Is it the period of time we stayed at the transmitting station?

214. Q. That is correct.

A. As I remember, it was about twenty minutes.

215. Q. How many minutes did you stay at the Second Ammunition Dump?

A. About forty minutes.

216. Q. How long did it take to travel from the Ainanman Transmitting Station to the Second Ammunition Dump?

A. From headquarters by motorcycle with a side car it was about fifteen minutes.

217. Q. Is that fifteen minutes from headquarters to the transmitting station?

A. Yes.

218. Q. And then, from the transmitting station, how many minutes did it take to go to the Second Ammunition Dump?

A. About twelve or thirteen minutes.

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*James P. Kenny*

EX-100, 1007.

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219. Q. Where did you go after the Second Ammunition Dump?

A. We returned to headquarters.

220. Q. How many minutes did that take?

A. About three minutes.

221. Q. What other times beside the first, third and sixth, if any, did Admiral Masuda go with you to see the natives?

A. He went on the evening of the ninth and the morning of the fourteenth.

222. Q. How many hours did you stay on the evening of the ninth with him?

A. The Second Ammunition Dump and also the transmitting station, was about ten minutes.

223. Q. Is that ten minutes in each place?

A. About ten minutes in each place.

224. Q. How long were you and Admiral Masuda with the natives on the fourteenth?

A. About five minutes. I would like this time, the fourteenth, corrected. It may have been the thirteenth of April for the date. The morning was that on which Raline was executed.

225. Q. What time in the evening of the ninth did you go to see the natives with Admiral Masuda?

A. As it was after the evening meal, I think it was about three thirty in the afternoon.

226. Q. During this period from the third to the fourteenth, you were conducting your investigation of these natives. How many times did you go to see the natives and question them when Admiral Masuda wasn't with you?

A. As I remember, the morning and the afternoon of every day in the period from the third to the sixth. I went every day in the morning and the afternoons and also on the seventh, I think I went in the morning and the afternoon, and on the eighth the afternoon only. After the tenth, when Raline was recaptured, I went about three times to ask him about the conditions on Mille Island. This was not in connection with the investigations.

227. Q. On the morning of the third, how much time did you spend investigating the natives?

A. The time I spent investigating by myself on the morning of the third was about two hours.

228. Q. From about what time to about what time?

A. As I remember, it was from about eight o'clock to about ten.

229. Q. How many hours did you investigate in the afternoon?

A. As I remember, it was about two and one-half hours in the afternoon.

230. Q. On the morning of the fourth, when and how many hours did you investigate the natives?

This line of questioning was objected to by the accused on the ground that it was irrelevant and immaterial.

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*James P. Henney*  
J.P.H.

0961



The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. On the morning of the fourth, in the Second Ammunition Dump, it was about an hour and one-half.

231. Q. In the afternoon?

A. Maybe a little more than two hours.

232. Q. Do you remember the time in the morning during which you went to investigate?

A. In the morning, it was before the noon meal.

233. Q. When was the noon meal?

A. It was around ten o'clock.

234. Q. In the afternoon, when did you investigate?

A. As I remember, it was from about one thirty to about three thirty.

235. Q. On the morning of the fifth, when did you investigate and how many hours?

A. On the morning of the fifth it was at the Second Ammunition Dump; investigated for about two and one-half hours.

236. Q. From what time to what time?

A. From about eight to ten.

237. Q. In the afternoon, how many hours and during what period of time?

A. At the Second Ammunition Dump from one to three.

238. Q. On the morning of the sixth, how many hours and from what period?

A. On the morning of the sixth, I went to the transmitting station from about eight thirty to ten.

239. Q. In the afternoon?

A. In the afternoon at the Second Ammunition Dump from one to two, about one hour.

240. Q. On the morning of the seventh?

A. On the morning of the seventh, at the Second Ammunition Dump, about one hour.

241. Q. What time?

A. As I recall, about eight thirty to nine thirty.

242. Q. In the afternoon, what period?

A. In the afternoon, from about one to two thirty.

243. Q. On the third, did you report at an examination and consultation as judge advocate?

A. On the morning of the third, I was ordered the duties of judge advocate.

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*James P. Kenny*

STENO. UCH.

PM 152

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244. Q. Was there an examination and consultation held on the morning of the third?

A. On the morning of the third, as I recollect, Admiral Masuda ordered the proceedings of the examination and consultation. I read what the natives had stated up to the morning of the third, and examination and consultation was held for about twenty to thirty minutes.

245. Q. What time of the day was this examination and consultation held?

A. It was before the morning meal and as I remember, it was about five thirty.

246. Q. When does the morning meal begin?

A. As I remember, it was about five thirty.

247. Q. Do you remember what time you got up in the morning?

A. It was three thirty or four.

248. Q. Do you remember if you had your morning meal at the regular time that morning?

A. I do not remember if breakfast was at the regular time or not.

249. Q. Where was this meeting held on the morning of the third?

A. In the air raid shelter, the personal air raid shelter, of Admiral Masuda.

250. Q. Were Furuki and Shintome present at this examination and consultation?

A. Yes.

251. Q. On the second you reported concerning the natives, did you not?

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) The first and second, I reported to Shintome and Masuda. On the morning of the third, after Major Furuki returned, this was the first time I reported to Major Furuki.

252. Q. When did the Baline group of natives arrive on Enidj on the morning of the third of April?

A. As I recall, it was about one or two in the morning.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

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*James C. Kenny*

153

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(Cross-examination continued.)

253. Q. On the fourth of April were any examinations and consultations held at which you acted as judge advocate?

A. Yes, there was.

254. Q. At what time of the day did they begin?

A. As I remember it was after the noon meal and up to the time I started my investigation.

255. Q. About what time was that?

A. As I remember it was about from eleven to twelve thirty.

256. Q. Did you have any other examinations and consultations that day or was that the only one?

A. As I remember it was only this time.

257. Q. Do you remember if on the third of April there was any other examination and consultation besides the one held about 5:30 in the morning?

A. Is it the third?

258. Q. The third, yes.

A. I remember that after the report, I made the afternoon report, the examination and consultation was held for about thirty minutes.

259. Q. So there were two examinations and consultations on the third of April. Is that correct?

A. As I remember there were two.

260. Q. On the fifth of April was an examination and consultation held?

A. Yes.

261. Q. What period of the day and for how many hours was this examination and consultation held?

A. On the fifth day also from about eleven to a little past twelve.

262. Q. Was any further consultation held that day?

A. As I remember on this day this was the only time.

263. Q. On the sixth of April was there an examination and consultation held during the day and what time was it held?

A. Yes, on this day also after the noon meal from about 10:30 to a little after twelve an examination and consultation was held.

264. Q. Was any further examination and consultation held that day?

A. As I remember on this day this was the only time.

265. Q. On the seventh of April was an examination and consultation held and if so at what period of time?

A. On April 7 I remember it being held in the evening from about three to three-thirty.

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*James P. Kenny*

WIT., WCH.

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266. Q. Was any other examination and consultation held on that day?  
A. As I remember the only meeting which was held as an examination and consultation was this one.

267. Q. During the period of that consultation from 3 to 3:30 was it dark outside? JK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was not dark.

268. Q. You said this was the evening. What time did it get dark?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall it usually became dark after five o'clock in the afternoon.

269. Q. Was it after the evening meal that this examination and consultation was held?

A. It was just before the evening meal.

270. Q. On the eighth of April was any examination and consultation held?  
A. Yes, there was.

271. Q. During what period of time?

A. As I recall it was from about 3:30 to 4:30 in the afternoon.

272. Q. Were any other examinations and consultations held that day?

A. As I remember that was the only examination and consultation held that day.

273. Q. On the ninth day of April was there an examination and consultation held?

A. Yes.

274. Q. When did that take place and for how long a period of time?

A. The place was Admiral Masuda's air raid shelter, it took place from six in the morning until nine in the morning.

275. Q. Was any further examination and consultation held with regard to these natives?

This question was objected to by the accused on the ground that it was vague and indefinite.

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James P. Kenney

LEGAT., WASH.

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. During the period of investigation from the third to around the eighth of April short examinations and consultations of about ten minutes were held but I do not know on what days these were held.

276. Q. At all these examinations and consultations were Furuki and Shintone and Masuda and yourself present?

A. Yes.

277. Q. Was there any regular method of calling these examinations and consultations together?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The office of Admiral Masuda and the quarters of Major Furuki, Shintone and myself were within an area of about twenty meters and when Admiral Masuda called out we could hear him and all could assemble. Whenever Admiral Masuda called us together, he called us.

278. Q. Then these so-called examinations and consultations took place at any time when Admiral Masuda called out that he wanted you, Shintone and Furuki together? Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, but it was usually in the afternoon and at intervals after the noon meal before we started the noon work. The place to assemble was right near the command post.

279. Q. Then is it true that there were several of these so-called examinations and consultations that took only about ten minutes?

A. Yes.

280. Q. In addition to these periods of examination and consultation at other times did you make any reports concerning your investigations?

A. Yes, reports were made.

281. Q. Do you remember if you made any report on the third of April?

This question was objected to by the accused on the ground that it was too vague and was misleading. The accused further objected on the ground that it was repetitions.

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*James P. Kenney*  
J.P.K.

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

282. Q. To whom did you make the report and at what time of day?

A. All reports of the investigation after the third up to around the eighth were made to Admiral Masuda with Shintone and Furuki present. It was made morning and afternoon immediately after my return to headquarters after the investigation. In some days it was two times a day and sometimes once. Concerning the third of April I think it was in the afternoon. JPK

283. Q. Were these reports part of the examination and consultation proceedings of these days?

A. It was separate from the examination and consultation.

284. Q. And is it true that you made these reports to Masuda, with Shintone and Furuki present? JPK

A. There is no mistake.

285. Q. Were Shintone and Furuki present every one of these days when you made your report to Masuda?

A. Furuki was absent when I made my report on the first and second of April but at all times on the third and after Furuki was present.

286. Q. How long did it take you to make your reports?

A. It was about twenty to thirty minutes.

287. Q. What took place at these periods of examination and consultation?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. What the natives had stated, all evidence that had been gathered, boats and a report from the district commanding officer concerning the actions of the natives after they had drifted ashore, this was presented to the judges so that they could determine their actions. Also what the natives had said was produced and documentary evidence was produced and was used to determine what the true actions of the natives were. On the eighth and ninth examination and consultation was held on whether the natives were guilty or not guilty and how they should be punished and on this the judges consulted. Masuda also stated what the natives had told him. On the ninth the last examination and consultation was held. I, who was the judge advocate, was asked to present the opinion as to punishment. The same day the eight natives were found guilty and were sentenced to death.

288. Q. You said during the course of this examination and consultation reports were used. Were your reports of your investigation used in the period from the third through the ninth at these examinations and consultations?

A. The reports I referred to were the reports from the district commanding officer concerning the actions of these natives.

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*James M. Kennedy*  
JAMES M. KENNEDY



289. Q. Did you read your reports at these examination and consultation meetings?  
A. I did.

290. Q. On the third did you read your investigation report at the examination and consultation meeting?  
A. I did.

291. Q. Did you read an investigation report on the fourth?  
A. No.

292. Q. Did you read one on the fifth?  
A. No.

293. Q. Did you read one on the sixth?  
A. I did.

294. Q. Did you read your report on the seventh?  
A. No.

295. Q. Did you read a report on the eighth?  
A. I did.

296. Q. Did you read a report on the ninth?  
A. On the ninth I read my opinion as to sentence.

297. Q. How many minutes did it take to read your report on the third?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember it took a little more than twenty minutes.

298. Q. Was this the only report that you made on that day or did you make a prior oral report?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The contents of the investigation of the first and second day was made orally to Masuda and Shintone. On the third after I had read the investigation report, as Furuki had heard it for the first time, he asked me to lend him the report and he borrowed it for about thirty minutes.

299. Q. Did you read the report at the examination and consultation meeting on the third?  
A. I did.

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*James P. Kenney*  
J.P.K.

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300. Q. On the third day of April before that alleged meeting, had you already made that same report?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Right at the start of the examination and consultation I read this report and on this basis the examination and consultation was begun.

301. Q. Was the reading of that report included in the period of time you told me it took for the examination and consultation?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, it was included in the period of time for the examination and consultation.

302. Q. Then, when you said that the examination and consultation took twenty to thirty minutes at about 5:30 in the morning, you included in that twenty to thirty minutes the time that it took to read the report. Is that correct?

This question was objected to by the accused on the ground that it was misleading and vague. JPK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

303. Q. Are you sure of this fact?

A. As for the time, two years have already elapsed and there may be a difference of about ten to fifteen minutes but it is correct that there was an examination and consultation that morning and that the investigation report was read and an examination and consultation held for a short period afterwards.

304. Q. This first investigation report, was that confined to a report on the Ralliejap group?

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

The judge advocate replied.

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*James P. Keamy*  
J.P.K.

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The commission announced that the objection was not sustained.

A. Yes.

305. Q. Was Ralime, Raliejap's brother?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I remember them saying that they were brothers.

The accused moved to strike out this answer on the ground that it was the opinion of the witness, and that it was hearsay.

The judge advocate replied.

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

306. Q. You have testified that you and Admiral Masuda went to see the natives at certain times. Did you take anything with you when you went to see the natives?

A. We took the documents which contained what the natives had stated. JK

307. Q. Did you take your opinion paper with you when you and Admiral Masuda went to see the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. On the ninth and thirteenth, before the executions, Admiral Masuda took the judgment paper on which my opinion was also written in.

308. Q. Who was with you and Admiral Masuda at that time?

A. On the ninth there was the driver of the motorcycle. On the thirteenth one of my men, Sergeant Major Fukatsu, or another non-commissioned officer was with me, I remember this. JK

309. Q. Was anyone else with you and Admiral Masuda when you went to see the natives on the ninth?

A. There was only the driver of the motorcycle. JK

310. Q. Then there was no interpreter when you went to see the natives on the ninth?

A. No.

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*James P. Kenney*  
J.P.K.

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311. Q. Did anyone read the opinion part of your paper to the natives on that day? *JK*

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. My opinion was not read.

312. Q. At any other time when you were there with Admiral Masuda were the charges and specifications that were on your opinion paper read to the natives?

This question was objected to by the accused on the ground that it was misleading. *JK*

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Admiral Masuda himself told them the specifications and stated that according to Japanese law you are sentenced to death.

The commission then, at 3:20 p.m., took a recess until 3:40 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

313. Q. At any time previous to the ninth of April did Admiral Masuda tell the natives what the specifications against them were?

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

The judge advocate withdrew the question.

314. Q. At any time previous to the ninth of April when you were present with Admiral Masuda, in your capacity as a judge advocate or as an investigator, did Admiral Masuda tell the natives what the specifications and charges against them were?

A. He did.

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*James P. Kenney*

DEPT. JEN.

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315. Q. When did he do this?

A. I remember his telling them on the eighth.

316. Q. You testified that on the eighth in your presence Admiral Masuda told the natives what the charges and specifications against them were. At any time prior to this date were you present when Admiral Masuda told the natives what the charges and specifications were?

A. As I recall, I did not say that Admiral Masuda told the natives the charges and specifications on the eighth of April. I believe the question of the judge advocate did not say "Did you relay this to the natives." I think it was stated previous to April 8. On the third of April and on the sixth of April he did not use the words charges and specifications. Admiral Masuda asked the natives if they had done such and such things and ascertained what they had done.

317. Q. Were you asked the question with regard to whether or not prior to April ninth Admiral Masuda told the natives the charges and specifications and did you answer that he did on April eighth?

A. How I understood the question was prior to April ninth did Admiral Masuda ever talk to you in your capacity as judge advocate and investigator concerning the charges and specifications against the natives.

318. Q. Were you ever present with Admiral Masuda and the natives when Admiral Masuda told the natives what the charges and specifications against them were?

A. No.

319. Q. Were you ever present with Admiral Masuda when he read any document containing the specifications against the natives?

A. Do you mean when he told this to the natives?

320. Q. Yes.

A. There never was a time when he used the words charges and specifications, but I was present when he asked the natives concerning their actions and specifications of their crimes.

321. Q. When did this occur?

A. As I recall I think it was April third and April sixth.

322. Q. Were there any interpreters present at these times?

A. There was none on April third, but as I recall I think there was one on the sixth of April.

323. Q. Where was this interpreter, at Ainsman Island or the Second Ammunition Dump?

A. As I recall I think he was at both places.

324. Q. Was it the same interpreter?

A. Yes.

325. Q. How did <sup>you</sup> he get from Ainsman to the Second Ammunition Dump?

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

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*James P. Kenney*  
LIEUT., USN.

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The judge advocate withdrew the question.

326. Q. Did this interpreter travel with you and Admiral Masuda in the motorcycle from Aineman to the Second Ammunition Dump?

A. He was at Aineman and, as I recall, I think he went with us to the Second Ammunition Dump.

327. Q. Did you take him with you?

A. Yes.

328. Q. Did you have a driver for the motorcycle?

A. There was.

329. Q. Was there a side car on the motorcycle?

A. Yes.

330. Q. How many seats were there in the side car?

A. Two could sit in the side car and one could ride on the back behind the driver.

331. Q. Do you remember the interpreter riding on the back behind the driver?

A. I remember him riding behind the driver.

332. Q. Then you know that he went from Aineman to the Second Ammunition Dump, do you not?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I know.

333. Q. And you remember the entire incident very clearly now?

A. As it is two years previous I can not remember everything clearly, but thinking on it I think he was there.

334. Q. After your investigation of the natives on the first and second of April you reported to Admiral Masuda and to Shintome. Did they tell you what further questions to ask the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Concerning the investigation on the first and second of April, I received instructions concerning the investigation. After the investigation of April second I received no instructions but was told by Admiral Masuda to ask all points which were not clear.

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*James P. Kenny*  
JAMES P. KENNY

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335. Q. During the following days on the third, fourth and fifth of April when you had reported to Admiral Masuda, to Furuki and to Shintome were you told any special questions to ask the natives?

A. Yes.

336. Q. And did you ask these questions that you were told to ask?

A. I did.

337. Q. Who told you to ask these questions?

A. Admiral Masuda.

338. Q. On the sixth and seventh of April, after you reported to Masuda, Furuki and Shintome, were you told what additional questions to ask the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. After the reports of the sixth, seventh and eighth of April, investigations on April sixth, seventh and eighth, I was given no instructions concerning the specifications of the crimes, but I was told to ask about the circumstances of Mille and what the natives knew about the discipline on Mille and what they knew about things which we did not wish known to the military, gunnocks and the natives. JK

339. Q. Is that what your questioning of the natives on the sixth, seventh and eighth consisted of?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No. Investigation was made on the crimes. But a part of the investigation was made on the things I mentioned above.

340. Q. And you did not receive any instructions during this period with relation to the crimes. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall I received no such instructions.

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James A. Kenney

1ST LT., USN.

341. Q. Do you know if during the period from April first through April ninth Shintone had other duties besides that of being a judge at these examinations and consultations?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do.

342. Q. Did he?

A. He did.

343. Q. Do you know if during this period Major Furuki had other duties?

A. I do.

344. Q. Did he?

A. He did.

345. Q. Do you know if during this period Admiral Masuda carried on other duties?

A. I do.

346. Q. In the period from March 31 to April 9 was Jaluit under continuous bombardment and shelling by American forces?

A. As I recall there was no bombardment, but the strafing and bombing by planes was continuously repeated every day.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 20, 1947.

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*James P. Kenny*  
J. P. KENNY

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**FIFTEENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, May 20, 1947.

The commission met at 9:35 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatech, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates,  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

The commission then, at 9:48 a.m., took a recess until 9:52 a.m., at  
which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken,  
resumed his seat as a witness in his own behalf, and continued his testimony. *JK*

(Cross-examination continued.)

347. Q. You testified that the natives confessed. Who confessed first in  
Raijap's group?

A. As I remember, the one who said first that they had not drifted, and this  
is how they had come, was Heibet.

348. Q. Who first said that they had murdered Tensha?

A. It was Heibet.

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*James P. Kenny*  
LIEUT., USN.



349. Q. Then, was it Heibet who confessed the entire incident first?

A. As I remember, it was Heibet who told the general outline of the story.

350. Q. Who confessed first in Ralime's group?

A. As I recall, the one who said that they had killed Petty Officer Tanaka and come, was I believe, Oshira.

351. Q. Didn't the child in Ralime's group confess first?

A. As I remember, the person who first confessed to killing Petty Officer Tanaka was Oshira. Concerning the acts after they had left Mille, the one who first spoke about this was, I believe, Siro.

352. Q. Did Siro confess about the acts after they left Mille before Oshira confessed about the murder?

A. As I recall, it was after Oshira had confessed.

353. Q. How did you get Oshira to confess?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. She was told that Ralime's group had already arrived and all their acts concerning Tanaka and also the clothes of Tanaka were shown them, and she quickly confessed to what they had done.

354. Q. How did you get Heibet to confess?

A. At first, as it was wondered if they were natives who had drifted or whether they were natives with another motive, and this was asked of them and Heibet stated that they had drifted. There was an examination of the boats and other evidence. At the investigation of the boats, there was myself as the investigator. Heibet, being a child, and the food given on Jaluit to the four natives was the same as to the men, was one copra and 3.8 pints of Chagaro. As the food given them was not good for the child, and as an investigator, every day when I went to investigate I asked the supply officer for emergency candy, which was made in Jaluit, and took this to the child, then gained her confidence. At first she would not talk, but she later stated, I think it was one afternoon, she stated that if her parents were told she would get scolded, but she stated that they had killed Tanaka and had stolen a boat and food and had deserted from Mille. This was how Heibet first came to tell.

355. Q. Did she tell this right away, or did it take several days of bringing her candies before she told?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

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*James P. Kenney*  
WENT., WCH.

A. As I recall, Naibet told us this after she had been given candy a couple of times. It was in the morning and in the afternoon of the first day. After the candy the child had was gone, I kept taking her more.

356. Q. Then, she confessed to you on the first day that you questioned her?  
A. As I recall, it was the afternoon of the first day.

357. Q. And you went to see her that morning and again that afternoon. Is that correct?  
A. Yes, that is correct.

358. Q. And you brought her a piece of candy in the morning and you brought her a piece of candy in the afternoon. Is that correct?  
A. Yes. On the first day, I had the supply officer give me a lot of candy, and took this. I took some in the morning and some in the afternoon. JK

359. Q. And you wish this commission to believe that in one day with two pieces of candy you were able to gain the confidences of these children so that they confessed that their parents had killed Tanaka?

This question was objected to by the accused on the ground that it was argumentative, and that the witness had not testified that he used only two pieces of candy.

The judge advocate withdrew the question.

360. Q. And you wish this commission to believe that in one day with candy in the morning and candy in the afternoon, you were able to gain the confidence of this child so that she confessed that her parents had killed Tanaka.  
A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) Yes.

361. Q. You testified on direct examination that twice, once on April second, and again after this alleged trial - this alleged examination and consultation - began, you asked Masuda to make an inquiry of Hille concerning the natives. Is that correct? Did you twice ask Masuda to inquire from Hille about the natives? JK

A. This is correct. I asked twice: once was on the first of April and the other was during the examination and consultation. The reason for this was because Admiral Masuda, Shintone, and Furuki were present.

362. Q. Did you ask that an inquiry be made to Hille because the natives had not yet confessed?

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

The judge advocate replied.

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*James A. Kenny*  
J. A. KENNY

The commission announced that the objection was not sustained.

A. No. It was actually to ascertain this, the facts.

363. Q. Was it because you doubted the truth of these alleged confessions you had received from Heibet?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No. The reasons I asked this on April second were: (1) It was to inquire whether it was a fact that Baline and three others had deserted from Mille; (2) It was stated that they had Tanaka fifteen kilometers from land, and to ask if Tanaka had been washed ashore and if he was alive. It was not because I doubted what Heibet and the others had stated. JK

364. Q. Then, you wanted to find out whether Tanaka was still alive. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was to receive verification from the Mille Defense Garrison that Petty Officer Tanaka was murdered.

365. Q. And did you want to find out whether Tanaka was still alive?

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

The judge advocate replied.

The commission announced that the objection was sustained.

366. Q. Did you see Admiral Masuda write the judgment paper?

A. I did.

367. Q. Did you see him write in the sentence?

A. I did.

368. Q. Did you see him write in the sentence at the bottom of the judgment paper?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. What do you mean by "at the bottom of the judgment paper"?

369. Q. You previously testified that Admiral Masuda wrote in the sentence

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James J. Hanning  
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at the bottom of the judgment paper. The question is, what did you mean when you said, "the bottom of the judgment paper"?

A. I saw him write in the sentence at the respective column in the judgment paper.

370. Q. You testified that about the fourteenth of April, a document was made public concerning what happened to the natives. Did you tell exactly what was in this document?

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

The judge advocate replied.

The commission announced that the objection was sustained.

371. Q. You testified about a document published on the fourteenth of April concerning the native incident. You testified concerning the contents of that document. Did you give the full contents of that document?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember, I stated everything that I remembered.

372. Q. You stated that the contents of this document were as follows: "At the end of the month the natives who sneaked in from Nille or other places in the Marshalls, I am not sure on this point, the eight natives committed murder and spying; therefore, all were executed." Is this all that you remember that this document contained?

This question was objected to by the accused on the ground that the judge advocate was reading from an unidentified document, thereby confusing the witness by not stating from what he was reading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall, what was read that I had testified is a mistake. What I stated was that from Nille or another island, I do not remember which, was used. The natives who had sneaked in from another island or Nille, I do not remember which, had committed murder and they had come and because they had spied, all of them had been executed. This is how I remember it. OK

373. Q. Do you remember anything else that this document contained?

A. Other to this, it was addressed to unit commanding officers the date of fourteenth of April, 1945, from the commanding officer of the Jaluit Defense Garrison.

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*James P. Kenny*  
Lieut., USN.

374. Q. Do you remember anything else this document contained?

A. I do not remember.

375. Q. Are you sure?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. As I remember, the gist was as I stated.

376. Q. Then, is it true that as far as you can remember, this document did not contain any reference to any trial being given these natives? JK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This was passed as information to the various commanding officers from the commanding officer of the Jaluit Defense Garrison, and I do not remember the words "trial" or "procedure" being used.

The commission then, at 10:54 a.m., took a recess until 11:08 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

377. Q. In your capacity as head of police, were you required to know criminal law?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

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*James P. Kenney*

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A. In my work, as head of the special police section, I have studied the naval criminal code. This was sufficient.

378. Q. Did you study the naval criminal code?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I knew the general outline of the naval criminal code.

379. Q. Did you also know the general outline of the naval court martial law?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not know the naval court martial law.

380. Q. Do you know the army court martial law?

A. No.

381. Q. How long were you an officer on active duty in the army?

A. I was called into service as an army reserve officer on the fifth of December, 1938, and served until October, 1945.

382. Q. Then, during that period, and the one previous year that you served, you served for approximately eight years as an army officer. Is that correct?

<sup>244</sup> This question was objected to by the accused on the ground that it was repetitious. JK

The judge advocate replied,

The commission announced that the objection was not sustained.

A. No. The one year I spent in the service previous to 1938, was the time when I entered at the lowest rate of private and during that year, my period, I served from the lowest rate of private to sergeant, and when I started my duties as an officer it was when I was called to active service in 1938.

383. Q. In your police activities, did you exercise police authority over the natives, as well as over the army and navy personnel?

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*James P. Kenny*  
LIEUT., JUV.

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The authority included the military, gunsoons, and natives, but in actual practice, concerning the natives in the outlying islands, the district commander of those islands exercised the authority, by order of Admiral Nagata.

384. Q. Were you required to know the criminal code as it applied to the natives?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. It was necessary.

385. Q. Did you hear Shintone and Furuki state their opinions that the children should not be punished?

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

The judge advocate withdrew the question.

386. Q. At the examination and consultation meetings, did you hear Shintone and Furuki state their opinion that the children should not be punished with death?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did.

387. Q. Are you familiar with Article 96 of the Japanese Court Martial Law which reads: "A decision of the court is determined by the majority," et cetera?

This question was objected to by the accused on the ground that the witness had already stated that he was not familiar with the naval court martial law.

The judge advocate replied.

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*James A. Kenney*  
JAMES A. KENNEY

The commission announced that the objection was not sustained.

A. I do not know this article.

388. Q. Do you know, if in Japanese military law, the decision is based on the conclusions of the majority?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) Concerning the various laws and trial procedure, I have no knowledge, and I do not know; but concerning the acts of the Japanese military forces, the decision is decided by the supreme commander.

389. Q. Have you ever participated in any trial of Japanese military personnel?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I have.

390. Q. Was that trial held on Jaluit?

A. Yes.

391. Q. Was that trial held in accordance with the navy law or army law?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was an examination and consultation of natives and the Japanese Criminal Code and the Naval Criminal Code were applied.

The commission then, at 11:35 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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*James P. Keamy*  
JUDGE ADVOCATE

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

392. Q. At the conclusion of this morning's testimony you testified concerning a trial of natives in which you participated. Was this trial of natives a different one from the examination and consultation of the Mille natives?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. It is a different examination and consultation.

393. Q. Was that an examination and consultation concerning Jaluit natives?

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

The judge advocate replied,

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

The commission announced that the objection was sustained.

394. Q. Was the proceeding of examination and consultation held in regard to the Mille natives trial?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Since the time of the incident I have thought that the examination and consultation concerning the natives that was taken by the authority of Admiral Masuda was a lawful procedure under the battle conditions in judging on these peoples lives.

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*James P. Keany*

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

The accused replied,

The commission directed that the answer be stricken and directed the witness to answer the question.

A. (continued.) From that time I have thought in substance that it was a trial.

395. Q. You were asked this morning, "Have you ever participated in any trial of Japanese military personnel?" You answered, "I have." You stated that this was an examination and consultation concerning natives. Was that alleged trial of natives similar to the examination and consultation held in the Mille case? JK

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. The Mille case was a case of natives from a different island. The procedure in comparison to the other case was very careful. The high ranking officers performed their duties to the best of their ability and there are some differences in the contents of this examination and consultation.

396. Q. You testified you were present when Shintome and Furuki were told to act as judges and you were told to act as a judge advocate. Were the words judges and judge advocates used by Admiral Masuda?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. He used those words.

397. Q. Did you understand the words judge and judge advocate to mean persons who officiate at a trial?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Do you mean in court?

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*James P. Kenney*  
Lieut., USN.

398. Q. The witness has stated that this was a trial. We are asking him if he believes that the judges and judge advocate participated in the trial as officials?

A. Yes.

399. Q. Then did you understand that this examination and consultation procedure was to be a trial when Admiral Masuda told you that you, Shintone and Furuki were to act as judges and judge advocate in this case? JPK

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I understood it to be a trial in substance.

400. Q. When did you first understand this procedure to be a trial?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. From that time I have understood it to be a trial in substance.

401. Q. Did you testify before a military commission in this court room on Guam in March and April of 1947?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

402. Q. Did you testify concerning a certain alleged examination and consultation held for natives whose executions were involved in that case?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I have testified about an examination and consultation not in this case, but a prior case.

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*James P. Kenney*

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403. Q. In that testimony did that alleged procedure in that examination and consultation consist of the assembling of certain judges and judge advocates by Admiral Masuda to consider the investigation reports and to deliberate on the punishment of certain natives?

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

The judge advocate replied,

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

A. Yes.

404. Q. At that trial did you testify that you were ordered by Masuda to be a judge and Furuki was ordered to be by the judge advocate? *JK*

This question was objected to by the accused on the ground that it was irrelevant and immaterial and contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Yes.

405. Q. In that trial in question 171 were you asked, "When did you decide that this procedure constituted a trial?" and did you answer "From the time I was confined at Jaluit as a suspect?"

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that the judge advocate was being allowed to testify without being sworn as a witness, and contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements. *JK*

The judge advocate replied,

The commission announced that the objection was not sustained.

A. That is not what I answered at that time. I do not believe that was what I answered at that time of the previous trial. Due to the shortage of words I feel sorry that the exact time meaning was not grasped. What I really meant was that at the end of the war I came to understand clearly that the examination and consultation procedure that was taken at that time could be called a trial. At the time of this examination and consultation I had no doubts as to whether this could be called a trial or not. At the time of this examination and consultation I felt no doubt whether this was a trial or not. The reason for this was because I believed that this

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*James P. Kenny*

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examination and consultation procedure was a legal one and the only one possible under the battle conditions, and I was under the impression that that was how I had explained this. Due to the shortage in the words I used, I do not remember how it was written down.

406. Q. Were you asked the following series of questions and did you give the following answers: "167. Q. During the two years that you were on Jaluit, were there any trials held of Japanese personnel for violating Japanese Army law or Japanese Naval law? A. I was. 168. Q. Were there any trials held? A. Disciplinary crimes were punished by the same procedure as the natives were. 169. Q. You were asked whether or not any trials were held. Did you believe that this disciplinary procedure constituted a trial? A. Yes. 170. Q. Have you always, since November, 1943, believed that such procedure constituted a trial? 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. 173. Q. Was this after the special procedures that were taken on the native cases? A. Yes."

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that it allowed the judge advocate to testify without being sworn as a witness, and was contrary to the principle of law stated in GSO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember it all as read to me, but I remember hearing and answering some questions, but I remember exactly in the middle or the end of this series of questions I stated after it was asked "Was this after the end of the war?" I remember stating distinctly that at that time I did not think about whether it was a trial or not.

The commission then, at 3:30 p.m., took a recess until 3:52 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony.

(Cross-examination continued.)

407. Q. You have testified earlier today concerning a board of investigation in which you were questioned by a U. S. Naval officer. Was this on October 9, 1945 on Jaluit Atoll that you were questioned?

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*James A. Kennedy*

SECRET. WEN.

This question was objected to by the accused on the ground that it was irrelevant and immaterial, and was contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember it was around the ninth.

408. Q. Was this questioning concerning the execution of the Mille natives?

This question was objected to by the accused on the ground that if the judge advocate wishes to introduce this testimony into evidence the proper way to do it is to introduce the entire board of investigation into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

409. Q. Were you asked the following question and did you give the following answer: "17. Q. What kind of trial did they have or was your investigation the only thing used? A. They did not have a trial here because even a Japanese soldier, they never have a trial and they just investigate and decide what to do from the report." 87K

This question was objected to by the accused on the ground that the judge advocate is being allowed to testify without being sworn as a witness and that the proper way to do this would be to introduce the entire document into evidence, and that it was contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember exactly.

410. Q. Do you remember giving this answer or the contents of this answer?

A. I remember distinctly that a regular trial was not given them, but I remember stating that an examination and consultation was held for them by the high ranking officers.

411. Q. Did you testify that a regular trial was not held for these natives?

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

The judge advocate replied.

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JAN. 1, 1944.

The commission announced that the objection was not sustained.

A. I remember saying that a regular trial procedure was not held.

412. Q. Do you deny making the answer "They did not have a trial here because even a Japanese soldier, they never had a trial and they just investigate and decide what to do from the report."

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that the judge advocate is being allowed to testify without being sworn as a witness and the proper way to do this would be to introduce the entire document into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do remember on Jaluit there was no Japanese soldier who was given a punishment for a felony, for the violation of the criminal code, and executed, and therefore I may have said this as it was right at the end of the war. After the end of the war there was much confusion and I do not remember what I stated.

413. Q. Were any Japanese army personnel tried for any crimes while you were on Jaluit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There was none where a regular trial was held.

414. Q. You testified that the natives were not given a regular trial but were given an alleged examination and consultation. Then when you executed these natives did you know that they did not have a regular trial?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not say regular trial, I said trial by regular procedure. As I remember I stated trial by regular procedure. JK

415. Q. And when you executed the natives you knew that they did not have a trial by regular procedure. Is that correct?

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*James P. Kenney*

W. H. W. H.

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. When I did the executions I had no questions in my mind whether this was a regular trial procedure or not. I thought this was a lawful examination and consultation procedure and believed that it was right. No question arose in my mind as to whether this was a regular trial procedure or not.

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

The accused replied,

The commission announced that the motion to strike was denied.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 21, 1947.

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*James P. Kenny*

W. T. S. S. S.

SIXTEENTH DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Wednesday, May 21, 1947.

The commission met at 9:40 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

416. Q. You testified that Naibet confessed first. Did she tell about how  
Raliejap and Raline had met the Americans and how they had come to Jaluit  
to spy?  
A. Yes.

417. Q. Did she confess all this on the first day of April?

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

The judge advocate replied,

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

A. The afternoon of the first day of April.

418. Q. You testified yesterday that the natives did not have a regular  
trial. Was the accused present when Masuda, Shintomo, and Furuki, held  
their examination and consultation?  
A. They were not present.

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*James P. Kenny*  
JURY, WCH.

419. Q. Were the accused represented by defense counsel or legal representative?

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

The judge advocate replied,

The commission announced that the objection was not sustained.

A. No.

420. Q. Were any witnesses sworn to tell the truth in their testimony before that commission?

A. The witnesses were not sworn.

421. Q. Were there any witnesses besides yourself who ever testified before that examination and consultation?

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) First Lieutenant Morikawa also spoke concerning the facts in the case and so did Admiral Masuda.

422. Q. Did any other witnesses appear and speak concerning the facts before this examination and consultation?

A. I remember Shintone and Furuki speaking of the boats and of the examination of other evidence and these other were not witnesses but investigation reports from the commanding officers of Jaluit, Chitogen, Pingalap and Ai Islands.

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

The accused made no reply.

The commission announced that the motion was denied.

423. Q. Were any documents prepared under oath submitted during the course of the examination and consultation? 97c

A. There were no special documents which were written under oath submitted during the course of the examination and consultation, but a document on which was written down what they had stated was submitted.

424. Q. Were you, as judge advocate, sworn to tell the truth concerning your investigations?

A. I was not required to take any special oath.

425. Q. Was any oath administered to you when you were appointed judge advocate?

A. I was not requested to take an oath.

426. Q. Were the children found guilty of spying but not murder?

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*James H. Kenny*  
JAN 14 1944



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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It is correct that I stated that they were found guilty of spying and not guilty of the other charges.

427. Q. In your official opinion paper that you submitted, did you indicate that they were not guilty of murder?

A. I did.

428. Q. How did you differentiate between the participation of the women in the crime and the participation of the children?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The crimes that the women committed were murder, desertion, and robbery. It was judged, or it was thought, that as principals together with Raline and Raliejap, they had conspired; whereas, the children only knew about the murder, robbery and desertion on Mille Island from what they heard from their parents; therefore, it was not considered guilty on the part of the children for the crimes on Mille, but it was on the part of the women. This was how it was distinguished between them; this differentiation was made between them.

429. Q. In your capacity as police officer did you use the Japanese Criminal Code?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, too vague and general in its scope.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I received no training on this, but as common sense, I knew a little about it.

430. Q. Were you asked on direct examination, "What opinion was that?" referring to your opinion expressed as judge advocate; and did you answer: "I gave my following opinion: Raline, Raliejap, Anchio, Loojirik, Oshira and Raliejap's wife, the above six were guilty of the crime of murder, robbery and violation of the navy criminal code; desertion to the enemy; violation of the Japanese Criminal Code," et cetera?

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*James P. Kennedy*

W. H. H. H.

This question was objected to by the accused on the ground that the judge advocate was again reading from a document, and if this document is a part of the record of proceedings of this present case, it is the best evidence as written, and this witness should not be asked to verify it in this manner.

The judge advocate made no reply. JK

The commission announced that the objection was not sustained.

A. That is how I testified.

431. Q. Then, you did charge these natives with violation of the Japanese Criminal Code?

A. I expressed my opinion that they had violated it - the Japanese Criminal Code.

432. Q. Are you familiar with Article 41 of the Japanese Criminal Code which reads: "Acts of persons under fourteen years of age are not punishable."?

A. At that time I did not know. After I was confined at Guam, I heard about this and know about it.

433. Q. Did you protest that these native children should not be executed?

A. I expressed my opinion that they should be confined to an island which was a continuation of the main island where there were no natives.

434. Q. Did you ever hear of the execution of children in Japan for criminal acts?

This question was objected to by the accused on the ground that it was vague in that the translation of "children" into Japanese would be very indefinite.

The judge advocate withdrew the question.

435. Q. Did you ever hear of the execution of children under fourteen in Japan for criminal acts?

A. I have not heard anything about it in particular.

436. Q. You have never heard of any children being executed for crimes. Did you know it was wrong to execute these children?

A. I did not think it was wrong. I sincerely believed that it was right.

Reexamined by the accused:

437. Q. In the question of the judge advocate in cross-examination you were asked: "Did you take an oath to perform the duties of the judge advocate?" and in answer to this you stated that you did not take an oath. Do you know that in Japan there is no system in which judges or judge advocates performing the duties of court do not take an oath?

This question was objected to by the judge advocate on the ground that it called for the legal opinion of the witness which he has not been qualified to give.

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*James P. Keeney*  
JAMES P. KEENEY

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The accused replied.

The commission announced that the objection was not sustained.

A. I do not know.

438. Q. Have you heard of oaths being taken in a court in Japan?

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

The accused replied.

The commission announced that the objection was not sustained.

A. No.

439. Q. What were your thoughts as you made the investigation of the natives regarding the legality of the investigations?

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

The accused replied.

The commission announced that the objection as made was not sustained, but that it felt that the question was too broad and too vague.

The accused withdrew the question.

The commission then, at 10:45 a.m., took a recess until 11:07 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Reexamination continued.)

440. Q. When you were ordered to execute the natives by Admiral Masuda, did you consider the order was legal?

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

The accused made no reply.

The commission announced that the objection was not sustained.

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*James P. Haney*  
J.P.H.



A. Yes, because by this authority of Admiral Masuda, the death sentence was given them. After an examination and consultation Admiral Masuda himself had given the sentence to each native. They were prisoners who were sentenced to death, and I thought these were lawful orders and that the order of Admiral Masuda was the order of the court; and, therefore, legal and right.

441. Q. Tell us what you know about the authority of a Japanese military commander to award certain punishments without resorting to a formal court martial for it.

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. In the Japanese military system, the various ranking commanding officers have the authority to punish according to the disciplinary punishment regulations without formal court martial.

442. Q. What punishments may be inflicted under battle conditions?

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

The accused replied,

The commission announced that the objection was sustained.

443. Q. Were you ever allowed to verify the testimony that you gave at the Furuki trial?

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

The accused made no reply.

The commission announced that the objection was sustained.

444. Q. Were you ever allowed to verify the answer to question seventeen which was alleged by the judge advocate to have been made and from which he read to you from the board of investigation? OK

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

The accused withdrew the question.

445. Q. Were you allowed to verify the answer which you gave to question OK

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*James P. Kenny*  
JAMES P. KENNY

seventeen that was alleged by the judge advocate to have been made, in which he read to you from the proceedings of the board of investigation as follows: "17. Q. What kind of trial did they have or was your investigation the only thing used? A. They did not have a trial here because even a Japanese soldier, they never have a trial and they just investigate and decide what to do from the report."

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

The accused replied.

The commission announced that the objection was sustained.

446. Q. On October 9, 1945, when you answered certain question which the judge advocate read from a document, were you represented by counsel? JK

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

The accused made no reply.

The commission announced that the objection was sustained.

447. Q. On cross-examination you were asked about the consultation and examination which Admiral Masuda, Major Furuki and Lieutenant Commander Shintone held regarding the Mille natives. Was this examination and consultation legal? JK

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

The accused made no reply.

The commission announced that the objection was sustained.

448. Q. Under the circumstances, when the consultation and examination are held in secret, as was done at Jaluit, when the Mille incident was examined and consulted, is it necessary that the accused be represented by counsel?

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

The accused replied.

The commission announced that the objection was sustained.

449. Q. Do you know of any rules of procedure for the special trial that was given these natives from Mille?

This question was objected to by the judge advocate on the ground that the witness has not testified that this was a "special trial." The witness has testified that an examination and consultation was given.

The accused withdrew the question.

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*James R. Kennedy*  
LIEUT., USN.

450. Q. Do you know of any rules of procedure for the special consultations and examinations which were given these natives from Nille?

This question was objected to by the judge advocate on the ground that the witness had not testified that this was a "special procedure."

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did not know any rules.

451. Q. Is a Japanese army officer subject to court martial for the offense of falsehood?

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

The accused replied.

The commission announced that the objection was sustained.

452. Q. From your investigation, do you know whether or not the children were in the boat at the time when the natives assaulted with intent to murder Petty Officer Tanaka?

This question was objected to by the judge advocate on the ground that the phrase "assaulted with intent to murder" was improper, and that it was irrelevant and immaterial.

The accused withdrew the question.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

(Reexamination continued.)

453. Q. In cross-examination by the judge advocate you testified to the period and time that the examination and consultation was held. What was the difference between Tokyo and Jaluit time?

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*James P. Kenny*  
JAN 10 1945



A. The time I stated here was Jaluit time. The difference in time between Jaluit and Tokyo is about three hours. If it was one o'clock in the morning on Jaluit it would be about four o'clock in the morning Tokyo time. As I recall I think it was about three hours difference.

454. Q. You stated that there was a difference of three hours between time in Jaluit and Tokyo. When you were testifying concerning the hours and the times on Jaluit did you use Tokyo time?  
A. We did not use Tokyo time. We used Jaluit time.

455. Q. When you say that it was one o'clock in Jaluit, is it in the middle of the night?

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

The accused withdrew the question.

456. Q. When you say one o'clock a.m. Jaluit time is it down in Jaluit?  
A. The sun rises about three a.m. and one o'clock would be near dawn. When I stated previously Jaluit it was misunderstanding on my part and I believe it was Japanese time that we were using. JK

457. Q. Tell us whether or not night time was used for travelling to the other islands at the time of this incident.  
A. At this time travelling between Enidj and the other outlying islands was usually done in the middle of the night.

458. Q. Do you know that a statement you wrote last December while you were confined on Guam has been introduced as evidence by the judge advocate?  
A. I do.

459. Q. Do you remember the contents of this statement at present?  
A. I remember the general outline.

460. Q. Do you remember writing the following: "The eight natives who were executed were Japanese and they had committed crimes at Jaluit and as a result of the highest examination and consultation they were given a sentence of death by Admiral Masuda and were prisoners with a sentence of death." Do you remember writing this in your statement?  
A. I do. JK

461. Q. On the witness stand you have testified concerning the examination and consultation given the Mills natives from the third of April. Is this the same examination and consultation you refer to in your statement?  
A. It is the same.

462. Q. On the witness stand you have been asked questions concerning trials or regular trial procedure. In this instance what did you understand the trial or trial by regular procedure to mean when replying to these questions?  
A. I understood trial to mean that the judges and judge advocate examined

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*James P. Kearney*  
J.P. Kearney

and consulted on the criminal case, determined the laws applicable and gave a decision. At that time I did not know what a trial by regular procedure was, but later from what I found out I understand it to be to hold a public trial, call the defendants and witnesses and the judges and the judge advocates, examine and consult and after examination and consultation by the judges and judge advocates determine the laws applicable and determine the decision.

463. Q. In your statement when you stated that certain criminals, after the highest examination and consultation on Jaluit, were given a sentence. Did you understand this to be a trial? gk

A. As it was an examination and consultation called together and held by Admiral Masuda who had the authority I firmly believed that it was a trial.

464. Q. You testified that when you were ordered to execute the two children you expressed your opinion to the contrary. Tell us at this time what were your reasons for this. gk

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

The accused withdrew the question.

465. Q. You testified that when you were ordered to execute the two children you expressed your opinion to the contrary. Did you express your opinion because you thought that it was illegal?

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

The accused withdrew the question.

466. Q. When you were ordered to execute these natives by Admiral Masuda did you know that this act of executing the death sentence would constitute a crime?

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

The accused withdrew the question.

Recross-examined by the judge advocate:

467. Q. On redirect examination you testified that military personnel could be given disciplinary punishment without a court martial. Could they be given the death sentence without a court martial? gk

A. No.

468. Q. You testified that at the time of the executions you thought that an examination and consultation was a trial, but that later on you decided that it had to be a public trial with certain witnesses. When was this that you decided that it had to be a public trial?

A. After the war when I was asked concerning the native incidents and other incidents I was taught by a person who knew a little about law.

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*James L. Kennedy*  
JAMES L. KENNEDY

469. Q. What did they teach you?

A. I was taught that a trial by regular procedure was such and such a thing.

470. Q. Were you taught that at a trial by regular procedure the accused must be present in the court?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was taught usually that the defendant was to be at the place of the public trial.

471. Q. Were you taught that the defendant had to be present when the witnesses were brought before the court?

A. This I was not taught.

472. Q. Were you taught that any witnesses who appeared before the court had to be sworn?

A. No.

473. Q. Were you taught these things while you were on Kwajalein or while you were on Guam?

A. It was on Jaluit.

474. Q. Were you ever taught the following from the Japanese Naval Court Martial Law with regard to giving an oath: "Article 247. Witness should make an oath unless there is any stipulation contrary to it. Article 248. An oath should be made by witness before questioning begins. However when there is a doubt as to whether he is a right person to make an oath or not then let him make an oath after the inquisition is over. Article 249. An oath should be made on 'the book of oath.' In this book of oath a statement 'I hereby swear that I shall tell the truth. I shall neither hide anything nor add anything.' In a case to make an oath after the inquisition is over, a statement should be written thus: 'I swear that I did tell the truth and I did neither hide anything nor add anything.' The chief judge shall read loudly the letter of oath and let the witness write his name and put his seal on. Article 250. A fact that there is a punishment for person who makes false testimony should be told beforehand to a witness who is to make an oath."

A. No.

475. Q. In October 1945 when you were at Jaluit did you understand the word trial included a procedure by examination and consultation?

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

The judge advocate replied.

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*James P. Kennedy*  
JAN 1, 1946.



The commission announced that the objection was not sustained.

A. I understood it to be included in the word trial.

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

The commission did not desire to examine this witness.

The witness made the following statement:

Concerning the examination and consultation procedure taken in this incident by Admiral Masuda. Admiral Masuda especially cleared a part of his quarters and made use of it for this purpose. Matsui and Isumi, two orderlies, were placed as guards at the entrance, carefully guarded so that no one could come in. Especially at the last examination and consultation when the sentence was to be decided by Admiral Masuda, the judges and myself were all called to attention. He solemnly heard our opinions and decided the decision. During my two years period of duties on Jaluit the fact that the commanding officer cleared a part of his quarters for any purpose this was the only time. Immediately after the end of the war Admiral Masuda was called by Commander McKinson to the Destroyer, and at this time he was asked the following question: There should be eight natives here who came from Kille, what did you do with them? The admiral answered that the natives had committed crimes, by my authority and according to Japanese law by lawful procedure they were executed. Commander McKinson then asked what did you do with the two children. Admiral Masuda replied the two children were the same as the adults, they were spies and knew as well as the adults the conditions on Jaluit. As there was no other way these two children were executed to prevent the desertion of military, gunsokus and natives and the leaking of military secrets which was dangerous to Jaluit. To retain discipline and the lives of the four thousand people on Jaluit they had to be executed. Present at this time were McKinson, his adjutant, myself and an army interpreter who was Sergeant Major Akamatsu, Isamu. Admiral Masuda submitted a report stating that Admiral Masuda had ordered Captain Inoue to perform this execution. This report was taken back together with other documents by Commander McKinson on the fifth of October 1945 at the headquarters of the defense garrison on Enidj. Witnesses to this are Major Furuki, Lieutenant Commander Shintone, Suzuki and Nakamura, myself and Sergeant Major Akamatsu. At this time I did not know the Hague Convention nor the laws of land warfare of the Hague Convention and the report that Admiral Masuda submitted that they had committed the crime of spying stated that the law for spying, article 85 of the Japanese Criminal Code, was applied.

The judge advocate moved to strike out the portion of this statement which related the conversation between Admiral Masuda and Commander McKinson on the ground it was hearsay.

The accused replied.

The commission announced that the motion to strike was denied and that the commission would consider the statement in its entirety and give it the proper weight.

The witness resumed his status as accused.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Thursday, May 22, 1947.

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James A. Henry  
Lieut., Col.

**SEVENTEENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands,  
Thursday, May 22, 1947.

The commission met at 9:15 a.m.

**Presents:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate informed the commission that the interrogatories and  
deposition of Warrant Officer Tanaka had arrived. Defense counsel requested  
an opportunity to examine these documents.

The commission then, at 9:28 a.m., took a recess until 9:48 a.m., at  
which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate was called as a witness for the defense and was duly  
sworn.

**Examined by the judge advocate:**

1. Q. State your name, rank and present station.  
A. James P. Kenny, lieutenant, U. S. Navy, judge advocate of this commission,  
War Crimes Office, Pacific Fleet.
2. Q. If you recognize the accused state as whom.  
A. Inoue, Fumio, former captain, Imperial Japanese Army.

**Examined by the accused:**

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*James P. Kenny*

LIEUT., USN.

3. Q. Are you the legal custodian of a certain document, the interrogatories in the case of Inoue, Fumio, former captain, Imperial Japanese Army and the deposition in the case of Inoue, Fumio, former captain, Imperial Japanese Army by Tanaka, Masaharu?

A. I am.

4. Q. Are these documents signed, sworn to, and otherwise authenticated?

A. The interrogatories are signed by Mr. Akimoto and Mr. Suzuki of defense counsel and Lieutenant Bolton, judge advocate. The deposition is signed by Masaharu Tanaka and sworn to before Captain James A. Moriarty, U. S. Marine Corps, and is further certified by Captain Moriarty, U. S. Marine Corps, and Robert Oldham, yeoman third class, U. S. Navy. JK

The witness produced the deposition of Tanaka, Masaharu, and it was submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, it was so received, and is appended marked "Exhibit 3." The judge advocate read the deposition.

An interpreter read the deposition in Japanese.

Cross-examined by the judge advocate:

5. Q. From the answer to the eighteenth interrogatory, will you read that portion which relates to the age of the child?

A. The answer to the eighteenth interrogatory, it is stated that the child was a boy. Further on in the answer it reads as follows: "The child was about six years old, very small and quite thin."

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

The commission did not desire to examine this witness.

The witness resumed his seat as judge advocate. JK

The defense rested.

The rebuttal began.

James P. Kenny, lieutenant, U. S. Navy, judge advocate was called as a witness for the prosecution and warned that the oath previously taken was still binding.

Examined by the judge advocate:

1. Q. State your name, rank and present station.

A. James P. Kenny, lieutenant, U. S. Navy, judge advocate.

2. Q. Are you the legal custodian of the record of proceedings of the war crimes investigation conducted at Jaluit, Majuro and Kwajalein Atolls, Marshall Islands, by order of the Commander Marshall-Gilberts Area to inquire into war crimes and atrocities on Jaluit Atoll?

A. I am.

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James P. Kenny  
LIEUT., U.S.N.



3. Q. Will you produce this record?

A. I will. Here it is.

4. Q. Are the record of proceedings duly authenticated by the signature of the investigator?

A. The proceedings are duly authenticated by Nathan G. Finkelstein, lieutenant commander, U. S. Naval Reserve, investigator.

5. Q. What portion of the proceedings do you desire to introduce into evidence?

A. That portion of the testimony of the witness, Inoue, Fumio, captain, Imperial Japanese Army which deals with the question of trial of some Mille natives on Jaluit Atoll.

The record of proceedings of the War Crimes Investigation, containing the full testimony of Inoue, Fumio, on October 9, 1945, was submitted to the accused for examination.

The accused requested a short recess for the purpose of examining this document.

The commission then, at 10:32 a.m., took a recess until 10:55 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

James P. Kenney, the witness under examination when the recess was taken, resumed his seat as a witness for the prosecution. He was warned that the oath previously taken was still binding, and continued his testimony. *JK*

(Examination continued.)

The record of proceedings of the War Crimes Investigation, containing the full testimony of Inoue, Fumio, on October 9, 1945, was submitted to the commission, and by the judge advocate questions three and seventeen and the answers thereto of the testimony of the before-named witness was offered in evidence.

The accused made the following objection:

The defense objects to this document or any part of it being offered into evidence at this time. First, it is not an original document and the original has not been accounted for. The document, therefore, violates the best evidence rule. This is a copy, and the copy is not even signed by the officer who was supposed to have ordered the board of investigation. Furthermore, this document is irrelevant. It is not the same case as this case. We object, also, because the judge advocate desires only to offer part of the document in evidence. It is a fundamental rule that if a document is offered into evidence, the entire document must be offered into evidence. The document is offered into evidence in connection with the testimony of *JK*

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*James P. Kenney*  
LIEUT., USN.

the accused. The accused was on the witness stand; the accused was available to the judge advocate. At that time it was proper, and that was the only proper time at which the document could have been offered into evidence. Section 678, page 1126, Wharton's Criminal Evidence, "Testimony taken at a trial cannot be read at a subsequent trial if the witness is obtainable." We can find no other rule which permits the reading into a subsequent trial the testimony taken at a former trial where the witness is available. The only exceptions are in case the witness is not available. This witness was available. He was on the witness stand for about three days on cross-examination. Ample opportunity was given the judge advocate at that time to test his credibility or anything else. In Underhill's Criminal Evidence, page 955, the definition for admitting testimony of missing witnesses, and we read this only to show on what grounds the testimony is admitted when the witnesses are missing, and in this case the witness is not missing. He was on the stand! We read: "The latter trial should be for the same matter, and the accused person should be the same as in the former," and they cite Reynolds v. United States, 98 U. S. 145, 25 L. ed. 244; Shaw v. United States, 1 Fed. (2d) 199; Bridges v. State (Ala.App.), 152 So. 51; Putnal v. State, 56 Fla. 86, 47 So. 864; State v. Emory, 116 Kans. 381, 226 Pac. 754; Commonwealth v. Galle, 275 Mass. 320, 175 N. E. 718, 79 A. L. R. 1380; State v. Brown, 331 Mo. 556, 56 S. W. (2d) 405; Trobough v. State, 122 Neb. 7, 238 N. W. 771; Brismo v. State, 36 Ohio App. 459, 173 N. E. 617; Kelley v. State, 51 Okla. Cr. 249, 300 Pac. 436; Rich v. State, 51 Okla. Cr. 418, 1 Pac. (2d) 805; State v. Edmonson, 120 Ore. 297, 249 Pac. 1098, 251 Pac. 763, 252 Pac. 84. Underhill goes further, on page 957, "A statement by the prosecuting attorney that his witness is dead is no proof of the fact such as will let in the missing witness's testimony," and they cite Flannigan v. State (Okla. Cr.), 29 Pac. (2d) 989. On page 961 of Underhill's Criminal Evidence under section 465 "Mode of proving absence of witness," we read "To admit the former testimony of a witness who is absent, insane, ill or deceased, a predicate should be laid,"....."that the witness has since died, become incapacitated, or cannot be found by due diligence." That is on page 961, section 465.

On page 970 of Underhill's, we read, "It is a preliminary question for the court, upon which it is error to refuse or neglect to rule, whether in any case it is proper to admit the testimony of the witness given at a prior proceeding," citing People v. Willett, 92 N. Y. 29, 1 N.Y. Cr. 355. In Wharton's Criminal Evidence, page 1126, Section 678, "Testimony taken at a trial cannot be read at a subsequent trial if the witness is obtainable." "Some courts deny the right to reproduce the testimony of a witness upon he is shown to be dead, even though he has gone beyond the jurisdiction of the court," citing U.S. v. Angell (C.C.) 11 F. 34; Pittman v. State, 92 Ga. 480, 17 S. E. 856; Collins v. Com. 12 Bush (Ky.) 271; Owens v. State, 63 Miss. 450; State v. Nicholas, 149 Mo. App. 121, 130 S. W. 96; People v. Newman, 5 Hill (N.Y.) 295; "In United States v. Angell (C.C.) 11 F. 34, the court says that under the constitutional provision that in all criminal cases the accused shall enjoy the right to be confronted with the witnesses against him, a witness if living, must be produced, and the mere fact that he is beyond the jurisdiction is immaterial. The court further says that it cannot fairly be maintained that, if the witness has once been confronted with the accused before the committing magistrate, the requirements or guaranties of the Constitution are answered. '.....The fair meaning of the Constitution is that wherever and whenever he is put on his final trial, he

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*James P. Kennedy*  
 LIEUT. GOV.

shall be confronted with the witnesses against him, if they be alive" (Wharton's Criminal Evidence, page 1129, fn. 9.) For these reasons, we hold that the document is not properly presented at the proper time, and it is objectionable evidence and will be most prejudicial to the rights of the accused.

The judge advocate made the following reply:

The defense counsel has failed to examine in the time that he has had the document, what it is, or what it contains. Defense counsel has stated that this is a copy. Defense counsel is in error. This is the original record of proceedings of the war crimes investigation conducted at Jaluit, Majuro and Kwajalein Atolls, Marshall Islands, by order of the Commander Marshall's Gilberts Area, October 7, 1945. This is the original record; the only things in this record which are copies are a duly attested copy of the original order authorizing and convening the investigation dated October 3, 1945, and a copy, duly attested, of the order dated October 6, 1945, appointing an assistant investigator, and a duly authenticated copy of the notice of promotion of the investigating officer, dated October 12, 1945, from the rank of Lieutenant to that of Lieutenant Commander. The report in its entirety and the board of investigation in its entirety, is the original record and is duly signed as the original record by the investigating officer, Lieutenant Commander Nathan G. Finkelstein. Secondly, the defense counsel has stated that the testimony which has been offered in evidence is testimony in a different case. If by that the defense counsel means that this portion of the testimony of Fumio Inoue, refers to a different crime, then, the defense counsel is clearly in error. The portion of testimony which was referred to in the question of the judge advocate on cross-examination during the laying of the foundation for the introduction of this evidence of contradictory statements, clearly and inconsistently showed that the questions and answers relate specifically to the eight Mille natives for whose murder, the accused is here being tried before this commission. Thirdly, the defense counsel has contended that the proper time for the introduction of this evidence of prior contradictory statements was during the course of cross-examination of the defense witness. Defense counsel is in error. I cite Wharton's Criminal Evidence, which was cited by defense counsel, section 1352, which appears under the subject of Impeachment of Witnesses, subparagraph 2, "Contradiction," section 1352 is headed "By rebuttal evidence," and it specifically states, and I quote in part, "Hence, it is proper to admit evidence of any acts of circumstances which are inconsistent with the relevant testimony of the witness. Any evidence which, in any aspect, tends to contradict the witness may not be excluded." Fourthly, Defense counsel has stated that there is no rule which permits the reading of testimony or the utilization of prior testimony where the witness is available. Defense counsel is mistaken by this as to the purpose of the introduction of the prior testimony of the witness at the board of investigation and as to the rule with relation to the introduction of prior testimony by the purpose of contradictions. This testimony which appears in the board of investigation has been specifically utilized for the purpose of establishing prior contradictory statements by the witness. Wharton's Criminal Evidence, section 1356 states: "Foundation for proof of inconsistent statement. A witness cannot be impeached by the proof of contradictory statements until a proper foundation or predicate has been laid by asking him whether he made such a

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*James P. Kenny*  
LIEUT. JUDGE



contradictory statement, or by asking him some kind of warning question to give him a chance to admit, explain, or deny the prior contradictory statement, which he has a right to do." Further in section 1399, of Wharton's Criminal Evidence, section 1399, reads as follows: "Impeaching testimony can be offered when, but only when, the witness denies, directly or qualifiedly, that he made the statement, or when he neither directly admits nor denies the making of such statement, but states that he does not remember whether or not he made it." It is obvious that it was proper for the judge advocate in cross-examination to lay the foundation for the introduction of the prior contradictory statements. The prior contradictory statements by the witness constituted of the testimony before the board of investigation which is now offered in evidence and the statement in the case of Major Furuki, Hidesaku. With regard to the use of prior testimony, the law is contrary to the statements made by defense counsel. Former contradictory testimony can be admitted in evidence, regardless of whether the witness is available or alive, and specifically when the witness is available and has already testified as he has in the instant case, the law clearly provides that evidence of prior contradictory statements made at a former trial may be introduced into evidence; and I cite again Wharton's Criminal Evidence, section 1363, "Former contradictory testimony. A witness may be impeached by proof of a contradictory deposition taken at a time prior to the trial. A witness may also be contradicted by proof of prior contradictory statements made before a grand jury, at a preliminary hearing, at a coroner's inquest, or on a former trial or hearing of the same case." With regard to the use of testimony made on a former trial, Underhill cites numerous decisions of the courts of the various states of the United States. It is obvious that there can be no valid objection to the admission into evidence of that portion of the testimony of Fumio Inoue which has been offered in evidence. JK

The commission announced that the objection of the accused was not sustained, and received in evidence that portion of the war crimes investigation offered by the judge advocate.

6. Q. Refer to these documents and read from the testimony of the accused, Inoue, Fumio, on October 9, 1945, questions three and seventeen and the answers thereto.

The witness read from the testimony of Inoue, Fumio, as follows:

"3. Q. Tell all you know about the execution of the eight natives who were captured April 1945, their capture and all the things leading up to it.  
A. About six months have elapsed so I might have the dates and the names of the natives mixed up but I will give you the true story of it. At that time I was Naval Police Commander. My duties were to check on the civilians and Navy and Army personnel from not eating more than they were allowed to. About the end of March this year there were reports to headquarters that four natives had drifted down to Jaluit. On the following day we had a report that four other natives had also landed on the island north of Medyai. At that time Warrant Officer Omura on Jaluit Island and First Lieutenant Furuno on Chitogen Island notified that the natives had drifted over here. Headquarters had me check on the eight natives because they thought the natives were sent here by the Americans to make some scheme to get the other natives off. Therefore the eight natives were sent to the headquarters. At that time these natives were sent to the headquarters they didn't have any particular person in charge to look after the natives in native cases so the admiral ordered me to investigate these natives. On this atoll here the

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Army and Navy got along very harmoniously so whatever we did we had full cooperation among the units, the Naval police were composed of Army and Navy personnel. I was the commander of the Navy and Army police. The natives that were brought from Jaluit were kept on Ainesan and the other four were kept at ammunition dump on Enidj. I and First Lieutenant Morikawa, intelligence officer, and Shiroshita, civilian interpreter, the three of us interrogated these eight natives. I first asked this question, "Why did you desert Mille?", the natives replied, "Because many of the other natives were being rescued by the other American ships and we had heard an order by the commander of Mille that if any more natives tried to escape or escaped that all the natives left on Mille would be executed; so we made up our minds to take a chance in trying to get picked up by an American ship or drift to Majuro. JK

"The four on Chitogen and the four on Jaluit had conferred with each other before they left Mille.

"17. Q. What kind of trial did they have, or was your investigation the only thing used?

A. They did not have a trial here because even a Japanese soldier they never have a trial and they just investigate and decide what to do according to the report."

An interpreter read these questions and answers in Japanese.

The commission then, at 11:30 p.m., took a recess until 2:55 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

The judge advocate, the witness under examination when the recess was taken, resumed his seat. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

7. Q. Does the record show how many questions were asked the witness Inoue?

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

The accused replied.

The commission announced that the objection was sustained.

8. Q. Does question one asked the witness Inoue relate to this incident?

A. No, question one merely asks the witness' name, rank and present station.

9. Q. Does question two relate to this incident?

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*James P. Kennedy*

LIEUT., GEN.

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

The accused made no reply.

The commission announced that the objection was sustained.

10. Q. Does the record show that this is a judicial proceeding?

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

The accused replied.

The commission announced that the objection was sustained.

11. Q. Does the record show that the witness testified under oath?

A. The record of this investigation indicates that the witness Inoue, Fumio was not duly sworn because it was considered that more information could be secured if the witnesses were not under oath.

12. Q. Is the testimony of the witness Inoue not under oath admissible in this trial in accordance with section 146 of Naval Courts and Boards which reads: ".....When a board of investigation is not required by its precept to take testimony under oath, the record of such board can not be introduced as evidence in subsequent proceedings, except as provided in section 222..?"

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

The accused made no reply.

The commission announced that the objection was sustained.

13. Q. Does the record show that the witness Inoue testified voluntarily?

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.

14. Q. Does the record show that the witness Inoue was informed of his rights as a defendant?

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

The accused made no reply.

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

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*James P. Keeney*  
LIEUT. JAG.



The commission announced that the objection was sustained.

15. Q. Does the record show that the witness Inoue had the benefit of counsel?

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

The accused replied.

The commission announced that the objection was sustained.

16. Q. Does the record show that the witness Inoue was informed that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith which had not been fully brought out by previous questioning? JK

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

The accused replied.

The commission announced that the objection was sustained.

17. Q. Does the record show that the witness was duly warned after he finished testifying?

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

The accused made no reply.

The commission announced that the objection was sustained.

18. Q. Does the record show that the witness waived the right to have counsel?

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

The accused made no reply.

The commission announced that the objection was sustained.

19. Q. Does the record show that section 734(d) to wit: "....Should a defendant waive his right to counsel, the president or senior member shall warn him that sworn testimony is admissible as evidence before courts martial, as provided in the 60th A.G.N. or the general rules of evidence, and again advise him to provide himself with counsel, informing him that counsel will be assigned him should he so desire....." was complied with? JK

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

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*James P. Kenny*

LIEUT., JAG.

The accused made no reply.

The commission announced that the objection was sustained.

20. Q. Does the record show who the members of the Board of Investigation are?

A. Yes, it does.

21. Q. Who were the members of this Board of Investigation?

A. The record contains a statement dated 3 October 1945 from Commander Marshalls-Gilberts area to Lieutenant Nathan G. Finkelstein, U. S. N.R., which appoints the said Lieutenant Finkelstein to act as investigator into the war crimes and atrocities. The record also contains a statement dated 6 October 1945 from the Atoll Commander Majuro to First Lieutenant Jesse O. Bishop appointing the said Lieutenant Bishop as an assistant investigator in this investigation.

22. Q. Does the record show that both these members were sworn?

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

The accused replied.

The commission announced that the objection was sustained.

23. Q. Did both of the members sign the board report?

A. The report of this investigation is signed by Lieutenant Commander Nathan G. Finkelstein, U.S.N.R., as investigator.

24. Q. And the other member did not sign the report?

This question was objected to by the judge advocate on the ground that there has been no indication that the other person was a member.

The accused made no reply.

The commission announced that the objection was sustained.

25. Q. Does the record show that the board reported any facts?

A. The record contains a summary of all factual information secured by the investigator during the course of this investigation.

26. Q. What, if any, facts did they report regarding the result of the investigation of the witness Inoue?

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

The accused replied.

The commission announced that the objection was sustained.

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*James P. Kenny*

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27. Q. What, if any, facts did they report as a result of the answers that the witness Inoue gave to the questions three and seventeen?

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

The accused made no reply.

The commission announced that the objection was sustained.

28. Q. Does this report show that the board made any recommendations for further proceedings such as to try the witness Inoue whose testimony you have read in part as answer to questions three and seventeen?

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

The accused made no reply.

The commission announced that the objection was sustained.

29. Q. Does the record show that the proceedings of the Board of Investigation were approved by the convening authority?

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

The accused made no reply.

The commission announced that the objection was sustained.

30. Q. Was question seventeen the last question asked the witness Inoue regarding this incident?

A. No.

31. Q. Will you read such further questions as were asked the witness Inoue regarding this incident?

This question was objected to by the judge advocate on the ground that question seventeen relates to the trial of the Mille natives and the judge advocate does not believe that there are any further questions regarding this trial given the Mille natives which was the purpose of only reading question seventeen.

The accused made no reply.

The commission announced that the objection was sustained.

32. Q. You stated that you were the legal custodian of the document. How did you get custody of this document?

A. At the time I was assigned to the War Crimes Office, Pacific Fleet, this document was a part of the records of the War Crimes Office and automatically by my attachment to that office I became one of the custodians of that record.

33. Q. Is this document a confidential document?

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*James P. Kenny*  
LIEUT., USN.

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

The accused made no reply.

The commission announced that the objection was sustained.

34. Q. Are you well acquainted with the naval regulations and other regulations regarding classified material?

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

The accused made no reply.

The commission announced that the objection was sustained.

35. Q. By what authority do you offer into evidence this document into the records of court that is a public court?

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

The accused made no reply.

The commission announced that the objection was sustained.

36. Q. By what authority do you read from this document in a public session of this court?

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

The accused made no reply.

The commission announced that the objection was sustained.

Reexamined by the judge advocate:

37. Q. You were asked by defense counsel "Was question seventeen the last question asked the witness Inoue regarding this incident?" You answered, "No." Was question seventeen the last question which relates to the subject of whether a trial was held for the Mille natives who were executed?  
A. Yes.

Recross-examined by the accused:

38. Q. Were the other questions after question seventeen a part of the proceedings of which the proceedings are confidential?

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

The accused made no reply.

The commission announced that the objection was sustained.

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*James P. Kenny*  
Lieut., USN.

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

The commission did not desire to examine this witness.

The witness resumed his seat as a judge advocate.

The commission then, at 3:47 p. m., took a recess until 3:58 p. m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate, a witness for the prosecution, was recalled and warned that the oath previously taken was still binding.

Examined by the judge advocate:

1. Q. State your name and rank.

A. James P. Kenny, lieutenant, U. S. Navy.

2. Q. Are you the legal custodian of the record of proceedings of the Military Commission convened at the United States Pacific Fleet, Commander Marianas, Guam, Marianas Islands, in the case of Furuki, Hidesaku, major, Imperial Japanese Army, on March 1, 1947?

A. I am.

3. Q. Will you produce this record?

A. I will. Here it is.

4. Q. Are the proceedings duly signed and authenticated by the president and all the members of the commission and the judge advocates?

A. They are.

5. Q. What part of the proceedings do you desire to introduce into evidence?

A. I wish to introduce that portion of the testimony of Inoue, Fumio, which deals with the question of trial on Jaluit Atoll during the period of the late war.

The record of proceedings was submitted to the accused and to the commission and such relevant portions thereof that contain the testimony of the before-named witness, Fumio Inoue, at the trial of Major Furuki, that relate to trials of natives held on Jaluit were offered in evidence.

The accused read a written objection to this document being received into evidence, copy appended marked "CC."

The judge advocate read a written reply, copy appended marked "DD."

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*James P. Kenny*

WASH. D.C.

The commission announced that the objection was not sustained and that the portions of the record referred to would be received in evidence.

6. Q. Will you read from this record such portions from the testimony of Inoue, Fumio, giving the date and place of the proceedings which relate to the question of trial of natives on Jaluit Atoll?

The witness read from the testimony of Inoue, Fumio, captain, Imperial Japanese Army, copy appended marked "Exhibit 4."

7. Q. Do you wish to have marked as part of the record in evidence a transcript of this testimony that you have just read?

A. I do.

This portion has already been admitted in evidence and is therefore appended marked as "Exhibit 4."

The commission then, at 4:32 p.m., adjourned until 9 a.m., tomorrow, Friday, May 23, 1947.

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*James P. Kenney*

LIEUT., USN.

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**EIGHTEENTH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Friday, May 23, 1947.

The commission met at 9:15 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garberino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

James P. Kenny, the witness under examination when the adjournment was  
taken, resumed his seat. He was warned that the oath previously taken was  
still binding, and continued his testimony.

Cross-examined by the accused.

8. Q. Were you present in court when Inoue testified in the Furuki trial  
and answered questions 167 to 172?  
A. I was.

9. Q. Does the record which you read show that the witness, Inoue, answered  
questions 167 to 172 in English?

A. The record contains the replies of the witness in English, but having  
been present at the trial and having prepared the complete record of this  
case, I am aware of the fact that the witness did testify in Japanese and  
that in turn was translated into English by an official interpreter.

10. Q. Does the record show that the witness Inoue testified in the Furuki  
trial for the offense that he is now being tried for?

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

The accused made no reply.

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*James P. Kenny*  
LIEUT., USN.

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The commission announced that the objection was sustained.

11. Q. Do questions 167 to 172 and the answers which the witness, Inoue, was alleged to have made and which you read into the record of this court relate to the same offense for which Inoue is now being tried?

A. These questions and answers that have been read by me from the testimony of Inoue, Fumio, did not relate to any particular offense at all, but related to the general question of trial, and in particular to the question of the mode of trial on Jaluit Atoll.

12. Q. Did the answers which the witness, Inoue, gave to these questions 167 to 172 state specifically that he referred to the trial of the Mills natives?

A. Neither in the question nor in the answer is there any reference to any specific incident on Jaluit Atoll, but the questions are all general and, as stated in my previous answer, relate in general to the question of trial on Jaluit Atoll.

13. Q. Does the record show that the witness, Inoue, was sworn?

A. Yes.

14. Q. Are you familiar with the rule of evidence laid down in Wharton's Criminal Evidence, Volume II, pages 1125 and 1126: "The view has been taken, however, that if the accused is examined under oath before a coroner's jury or a committing magistrate, his testimony cannot be regarded as voluntary, and cannot be reproduced," citing the following: State v. Perry, 106 S. C. 289, 91. S. E. 3007

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

The accused made no reply.

The commission announced that the objection was sustained.

15. Q. Are you familiar with the rule laid down in section 638, Volume II, Wharton's Criminal Evidence, which reads: "Testimony taken at a trial cannot be read at a subsequent trial if the witness is obtainable."

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

The accused made no reply.

The commission announced that the objection was sustained.

16. Q. Can you as a judge advocate get this same evidence as oral testimony from the witness, Inoue?

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

The accused made no reply.

The commission announced that the objection was sustained.

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*James P. Kenney*  
Lieut. Col.

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17. Q. Are you familiar with the rule of law laid down for this in section 454, Naval Courts and Boards, "Limitation when a deposition is used. In any case where a deposition is used in evidence by the prosecution by reason of the fact that oral testimony can not be obtained, as authorized by article 68, A. G. N., the maximum punishment which may be imposed shall not extend to death or to imprisonment or confinement for more than one year"?

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

The accused made no reply.

The commission announced that the objection was sustained.

18. Q. Does the record show that the witness, Inoue, was informed that he was privileged to make any further statement as a matter of record which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questions?

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

The accused made no reply.

The commission announced that the objection was sustained.

19. Q. Was Major Furuki tried for the same offense as Captain Inoue is being tried for in this case?

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

The accused made no reply.

The commission announced that the objection was sustained.

20. Q. Is the witness, Inoue, who answered questions 167 to 172, inclusive, the same Inoue, Fumio, captain, Imperial Japanese Army, who is the accused in this present case?

A. He is.

21. Q. Does the record in the Furuki case show that the witness, Inoue, was allowed to verify the testimony he gave, particularly, the answers which he gave to questions 167 to 172, inclusive?

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

The accused made no reply.

The commission announced that the objection was sustained.

22. Q. Is the testimony that you read of Inoue from the Furuki case, all of the testimony concerning trial?

A. It is not.

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*James P. Kenny*  
LIEUT., USN.



23. Q. You stated that it was not all of the testimony on trial. What part of this testimony is it?

A. It is that portion that runs from question 167 to the answer to question 172.

24. Q. When you stated that this testimony was not all the testimony concerning the trial, what did you understand trial to be when you answered the last question?

A. I understood that counsel meant by this question any testimony in this previous testimony of Captain Inoue which dealt with the matter of the conduct of trial on Jaluit Atoll.

25. Q. The question I am asking is when I asked you was this all of the testimony of Captain Inoue concerning trial you answered that it was not. In this case, when you answered that it was not, what did you understand trial to mean?

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

The accused withdrew the question.

26. Q. In Inoue's testimony in the Furuki case, is this part from one sixty-seven to one seventy-two all of the testimony of Captain Inoue in which the word trial is used? *J-4*

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

The accused withdrew the question.

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

The commission did not desire to examine this witness.

The witness resumed his status as judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence, and present occupation.  
A. Shintone, Sanjire, address Kagoshima-ken, Kawanabe-gun, Kasada-cho, Jito-cho 201. I am a farmer.

2. Q. If you recognize the accused state as whom.  
A. I think he is Captain Inoue.

3. Q. During the year 1945, were you stationed with the Japanese forces on Jaluit Atoll? *J-4*  
A. Yes.

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*James P. Kenny*  
LIEUT., USN.

4. Q. To what organization were you attached?

A. I was attached to the Jaluit Defense Garrison.

5. Q. In what capacity?

A. I was the head engineering officer and also the head repair officer. I was attached to the Jaluit Naval Guard Unit in October, 1943. After the executive officer of this unit was wounded, I acted as executive officer, but I was not the executive officer ordered by general headquarters. I was also in charge of communications, transportation, also a member of the munitions committee. As the self-supporting measures committee was set up I became head of this committee. But my main duties were as head engineering officer and head repair officer.

6. Q. Who was the atoll commander during the first six months of 1945?

A. The commanding officer Masuda was commanding officer from the beginning.

7. Q. During the first six months of 1945, were you the executive officer?

A. The person who was wounded was the executive officer, but as a necessary measure or through necessity, I was ordered to be the executive officer. I do not remember exactly the date that I was ordered to act as executive officer. I may have been the executive officer during this period.

8. Q. During the early part of the year 1945, did you learn that some natives from Mille Atoll had landed on Jaluit and had been taken prisoners by the Japanese forces?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I heard later that natives had landed at two places on Jaluit Atoll. One place on an island north of Enidj, I do not remember the name, and another on the south island. They were investigated and I heard from no one in particular that they were spies. I do not remember exactly who I heard it from.

9. Q. Do you recall the month of the year 1945 in which this information came to your knowledge?

A. It was the beginning of 1945, and I think it was around March or April. That is about all I can remember.

10. Q. Do you know how many natives were involved in this incident?

A. As it was outside of my authority, and I received no detailed reports concerning this, I do not know. But as they came in a small boat I presumed them to be from six to seven or eight natives.

11. Q. Were you ever directed to perform the duties of a judge in any proceedings concerning these natives?

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

CERTIFIED TO BE A TRUE COPY:

*James P. Kenny*  
James P. Kenny,  
Lieutenant, U. S. Navy,  
Judge Advocate.

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The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

12. Q. Did Admiral Masuda ever state in your presence that, "On my authority the highest examination and consultation possible on Jaluit will be conducted by the ranking officers. Furuki, Shintome and myself shall act as judges and Inoue shall act as a judge advocate"?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I have never been ordered this.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

13. Q. Were you present at any time when these Hille natives were discussed on Jaluit?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. There was a time when I went to report on my duties. At this time when I went Captain Inoue was reporting something by document to the battalion commander and the commanding officer. In what I remember, I remember Captain Inoue stating that among the natives were women and children and that these women and children should be confined on another island on Tuiet Island, and as there was a shortage of labor, use them to gather coconuts. As I was then head of the self-supporting measures committee, this was of interest to me. I was not asked my opinion, but I stated the same opinion as Captain Inoue and Major Furuki also stated the same opinion. The commanding officer then stated he was very sorry for the women and children, but if they were free they may spy, and, therefore, disrupt military discipline, and there was no other way. As I thought the opinion of the commanding officer was firm and could not be helped, as I stated before. I was very busy with my duties and left after about ten or fifteen minutes.

James P. Henry  
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CERTIFIED TO BE A TRUE COPY

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14. Q. Were you directed by anyone to attend this discussion?

A. I was not directed. I went to report to the commanding officer on my duties which were mainly engineering and repair and I was not directed by anyone.

15. Q. Were you ever present in the Admiral's air raid shelter at a discussion of these Mille natives?

A. Other to the time I related before, I was never present.

16. Q. This incident that you have just described to us, where did that take place?

A. As I recall, it was on the veranda, the veranda of the officers' mess.

17. Q. While you were present at this discussion did you sign any document concerning these Mille natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

18. Q. Did you ever see a document concerning these Mille natives which contained their names, a list of the crimes, an opinion by Captain Inoue and a decision of Admiral Masuda?

A. No.

19. Q. Did you ever see any document concerning these Mille natives?

A. I do not remember.

20. Q. Did you ever see the clothes of the Japanese who, it was claimed, had been murdered by these natives?

A. No.

21. Q. Did you ever examine the boat in which these Mille natives arrived on Jaluit?

A. By order of the commanding officer, I was ordered to examine the boat. This was, because at this time, we were transporting coconuts, chagaro and vegetables for self-supporting means and to see if it could be used in this capacity. The width was about one meter, the length about three meters, and it was a Japanese type of boat and as I remember it may have had an oar or a pole.

22. Q. Did you ever see any of the contents of the boats in which the Mille natives arrived on Jaluit?

A. As I remember, and as I stated before, in the boat was an oar or a pole or something to steer the boat.

23. Q. Was that the only content of the boat?

A. I did not discover anything in the boat, or was there anything in the boat besides the oar.

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James P. Keating  
Lieut., USN.

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24. Q. After your inspection of the boat, did you report concerning the inspection to Admiral Masuda?

A. I did.

25. Q. What did you report to him?

A. As the motive was to see if the boat could be used by transportation, I answered that it could be used. As I recall, this boat was later sent to an island north of Enidj to see if it could be used.

26. Q. Did Admiral Masuda ever say in your presence, "Tomorrow, I shall hold an examination and consultation to determine the sentence of these natives. Inoue, in your capacity as a judge advocate, shall give an opinion as to their punishment. Tomorrow, Furuki and Shintome prepare opinions as to sentence."

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember having been told this.

27. Q. Did you ever relay an order from Admiral Masuda to Inoue by saying: "This morning natives from another island who had sneaked into Jaluit had been brought here. Admiral Masuda has ordered Morikawa to investigate them, but he thinks one is not sufficient. Admiral Masuda ordered that you shall also perform this investigation."

A. I do not remember being told this and relaying it to Captain Inoue, as head of the special police section, they directly came under Admiral Masuda, and this was not a thing that should be relayed through myself.

28. Q. Were you in the presence of Admiral Masuda at any time when he directed anybody to act as a judge or a judge advocate in any proceeding concerning the Mille natives?

This question was objected to by the accused on the ground that it was leading, too broad in its scope, irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I have never been in the presence of Admiral Masuda when he said this.

Cross-examined by the accused:

29. Q. When you were asked by the judge advocate, do you recognize the accused, you stated that "I think he is Captain Inoue." Don't you know Captain Inoue well?

A. I know him.

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*James P. Henry*

WITNESSES.

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30. Q. Did you say, "I think it may be he" because you did not remember him clearly?

This question was objected to by the judge advocate on the ground that the expression "I think" is often the way in which the Japanese acknowledge something as a fact.

The accused replied.

The commission announced that the objection was not sustained. JK

The question was repeated.

A. I know the accused Inoue well, but in this question I was asked: Do you know the defendant? Had I been asked: Do you know Captain Inoue, I would answer, I know, but I was asked, Do you recognize the defendant, and it is hard for me to say the defendant Inoue, when a short time ago we were together. In the first place, I cannot speak English, and I would like to say at this time it is difficult for me to get the meaning of the question when it is asked in English and translated into Japanese.

31. Q. You testified as to your position at the beginning of 1945 as that of acting executive officer and also the communications officer. At this time, do you know who was the next ranking officer after Admiral Masuda?

A. In the navy, I was the senior officer; in the army, Major Furuki was one year senior to myself. Major Furuki was the senior officer in the army and was one year senior to myself.

32. Q. As for yourself being the senior naval officer also the executive officer, I believe you know concerning military matters at Jaluit. How about this? Do you?

A. I think all of you think this is how it was, but this is the organization in regular time, and if I was an executive officer who was dispatched from central headquarters, this may be true, but the regular executive officer was wounded and the position was vacant for a long time. No replacements came and the battle conditions became fiercer and I was the officer who was but a person who had come up from the ranks in the engineering department. Only because I was the senior navy officer, I was ordered to be the acting executive officer. I was in the engineering department and I knew the duties of the engineering department, but I did not know the duties of the executive officer. I declined saying that I cannot do the duties. At the time the commanding officer stated that at headquarters, he had many competent young officers; the commanding officer himself was old and experienced and that I need be in name only, and I was offered to be the acting executive officer; but my work included division officer of the engineering department, division officer of the communication department, division officer of the transportation department. The work I was doing was the work of ten people, and unless I tell the battle conditions at that time it may not be clear. As the saying goes, no food, no ammunition. The conditions on Jaluit were deplorable. There was no food, also work that was no part of my duties. JK

The judge advocate moved to strike the words "As the saying goes, no food, no ammunition. The conditions on Jaluit were deplorable. There was no food, also work that was no part of my duties." On the ground that it was irrelevant and immaterial. JK

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James P. Keeney  
Lieut., JAG.

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The accused made no reply.

The commission directed that the words be stricken out.

The witness was duly warned.

The commission then, at 11:36 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

33. Q. To what extent does the executive officer know about the public duties of the commanding officer?

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

The accused withdrew the question.

34. Q. As acting executive officer to what extent did you know what the commanding officer did?

A. As acting executive officer the executive officer is closest to the commanding officer. In seagoing units it is an important position and many times he does the work maybe of a department head. On Jaluit the commanding officer was a captain and the executive officer was to be a lieutenant commander or a lieutenant, and a person which at times may have to take over the work of the commanding officer. Usually a person in this position was a graduate of a school. At that time the battle conditions became fierce, Kwajalein fell, Saipan fell and transportation to the rear was cut off. There were no replacements in personnel, there was no supply in ammunition and arms and this was impossible. After the executive officer was wounded the position was vacant for a long time. I was officer in charge of the Engineering Department and a person who had worked up through the ranks and I was executive officer only in name. I could not perform the duties thoroughly and also from the standpoint of my work I would not do it or take the place of the commanding officer. I did not have the ability. To the commanding officer at headquarters there were attached many people to help the commanding officer directly. I could not look after the work of the executive officer or the work of the commanding officer well. Especially engineering and repair was the most important function on Jaluit. There was the repair to the cannon and machine guns and looking after the engineering equipment. The repairs of this and the repairing of boats were the most important work. When there was no food boats were needed to transport grasses gathered on other islands, coconuts from outlying islands. The boats had to be made available....

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The commission directed that the question be repeated in Japanese and the witness was directed to answer it.

A. (Continued.) Concerning the work of the commanding officer I do not know because I was very busy as I stated before and the commanding officer gave orders directly to people under him who were in charge of the various works.

35. Q. Do you mean that you were not capable of performing the duties as executive officer?

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

The accused replied.

The commission announced that the objection was sustained.

36. Q. In the testimony of this morning and this afternoon you stated the reasons you did not know about the work of the commanding officer was that you were very busy in your own work and another that the commanding officer did not tell you about his work. Is this correct?

A. As I have stated before I had the duties of repairing arms and keeping up the boats, this was very important. I was always told to keep these things going, I could not have done the work of the commanding officer, I repeat, my work was most important.

37. Q. This morning you testified that you did not know the work of the commanding officer, one reason you gave was because you were very busy and you stated facts concerning that the commanding officer ordered directly the work to the people in charge and did not tell you about it so you did not know about the work of the commanding officer. I am asking you if this is correct.

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

The accused replied.

The commission announced that the objection was not sustained.

A. As I understand it I did not say I did not know the work of the commanding officer, what I said was I knew what I was ordered. What I was not ordered I did not know, and as I hear this question it sounds as if what I was not ordered I knew. I knew what I was ordered, but I do not know what was ordered other persons. The commanding officer had persons directly under him and the commanding officer was also the supreme commander and he can order anyone directly. I did not say that I was ordered something and relayed it to someone else.

38. Q. It is still not clear, but do you mean that the commanding officer told you everything that that was connected with the duties of executive officer. Is this correct?

A. It is the will of the commanding officer, he can tell me anything he wishes and under the conditions on Jaluit with no food, no ammunition there may have been things which he could not relay to me.

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LIEUT., USN.

39. Q. You stated that you had the duties as the communication officer, therefore did you know about the conditions on the other islands?

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

The accused replied.

The commission announced that the objection was sustained.

40. Q. At this time you were the communication officer. Did you know about the conditions on Mille?

A. As communications officer I should know all about the dispatches, but as I stated before I was very busy with many duties, but as I had many duties and when I was ordered acting executive officer I declined this, but the commanding officer said that my duties were getting more important and that he wished I would strive to accomplish this work. This was also when there was an ensign communication officer who was in charge of communications and also there were officers attached to headquarters and so I did not actually see all the dispatches.

41. Q. Then to what extent did you know about the conditions on Mille?

A. I knew hardly a thing.

42. Q. Do you know about the natives who sneaked into Jaluit at the end of March 1945?

A. This morning I stated that I knew that they had drifted to Jaluit.

43. Q. Do you know when these natives came to Jaluit, did you know that one of the officers of Masuda, Major Furuki, was absent from the main island?

A. I do not remember exactly if Major Furuki was absent or not.

44. Q. Is the place where Major Furuki was staying and where you were staying far apart?

A. I can not tell anything but what I remember.

The commission directed that the question be repeated to the witness in Japanese and directed the witness to answer the question.

A. (continued.) Usually Major Furuki is at headquarters, but whether he was away from headquarters or whether he was at the outlying island I do not remember exactly.

The commission directed that the question be repeated to the witness in Japanese and directed the witness to answer the question.

A. (continued.) I think they were about thirty to forty meters apart.

45. Q. And when Major Furuki was absent from headquarters for a considerable period of time, didn't you know about it?

A. Major Furuki was out many times on inspections and I do not exactly remember whether Major Furuki was absent at the time of the incident.

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46. Q. When these natives who sneaked into Jaluit were brought to headquarters is it not a fact you were present when Morikawa and Inoue were ordered to investigate them?

A. I do not remember of being present.

47. Q. Have you heard of this fact from anyone?

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

The accused replied,

The commission announced that the objection was not sustained.

A. No.

48. Q. Do you know about a native who escaped?

A. I do.

49. Q. Tell us what you know.

A. The native escaped from the place where he was and I ordered all the people to search for him so not only myself but all the people knew.

50. Q. When this native escaped is it not true that you were very angry at the guard and that you struck the guard?

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

The accused replied,

The commission announced that the objection was not sustained.

A. I did not strike the guard. In the navy there is the officer-of-the-day and also there is the senior petty officer who is in charge of the guard and this is the person who directly instructed and watched over the guards. I absolutely did not strike the guard. JK

51. Q. Is it true that you became angry?

A. I may have told the senior petty officer of the guard that he should be more careful.

52. Q. You stated that you may have. Don't you remember exactly if you did or not?

This question was objected to by the judge advocate on the ground that it went into collateral material which was irrelevant and immaterial.

The accused withdrew the question.

53. Q. Is it true that you lead the search for the natives on the coast?

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

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The accused replied.

The commission announced that the objection was sustained.

The commission then, at 3:13 p.m., took a recess until 3:38 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

54. Q. This morning you answered to a question of the judge advocate, "There was a time when I went to report on my duties to the commanding officer. At this time when I went when Captain Inoue was reporting something by document to the Battalion Commander and the commanding officer. From what I remember what Captain Inoue was stating that among the natives were women and children and that these women and children should be confined on another island. Though I was not asked my opinion I expressed the same opinion and so did Major Furuki. The commanding officer stated that he was sorry for the women and children, but if they were confined they may escape and spy and disrupt military discipline and that there was no other way." Do you know if this investigation and meeting was held in secret or in public?

A. I can not say whether it was held in secret or in public.

55. Q. Did Admiral Masuda ever tell you, who was the executive officer, anything concerning this native incident?

A. Other to the time I came upon this meeting I have heard nothing from the commanding officer. OK

56. Q. When you came upon this meeting was this the first time you found out about this incident? OK

A. The short time before this or after I do not remember exactly I heard that the natives who had drifted from Kille were spies. Other to this I did not know.

57. Q. Then you say that you knew that the natives were spies, but you did not know the substance concerning these natives. Is this correct?

A. Other to this I do not know.

58. Q. You, a person who knew nothing about the circumstances of the incident, came upon this meeting and expressed your opinion. How could you a person who knew nothing about the incident express your opinion?

A. I had heard the natives were spies before this and heard Captain Inoue. I suddenly came upon this meeting and Captain Inoue was saying that the women and children should be confined on an outlying island. As I am old and felt sorry for the women and children, even though they were guilty, without being asked I expressed my opinion. OK

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*James P. Kennedy*

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59. Q. Then is it correct that you expressed your opinion without knowing about what the natives had done?

This question was objected to by the judge advocate on the ground that counsel was misquoting the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. I heard they were spies, and I had gone in suddenly to the meeting. Among the spies there were women and children. At this moment I felt sorry that the women and children should be executed and I expressed my opinion.

60. Q. Then is it correct that you did not know anything about the contents of this incident, but that you felt sorry for the women and children so you expressed your opinion. Is this correct?

A. Yes.

61. Q. Did you know that this was an important meeting to decide whether a person should be executed or not?

A. When I came upon the meeting unexpectedly I did not have the time to think what it was such an important thing because I was so busy in my work.

62. Q. You stated that you expressed your opinion to save them at this time because you were so busy you did not have the time to realize what an important meeting this was. Are you answering this seriously? JK

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

The accused replied.

The commission announced that the objection was sustained.

63. Q. You stated you expressed your opinion without being asked, you also stated that you knew nothing about the contents of this incident and in this important meeting did Admiral Masuda permit you to express your opinion?

This question was objected to by the judge advocate on the ground that the accused is characterizing the testimony of the witness and that it was irrelevant and immaterial.

The accused withdrew the question.

64. Q. You stated when Captain Inoue expressed his opinion concerning these four people, the women and children, you expressed your opinion without being asked and you, who did not know the contents of this incident, expressed your opinion. Is this correct? JK

This question was objected to by the judge advocate on the ground that it incorrectly characterized the testimony of the witness.

The accused replied.

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LIEUT., USN.



The commission announced that the objection was sustained.

65. Q. In your position as executive officer, though you may not be directly connected with these incidents, do you come into the knowledge of these incidents through what is passed to you by Admiral Masuda, or by what is reported to you?

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

The accused withdrew the question.

66. Q. In your position as executive officer, though you may not be directly connected with this incident, do you come into the knowledge of these incidents through what is passed to you by Admiral Masuda or by what is reported to you? JX

A. As the executive officer, the commanding officer did not pass any information to me. If it was the usual executive officer all these arrangements should be made by the executive officer and reported to the commanding officer. Meetings and investigations prepared by the executive officer was the usual procedure in the Japanese navy, but in Jaluit, as I stated before, I was not the regular executive officer and due to these circumstances I was not passed this information from the commanding officer.

67. Q. Then is it correct that Admiral Masuda ordered you to your position of executive officer and then overlooked you and did not pass you information?  
A. Yes.

68. Q. During the war is it correct that when the men under you did not call you executive officer you were very angry?

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

The accused made no reply.

The commission announced that the objection was sustained.

69. Q. Is there any instance in which after the end of the war you disliked the name executive officer and had them call you Head Engineering Officer?

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

The accused made no reply.

The commission announced that the objection was sustained.

70. Q. When these natives were executed do you know of the fact that you ordered five men as guards?

This question was objected to by the judge advocate on the ground that it characterized the testimony of the witness by the words "do you know of the fact."

The accused withdrew the question.

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71. Q. Do you know that five navy men were sent out as guards at the time of the execution?

A. On Jaluit there were many bombings and work details were put out frequently there were many working details. I do not remember being ordered to send a working detail for the execution.

72. Q. In the period from April 8 to 13 or 14 did you ever put out five guards from the navy?

A. When you say guard I think you mean sentries. You say you mean in the navy, these come under the direction of the officer-of-the-day and guards are put out by the army and the navy and I do not remember putting out such and such a number on a certain day.

73. Q. Do you know about the execution of the natives?

A. I know about the execution. After the end of the war the commanding officer went to complete the surrender to the commander of the occupation forces. At that time he was asked about the natives, and the commanding officer answered by Japanese laws they have been disposed of and it was nothing to be ashamed of before anyone's eyes. I heard this after he had returned from the boat and I heard that they had been executed for the first time. The commanding officer came back from the boat and I believe it was on the veranda where we were assembled that I heard this.

The judge advocate moved to strike out the portion of the answer beginning with the words "and the commanding officer answered.....", on the ground that it was hearsay.

The accused replied.

The commission announced that the motion to strike was not sustained and that the answer would be given its proper weight.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Saturday, May 24, 1947.

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*James P. Kennedy*

WITNESSES, ETC.

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SEVENTEENTH DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Saturday, May 24, 1947.

The commission met at 9 a. m.

**Presents:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Rosece, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatsch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Shintone, Sanjiro, the witness under examination when the adjournment was  
taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Cross-examination continued.)

74. Q. In yesterday's testimony, you testified that Captain Inoue expressed  
his opinion to Admiral Masuda to stay the execution of the children and the  
women and confine them on an outlying island, and that you also stated the  
same opinion. Did you ever ask anyone as to what happened to these natives  
after this?

A. No.

75. Q. You stated that you expressed your opinion to save their lives. Did  
you have no interest in what happened to them?

A. It was not that I was not concerned with them, but there were people who  
were in charge of this and it wasn't that I did not have concern, but I did  
not think deeply about it.

76. Q. Have you ever been questioned as a witness in the Furuki trial in this  
court room?

A. I was called and was on the witness stand.

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LIEUT., USN.



77. Q. When you testified in the Major Furuki case, do you remember testifying that in front of Admiral Masuda, Major Furuki, and Inoue, you expressed opinions concerning the execution of the natives?

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

The accused replied.

The question was repeated.

The commission announced that the objection was sustained.

78. Q. Did you ever make a statement, affidavit, before an officer of the legal section in Tokyo before you came to Guam, on the twenty-sixth of March, 1947, concerning the Furuki incident and your replies to the questions?

A. They did not say that it was the Inoue incident or the Furuki incident, but I was questioned previously.

79. Q. You just testified that you were not told it was the Inoue incident or the Furuki incident, but you stated that you replied to these questions. Under what understanding did you reply to these questions?

This question was objected to by the judge advocate on the ground that it was too vague, irrelevant, immaterial, and too broad in scope. JK

The accused replied.

The commission announced that the objection was not sustained.

A. I was asked concerning native incidents and I answered under the understanding that it concerned the native cases.

80. Q. When you say "native incidents," which native incidents do you mean? JK

A. I was also asked this at Tokyo, but when I answered this, I was not stating as to any specific native incident.

81. Q. Then, do you mean that includes both the Jaluit native cases and also the Mills native case? JK

This question was objected to by the judge advocate on the ground that it was too broad and misleading.

The accused replied.

The commission announced that the objection was not sustained.

A. As I was not involved in these incidents, I could not say. If I was involved, I may have been able to answer directly, Inoue case or Furuki case; but because I wasn't involved, I could not answer, and if I was involved deeply, I think I would have been able to answer your question.

82. Q. Therefore, I am asking, when you answered the questions to this affidavit, did you answer them including both of the cases?

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James I. Kennedy  
Lieut., JAG.

This question was objected to by the judge advocate on the ground that it was too broad and vague.

The accused withdrew the question.

83. Q. To question twenty-one in the affidavit, "Were these natives given a court trial before execution?" you answered, "I would imagine that a trial had been given the natives, as it was thought that they were spies." Is this correct?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and that the prior statement quoted was hearsay, and the answer to the previous question had not been quoted in full.

The accused replied.

The commission announced that the objection was not sustained.

A. At Tokyo, I was asked concerning spies and I answered as the defense counsel has pointed out, "I think a trial was held." After this I was again questioned and I was told that Inui who was a paymaster lieutenant, said there was no trial. Inui says he thinks there was none and you say you think there was. Why is this? As they were spies, it is natural that they be investigated, a trial held before they were punished, and this I presumed as common sense; I presumed this and I replied. I was again asked, "Inui says that it may not have been a trial, and you say that there may have been a trial. How is this?" In the Japanese navy, whenever a person is punished, there would be a trial and in the Japanese service, whenever a Japanese person is punished, I think there would be a trial. I do not think they would have done such a thing as this without a trial, and this is how I replied. And also, I do not know if Inui actually said this or not; I did not hear directly. That is what I was told by the people questioning me, and I would like to point this out.

84. Q. Can the same thing that you replied in this last question be said for this incident?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, related to hearsay, was irrelevant and immaterial and that counsel had not shown any prior contradictory statements with regard to which this witness was being questioned as to an earlier affidavit.

The accused made no reply.

The commission announced that the objection was not sustained.

A. Naturally, it includes both of them.

The commission then, at 10:10 a. m., took a recess until 10:50 a. m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

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LIBERTY, IOWA.

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

(Cross-examination continued.)

85. Q. From what you have testified previously and what you have testified to now, I believe there is contradiction in your statements. You stated just now that you thought "I imagined there was a trial and this was common sense." Does this apply also to this testimony you gave in reply to the question of the judge advocate?

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

The accused replied.

The commission announced that the objection was sustained.

86. Q. You testified that you were the engineering officer, the repair officer, the communications officer, the transportation officer and also head of the self-supporting measures committee. In what unit did you have these duties?

A. I was attached to the Sixty-second Naval Guard Unit and later when the Jaluit Defense Garrison was organized, it referred also to the Jaluit Defense Garrison. JK

87. Q. Was the self-supporting measures committee a committee of the Sixty-second Naval Guard Unit?

A. I do not remember whether the self-supporting measures committee was set up first or organized first, or the Jaluit Defense Garrison was organized first.

88. Q. Do you remember when the Jaluit Defense Garrison was organized?

A. I do not remember the day of the month.

89. Q. Do you have any approximate recollection?

A. As I recall, it may have been after the fall of Kwajalein or it may have been after the fall of Saipan. Anyway, it was after we were not on means of transporting food and replacements, and ammunition became unavailable. JK

90. Q. Do you know what were the relations between the Sixty-second Naval Guard Unit and the Jaluit Defense Garrison?

A. The headquarters of the Jaluit Defense Garrison was located on Enidj, yet there were units such as the construction corps, construction battalion and the ammunition dump on Jaluit around. Each unit was independent. At that time the Sixty-second Naval Guard Unit existed. I do not remember exactly, but there were orders from the headquarters by dispatch after transportation was cut off from the rear bases and there was no supply that the senior commanding officer in the south seas islands should take command of all units and Japanese on these islands. The senior commander, regardless of whether he was navy or army, would become supreme commander, and Admiral Masuda, who was the commanding officer of the Naval Guard Unit, was the senior officer. He became supreme commander. I do not remember if that is

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*James P. Kenney*  
LIEUT., JAG.

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the time that the Jaluit Defense Garrison was organized, but the ranking officers were called together and Admiral Masuda stated that from this day the Jaluit Defense Garrison would be organized.

91. Q. In your previous testimony you stated that they were talking about the natives on the veranda. Where was this veranda?

A. There was a veranda, the former officers' wardroom. The wardroom was destroyed by bombing and it was built up about one meter off the ground by concrete, and it was also used as a water tank and it was used as an officers' wardroom. When I meant the veranda, it is the officers' wardroom.

92. Q. What was the distance from Admiral Masuda's quarters to the veranda?

A. The direct distance was about twenty meters, and many times it was destroyed by bombings. It was put up again, so that the distance may vary from twenty to thirty meters.

93. Q. When you testified, stated, that you expressed your opinion at the veranda concerning the natives, Admiral Masuda, Inoue, Major Furuki was there. Was there anyone else present?

A. When I went there, it was Admiral Masuda, Major Furuki and Captain Inoue, and when I went there, that made four people altogether. I do not remember anyone else being there.

94. Q. Does Admiral Masuda usually perform his duties at this place?

This question was objected to by the judge advocate on the ground that it was characterizing the witness's testimony, was misleading and vague.

The accused replied.

The commission announced that the objection was sustained.

95. Q. When you entered this veranda when Admiral Masuda, Inoue and Furuki were discussing the natives, were they standing?

A. The three of them were seated.

96. Q. When you talked to them, did you sit down and talk with them?

A. As it was ten to fifteen minutes and there were many chairs at the wardroom, I think I was sitting.

97. Q. Do you remember what time of day this was?

A. I do not remember distinctly the time.

98. Q. Was there a table there?

A. There was a long table which was always there.

99. Q. When you went to Admiral Masuda to receive orders and to discuss problems with him, where did you go to talk to Admiral Masuda?

A. The commanding officer usually performed his duties in his room or on the veranda or the air raid shelter, the command post; and whenever I went to receive instructions, I looked for where he was and I went there.

100. Q. You stated that you went to examine the boat the natives came in. Was the time you went to examine the boat before you came upon this meeting on the veranda or was the meeting on the veranda before you went to examine the boat? Which was first?

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*James P. Kennedy*  
Lieut., USN.

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A. The boats came under the direction of the transportation officer and it is needed for transportation of cargo. I remember exactly going to see the boats, but I do not remember when I went.

101. Q. You stated that you knew that a native from Mille escaped and that you stated that you found out about the execution of the natives after the war. What was the period of time between the time the natives escaped and the end of the war?

A. I do not remember exactly what the period of time was.

102. Q. Approximately how many months was the time?

A. I remember exactly that a native escaped and everybody looked for him, but I do not remember the time.

103. Q. Do you remember the native having escaped around April of 1945?

A. It may have been this time, but I do not remember.

104. Q. Do you know where these natives were confined?

A. The native who was confined at the Second Ammunition Dump was the one who escaped.

105. Q. You stated that you were greatly concerned about the women and children and that without being asked you stated your opinion to Admiral Masuda. Weren't you interested in what happened to the natives?

A. I do not mean that I had none at all, but, it is natural that I am concerned concerning the death of a person, but as the lives of two thousand people on Jaluit depended on my work, my work is transportation of food and this could not be done during the day because of the air raids and planes overhead and at night to travel without lights was very dangerous. There were many cases in which the boats overturned by squalls and there were some who died of this. Repair of boats, oars, and repairmen were mainly made up of conscripted workers and unless I was always with them keeping them going, they would not work; therefore, I would always have to be with them, and unless a person experienced the bombings he must be able to stand by them or was in a very dangerous place. I always was busy. I had no time for myself, and as I was asked by the defense counsel as to whether I had no concern for these natives, I don't say that I had no concern at all, but I was very busy.

The witness was duly warned.

The commission then, at 11:30 a. m., adjourned until 9 a. m., Monday, May 26, 1947.

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*James P. Kenny*

CLERK, U.S.N.

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**TWENTIETH DAY**

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, May 26, 1947.

The commission met at 9 a. m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Reese, Coast Artillery Corps, United States  
Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major James H. Tatch, U. S. Marine Corps, members, and  
Lieutenant David Bolton, U. S. Navy, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocates.  
Robert R. Miller, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Shintone, Sanjire, the witness under examination when the adjournment  
was taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Cross-examination continued.)

106. Q. Do you know whether or not Admiral Masuda made public to all the  
forces on Jaluit that the natives who had sneaked in from Wille had been  
executed because they had committed crimes there?

A. If it was to everybody, I do not know if it was proclaimed or not; and I  
do not remember distinctly.

107. Q. Have you ever relayed this proclamation through your capacity as  
executive officer to your officers under you?

A. I do not recall.

108. Q. You testified that you knew that these natives were spies. When you  
say spies, do you mean a public enemy?

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

The accused replied.

The commission announced that the objection was sustained.

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*James P. Kenny*  
J. P. KENNY, USN.



109. Q. You testified on direct examination that you came into a conference that Admiral Masuda was holding and gave an opinion. Was this a regular conference that he held each day?

A. I came upon a meeting of the commanding officer and Major Furuki and Captain Inoue. I do not know if this was a regular meeting or not, but there were many meetings of many kinds. When I said many kinds of meetings, as the food was short on Jaluit, it was many meetings concerned with this problem.

110. Q. What time of the day was this meeting?

A. I do not remember.

111. Q. Was it right after the noon meal?

A. I do not know if it was after the morning meal or after the noon meal.

112. Q. Did Admiral Masuda have a conference every day after the noon meal?

A. These meetings concerning the food shortage were held after the morning meal, after the noon meal or after the evening meal.

113. Q. Was this the only thing that was discussed at these meetings?

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

The accused withdrew the question.

114. Q. Was the shortage of food the only thing discussed at these meetings that were held after each meal?

A. The shortage of food was not the only thing discussed. I reported the repair of arms during the meal and at times carried over after the end of the meal, and also reports were made concerning the repairs of ships and the repairing of air raid shelters which had been damaged.

115. Q. Did you, Admiral Masuda, Major Furuki and Captain Inoue have your meals together at these times?

A. The four you mentioned were not the only ones present. There was also the senior medical officer, the head supply officer, the head gunnery officer and head of the civil government.

116. Q. Was this the only time you officers got together each day?

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

The accused replied.

The commission announced that the objection was not sustained.

A. The only times we assembled was during the meals.

117. Q. Is it not true that the reason you did not assemble at other times was that it was too dangerous to do so?

A. There were times when meetings were held when a person who was dispatched to the other islands to investigate the food problems was called and meetings were held other to the times after meals.

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LIEUT., USN.

118. Q. How long did these conferences after the meals last each day?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and that it was going into collateral matter.

The accused replied.

The commission announced that the objection was sustained.

119. Q. Did the paymaster and the medical officer stay till the end of each conference from April first to April ninth?

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

The accused replied.

The commission announced that the objection was sustained.

120. Q. Did you have a conference after each meal each day from April first to April ninth?

A. I do not remember if there were conferences, when it is stated from first to ninth, every day, but I think there may have been during this period. I do not remember.

121. Q. Is it not true that the most important thing that happened during the period April first to April ninth was the Mille natives landing on Jaluit and their subsequent actions?

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

The accused replied.

The commission announced that the objection was sustained.

122. Q. How long did these conferences after the meals from April first to April ninth last, approximately?

This question was objected to by the judge advocate on the ground that the witness had already stated that he did not know how long they were held.

The accused replied.

The commission announced that the objection was sustained.

123. Q. You testified that you did not remember about a document setting forth the crimes which the Mille natives committed. Could there have been such a document issued by Admiral Masuda and you not see it?

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

The accused replied.

The commission announced that the objection was sustained.

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*James A. Kanny*  
*Lieut. J. M.*

124. Q. When you inspected the boat the Mille natives came in, did the boat have a sail?

A. No.

125. Q. How did you find out that these natives came from Mille?

A. I heard from someone that natives landed on the north and south of Jaluit and that they were investigated and were found spies. From whom I heard this I do not remember.

126. Q. Didn't you inspect them yourself?

A. I did not see them.

127. Q. At no time during their stay on Jaluit did you see the natives?

A. I did not see them.

128. Q. Not even Ralimo?

A. I do not know.

129. Q. How far is it from Mille to Jaluit?

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

The accused replied.

The commission announced that the objection was not sustained.

A. As I have not gone by boat to Mille or by plane to Mille, I do not know how far it was.

130. Q. Are you sure you were ordered to inspect the boat the natives came to Jaluit in?

A. Yes, I was ordered by the commanding officer.

131. Q. After you had been ordered to inspect the boat, tell just what you did.

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

The accused replied.

The commission announced that the objection was not sustained.

A. The reason why I was ordered to inspect the boat by Admiral Masuda is as I stated before, because boats were needed to transport food and to inspect and to see if it could be used for transporting copra. When I went to see the boat, the width was about one meter and the length about three meters, a Japanese type boat, and I remember there was an oar and a rudder in the boat.

132. Q. Did you report your findings with regards to the boat to Admiral Masuda?

A. I did.

133. Q. When did you do this?

A. Immediately after I inspected the boat I returned and reported.

134. Q. Who was present when you reported this?

A. I think it was only the commanding officer. I do not remember anyone else being there.

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135. Q. Wasn't Major Furuki there?

A. I do not remember.

136. Q. Do you know where Major Furuki was at that time?

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

The accused replied.

The commission announced that the objection was sustained.

137. Q. When you made your report to Admiral Masuda was Major Furuki away on an inspection trip to another island? JK

A. I do not remember.

138. Q. Was it your opinion that the four natives that came from Mille could come all the way from Mille in this boat?

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

The accused replied.

The commission announced that the objection was sustained.

139. Q. How long did it require for you to make this report to the admiral about this boat?

A. I reported the width, the length and the capacity of its transportation, and that it was a small boat and it could not be used where there were a lot of waves. It was a simple report, so it did not take long.

140. Q. Do you remember hearing the natives from Mille discussed at any time during the period of April first to April ninth?

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

The accused withdrew the question.

141. Q. Do you remember hearing the natives from Mille who were alleged to have been spies discussed by Admiral Masuda at any of the conferences after the meals during the period of April first to April ninth?

A. I do not remember.

142. Q. Where were you when the Mille natives were reported to you to have landed on Jaluit?

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

The accused withdrew the question.

143. Q. You testified that you were the acting executive officer. When the Mille natives landed on Jaluit, was this incident reported to you?

A. I do not remember.

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*James P. Kenney*  
LIEUT., USN.

144. Q. Do you remember when these natives from Mille landed on Jaluit?  
A. I do not remember.

145. Q. When Admiral Masuda told you to inspect the boat, was this the first time that you found out about the natives from Mille landing on Jaluit?  
A. Whether this was the first time or whether I heard that the natives were spies was first, I do not remember.

146. Q. Do you remember when you first heard that they were spies?  
A. I do not know the time and the date.

147. Q. Was it before you gave your opinion at this conference?  
A. I had heard this before I expressed my opinion. Because I had heard of this before the meeting, it came instantly to me that this was about the spies. *JK*

148. Q. When you expressed your opinion at this meeting about these natives, did you consider them as enemies of Japan?

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

The accused replied.

The commission announced that the objection was sustained.

149. Q. Did you, because of your position as executive officer, have to assume the duties and responsibilities of Major Furuki while he was away during the short period the natives landed on Jaluit?

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

The accused withdrew the question.

150. Q. Was Major Furuki away on an inspection trip during the latter part of March and the early part of April, 1945?  
A. As Major Furuki was away frequently, I do not remember.

151. Q. Do you remember telling Major Furuki when he returned from an inspection trip about the natives from Mille landing on Jaluit?  
A. I do not remember telling Major Furuki.

152. Q. Who did you tell about these natives from Mille landing on Jaluit?

This question was objected to by the judge advocate on the ground that the witness had not testified that he told anyone.

The accused withdrew the question.

153. Q. Did you tell anyone about the natives from Mille landing on Jaluit?  
A. I do not remember telling anyone.

154. Q. Do you remember ordering people to search for the missing native, Halima?

A. I do not remember the name of the native distinctly, but I was ordered by the commanding officer to have all people search for the native, other to the ones who were on duty or on important jobs. This was ordered by the commanding officer and I think I ordered the people to search for him, but I do not remember distinctly.

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*James A. Kennedy, USM.*

155. Q. Do you remember if this was after the other natives from Wille had been executed?

A. I remember distinctly that the native was looked for, but as I do not know the date the natives were executed, I do not remember.

156. Q. Did you know that this native that you ordered people to look for was a spy?

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

The accused replied.

The commission announced that the objection was sustained.

157. Q. When you ordered the search for the missing prisoner, did you know whether he was suspected of being a spy?

A. As I recall, I think it was made public that one of the spies had escaped. JK

158. Q. Did you consider him as a spy?

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

The accused replied.

The commission announced that the objection was sustained.

159. Q. The opinion that you testified to having given, was this opinion given before you ordered the search for the missing native spy from Wille?

A. I do not remember if it was before or after.

160. Q. When you gave your opinion about these spies, did you consider them as public enemies?

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

The accused replied.

The commission announced that the objection was sustained.

161. Q. Was this the first time that you had expressed your opinion, as you testified you did, to the Admiral without being asked to do so?

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

The accused withdrew the question.

162. Q. Was this the only time that you expressed your opinion, without being asked to do so, about these natives to the admiral?

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

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*James P. Henry*

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The accused made no reply.

The commission announced that the objection was not sustained.

A. I only expressed my opinion once.

163. Q. How did the admiral receive your opinion?

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

The accused replied.

The commission announced that the objection was sustained.

164. Q. What did the admiral say to you after you had expressed your opinion concerning these native spies?

A. As I stated before, Captain Inoue, myself, and I believe, Major Furuki expressed the same opinions and the commanding officer stated, "I am sorry to execute the women and children, but if any of them escape they will spy, therefore disrupting military discipline." This was what he stated.

165. Q. You just testified that Major Furuki and Captain Inoue expressed their opinions. Did they express their opinions before you did or after you did?

A. Captain Inoue expressed his opinion first.

166. Q. Then, did you express your opinion?

A. I did, and as I recall, I think the battalion commander, Major Furuki expressed the same opinion.

167. Q. Did Admiral Masuda ask Captain Inoue to express his opinion?

A. After I arrived, I do not recall, Captain Inoue was stating that he would like to have them confined on Tiet Island and have them gather copra. I entered while he was stating this and I do not know if he was asked his opinion or not.

168. Q. Do you remember whether Admiral Masuda asked Major Furuki to express his opinion?

A. I do not remember if the commanding officer said to Furuki, "What is your opinion?"

169. Q. You do remember that Major Furuki expressed his opinion.

A. I do.

170. Q. How long did you stay at this conference?

A. As I recall, about ten to fifteen minutes.

The commission then, at 10:23 a. m., took a recess until 10:36 a. m., at which time it reconvened.

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

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*James P. Keating*

LIEUT. JUDGE

He witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

171. Q. When you left this conference, did the other two officers, Furuki and Inoue, also leave?

A. I left first, because I had reported on my duties and I was about to start on my other duties. I think they did not leave together with myself. JK

172. Q. So that when you came into this meeting, you did not know that it was a regularly scheduled meeting. Is that true?

A. I did not think about whether it was a regularly scheduled meeting or not. I just perceived that he was reporting on the women and children spies.

173. Q. Then you knew what they were meeting about, did you?

A. It was not that I knew beforehand, but after I went there I perceived that it was a report on the spies or an examination and consultation.

174. Q. And without being asked you barged in on the admiral and two of his officers on an examination and consultation concerning the spies. Is that right?

A. Yes, I went there.

175. Q. What you testified to in Tokyo by affidavit saying: "I would imagine that a trial had been given the natives as it was thought that they were spies. Naturally such violence would not be committed if there was no trial." Is this then not contrary to what you said on direct examination regarding the trial of Mille natives?

This question was objected to by the judge advocate on the ground that it was vague and highly improper to ask the witness if he thinks it is contrary without pointing out the specific contradiction, as several distinct elements are contained in the quoted statement. JK

The accused replied.

The commission announced that the objection was sustained.

176. Q. You testified on direct examination that you knew Captain Inoue. What was Captain Inoue's general reputation on Jaluit?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the rebuttal evidence.

The accused replied.

The commission announced that the objection was not sustained.

A. Captain Inoue was attached to the same Jaluit Defense Garrison as myself; the highest ranking army officer was Major Furuki, the next ranking officer was Captain Inoue. He was a very serious and careful person. He was a person

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with a sense of absolute obedience which was typical of the Japanese military soldier. He was kindly and looked after his men and friendly with his superiors. As an example of my men, a person who was in my division, Petty Officer Nishida, worked under Major Furuki. He became sick and died. I was present at his burial and Captain Inoue also was there and I remember him stating that he believed the death of Petty Officer Nishida was his responsibility. He wished he had looked after him more carefully and if he had done so he may not have died. To this he expressed his regret to his superiors and to his division officer who was myself. His sickness was as I recall pulmonary tuberculosis and as I recall I remember his stating as if the death of Petty Officer Nishida was all his fault. He was very kind and very sincere to his superiors and subordinates. Captain Inoue was dispatched many times to the outlying islands because of his numerous duties. Because I was head of the self-supporting committee I came in direct contact with the natives. Due to the heavy bombing of Jaluit the military personnel suffered from an acute shortage of food and clothing. The food situation of the natives was also critical. I remember Captain Inoue stating to me and also at the conference concerning the food problem that the natives should get first priority in case a shipment of food and clothing arrived. JK JK

The commission directed that the words "as an example one of my men .....and I remember his stating as if the death of Petty Officer Nishida was all his fault," and "Captain Inoue was dispatched many times to the outlying islands.....that the natives should get first priority in case a shipment of food and clothing arrived," be stricken from the record.

The commission directed that the witness answer the question only with regard to the general reputation of Captain Inoue on Jaluit Atoll pertaining to the issues.

A. (continued.) I would like to state that Captain Inoue was on very friendly terms with his superiors and subordinates. He was not talked of badly. No one talked badly of him.

Reexamined by the judge advocate:

177. Q. On cross-examination you were asked certain questions with regard to an affidavit that you made in Tokyo. In certain of these questions only part of your answer to question twenty-one appears to have been used in the framing of the question. Were you asked at Tokyo the following question and did you give the following answer: "21. Q. Were there natives given a court trial before execution? A. I would imagine that a trial had been given the natives as it was thought that they were spies. Naturally such violence would not be committed if there was no trial. However, I did not hear of any trial myself."?

This question was objected to by the accused on the ground that the entire document should be submitted rather than just a portion thereof read.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. At Tokyo I was asked was there a trial. I stated I did not know. I was then asked did you think there was a trial and because I had heard that some spies had come in I answered that I thought that there was a trial. All that I said to the question was there a trial was that I imagined there was a trial.

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178. Q. Is this your signature? (Indicating on subject affidavit.)

A. Yes.

179. Q. When you were asked questions in Tokyo on 26 March 1947 were they translated to you and did you subscribe your name to the bottom of the translation on this piece of paper?

This question was objected to by the accused on the ground that the entire document should be offered in evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did sign it. What I stated in Tokyo and what I stated here I believe that there was no difference, and when I state this I do not mean this to have a different meaning.

180. Q. The judge advocate is not trying to show that what you said is not true. He merely wishes to know if you were asked the following question and if you gave the following answer: "21. Q. Were these natives given a court trial before execution? A. I would imagine that a trial had been given the natives as it was thought that they were spies. Naturally such violence would not be committed if there was no trial. However, I did not hear of any trial myself."?

A. It is as it is stated here and I understand it.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The rebuttal ended.

The surrebuttal began.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. First Lieutenant, Imperial Japanese Army, Ieki, Tamenori.

2. Q. Are you presently confined on Guam?

A. Yes.

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

A. Inoue, Fumio.

JK

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*James P. Conway*

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Examined by the accused:

4. Q. Have you ever had duty with the Japanese forces on Jaluit?

A. Yes.

5. Q. During what period did you have duty on Jaluit?

A. From the end of November 1943 to the end of the war, October 1945.

6. Q. Do you know if a publication was put out in April 1945 by the commanding officer concerning natives of another island?

A. I do.

7. Q. Was this publication made public?

A. A circular was put out. It was put out by the commanding officer of the Jaluit Defense Garrison and it stated that the natives who sneaked in from Mille had committed felonies at Mille and had committed spying on Jaluit, therefore all of them had been executed. At this time I was a platoon leader in charge of some positions. This was put out in the middle of April 1945. I received this circular. JK

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

8. Q. Do you know that Lieutenant Commander Shintone was the acting executive officer of the Jaluit Defense Garrison?

A. I do.

9. Q. Through common knowledge, do you know what kind of work the executive officer did in relation with the commanding officer?

A. As the executive officer of the Sixty-second Naval Guard Unit, he directly supported Admiral Masuda and helped him in his work. When Admiral Masuda was sick, Commander Shintone did the work. The character of Commander Shintone is such that he had to have a say in whatever went on, and he had to participate in whatever activity there was. JK

The judge advocate moved to strike the words "The character of Commander Shintone is such that he had to have a say in whatever went on, and he had to participate in whatever activity there was," out of the answer on the ground that they were hearsay, irrelevant and immaterial.

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*James P. Kenney*

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The accused replied.

The commission directed that the words be stricken out.

10. Q. This morning you testified that the fact of the execution of the Mille natives was made public. Does such publication go through the office of the executive officer?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial and called for the opinion of the witness since this witness was an army officer and was not attached to the Sixty-second Naval Guard Unit. JX

The accused<sup>d</sup> replied. JK

The commission announced that the objection was sustained.

11. Q. Do you know by what means Admiral Masuda made public this publication you testified to this morning?

A. I do.

12. Q. Tell us.

A. This was a circular which was put out by the commanding officer of the Jaluit Defense Garrison and on his order; and such orders passed through the ranking officers, Shintone and Furuki, and there can be no mistake when it is said there is nothing which did not pass through Shintone and Furuki. JK

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

The accused replied.

The commission directed that the answer be stricken out.

13. Q. Do you know about the escape of a native called Balime?

This question was objected to by the judge advocate on the ground that it was repetitions, irrelevant, immaterial and beyond the scope of the rebuttal.

The accused replied.

The commission announced that the objection was sustained.

14. Q. Do you know of the fact that Commander Shintone lead the search for this native?

This question was objected to by the judge advocate on the ground that it was repetitions, in that the witness Shintone did not deny participating in the search.

The accused replied.

The commission directed that the record be checked.

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*James A. Kenney*  
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The record was checked.

The commission announced that the objection was sustained.

The accused did not desire further to examine this witness.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.  
A. Former lieutenant, Imperial Japanese Navy, Sakuda, Sawaaki. JK
2. Q. If you recognize the accused, state as whom.  
A. Captain, Imperial Japanese Army, Inoue, Fumio.
3. Q. Are you presently confined on Guam?  
A. Yes. JK

Examined by the accused:

4. Q. Have you ever had duty with the Japanese forces on Jaluit?  
A. I have.
5. Q. During what period did you have duty there?  
A. From October, 1943, till the end of the war.
6. Q. What unit were you attached to on Jaluit?  
A. I was attached to the Sixty-second Naval Guard Unit.
7. Q. Do you know Lieutenant Commander Shintone?  
A. I do.
8. Q. What was the relation between Lieutenant Commander Shintone and yourself?  
A. Lieutenant Commander Shintone was the executive officer of the Sixty-second Naval Guard Unit, but I had no direct relation with him. There was no direct relationship between us.
9. Q. Was Shintone your superior officer?  
A. Yes.
10. Q. Do you know, if in April, 1945, Lieutenant Commander Shintone made anything public to his subordinate officers concerning the Mille natives?  
A. In April of 1945, at the morning assembly where everyone was assembled, Commander Shintone read a circular which was put out by the commanding officer, stating that the Mille natives had been executed.

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11. Q. Do you remember if it was stated that the natives were executed?  
A. As I recall, it stated that the natives had committed murder at Mille, and they had sneaked into Jaluit as spies.

12. Q. When this circular was read to <sup>by</sup> Commander Shintome, how many persons were assembled there? JK

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

The accused replied.

The commission announced that the objection was not sustained.

A. The number of people assembled were people of the headquarters, and numbered about fifty officers, non-commissioned officers and men.

13. Q. Do you know the general reputation of the defendant, Captain Inoue, on Jaluit?

A. Concerning Captain Inoue, what I noticed and what the other people on Jaluit noticed was that he was a very serious person in his work. Also that he was very careful and deliberate in his work. He listened to everyone's opinion, after which he received the authorization of the commanding officer; and in performing his duties, he strove for perfection.

The accused did not desire further to examine this witness.

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

The witness made the following statement:

From the papers I have seen of the Jaluit Defense Garrison and from the character of Captain Inoue, I sincerely believe the disposition of the Mille natives was done in the best way the circumstances could allow on Jaluit.

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

The accused made no reply.

The commission directed that the statement be stricken out.

The witness was duly warned and withdrew.

The surrebuttal ended.

The accused read a written statement in Japanese in his defense, appended marked "EE."

The commission then, at 3:27 p.m., took a recess until 3:45 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of the statement of the accused in his defense, copy appended marked "FF."

The judge advocate stated that the invitation from Commander Marianas authorizing the attendance of three official Marshallese native observers at the trial of Inoue, Fumio, has not been accepted. The judge advocate requested that the invitation submitted through the Atoll Commander Kwajalein be appended to the record.

The commission announced that the request was granted and the invitation through the Atoll Commander Kwajalein to the three official native observers from the Marshall Islands is appended, copy marked "GG."

The judge advocate and defense counsel requested an adjournment until 9 a.m., Thursday, May 29, 1947, in order to prepare final arguments.

The commission then, at 4:13 p.m., adjourned until 9 a.m., Thursday, May 29, 1947.

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